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

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, ATTORNEY, GENERAL, Plaintiff, v. UNITED STATES DEPARTMENT OF AGRICULTURE; MIKE JOHANNS, in his official capacity as Secretary of the Department of Agriculture; MARK REY, in his official capacity as Under Secretary of Agriculture, DALE BOSWORTH, in his official capacity as Chief of the United States Forest Service, and JACK A. BLACKWELL in his official capacity as Regional Forester, Region 5, United States Forest Service, Federal Defendants.	No. CIV-S-05-0211 MCE/GGH **FEDERAL DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS** Date: June 20, 2005 Time: 9:00 a.m. Location: 15th Floor Courtroom: No. 3 Judge: Hon. Morrison C. England, Jr.

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I. INTRODUCTION

This case involves a challenge to the Final Supplemental Environmental Impact Statement ("FSEIS") and the Record of Decision ("ROD") for the 2004 Sierra Nevada Forest Plan Amendment ("2004 Framework"), a significant amendment to the management plan for eleven national forests in the Sierra Nevada. Alleging violations of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*., and the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 *et seq*., Plaintiff seeks to set aside the 2004 Framework, which replaced the previous management direction found in the 2001 Sierra Nevada Forest Plan Amendment ("2001 Framework"). Pl. Comp. at 16.

As Defendants demonstrated in their memorandum supporting their motion to dismiss,[1]/ Plaintiff lacks standing to bring a suit as *parens patriae* against the federal government. See Defs.' Mem. at 8-10. The law is well settled that Plaintiff may not rely on its citizens' alleged interests or injuries to establish standing. Plaintiff argues that the "People's interests are not grounded solely in *parens patriae*." Id. at 3. However, to the extent that Plaintiff is filing suit pursuant to the authority granted under California Government Code section 12607 (see Pl. Comp. at ¶ 10), this *is* a *parens patriae* suit. This statutory provision provides the Attorney General with the authority to bring certain environmental actions on behalf of the State's people. Cal. Gov't Code § 12607. The clear language of the statute and its legislative history demonstrate that the statute only authorizes *parens patriae* suits. Thus, section 12607 of the California Government Code cannot be a basis for a suit against the federal government. Accordingly, this suit -- which is a *parens patriae* suit – must be dismissed.

Plaintiff's attempts to use section 12607 as its authority for representing the State's sovereign interests should also be rejected. Indeed, Plaintiff's claims regarding the State's interests do not demonstrate Plaintiff has standing before this Court. Not only do these allegations of the State's interests not appear in the Complaint, Plaintiff has not identified any

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[1]/ References to the Defendants' memorandum refer to Defendants' Memorandum in Support of Motion to Dismiss, filed April 27, 2005 ("Defs.' Mem.") (Doc. No. 18).

authority for bringing these claims. Moreover, Plaintiff's allegations of possible harm to the State's interests fail to satisfy Article III. Plaintiff's Complaint should be dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

II. THE ATTORNEY GENERAL LACKS STANDING TO BRING THIS SUIT AS *PARENS PATRIAE.*

A. The Attorney General May Not Sue the Federal Government on Behalf of the State's People.

Plaintiff may not rely on its citizens' alleged interests or injuries to establish standing before this Court. See Pl. Opp. at 9. As Defendants made clear in their opening memorandum, the law is well settled that *parens patriae* suits against the federal government are barred.

The Supreme Court stated that "[w]hile the State, under some circumstances, may sue in [its *parens patriae*] capacity for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government." Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 610 n.16 (1982) (internal citation omitted). While Plaintiff emphasizes that this language was dicta, Pl. Opp. at 11, the Ninth Circuit affords great deference to Supreme Court dicta. Coeur D'Alene Tribe of Idaho v. Hammond, 384 F.3d 674, 683 (9th Cir. 2004), cert. denied, 125 S. Ct. 1997 (2005) ("our precedent requires that we give great weight to dicta of the Supreme Court."); McCalla v. Royal MacCabees Life Ins. Co., 369 F.3d 1128, 1132 (9th Cir. 2004) ("we treat such dicta with 'due deference,' as it serves as a 'prophecy of what that Court might hold.'") (internal citations omitted); Zal v. Steppe, 968 F.2d 924, 935 (9th Cir. 1992) ("dicta of the Supreme Court have a weight that is greater than ordinary judicial dicta."). Therefore, the Supreme Court's direction in Snapp – that "[a] State does not have standing as *parens patriae* to bring an action against the Federal Government," 458 U.S. at 610 n.16 – should be given great weight in determining the outcome in this case.

The Ninth Circuit has addressed the question of whether a State may represent the interests of its people in a lawsuit against the federal government and followed the direction of the Supreme Court in Snapp. See Nevada v. Burford, 918 F.2d 854, 858 (9th Cir.1990) (state lacked standing to sue BLM on behalf of its people). In Nevada, the Ninth Circuit rejected the

state of Nevada's claim that it had standing to advance the interests of its citizens by challenging a federal agency's compliance with NEPA. 918 F.2d at 858. Nevada is the only Ninth Circuit case with facts analogous to this case. Therefore, its holding–that the State does not have standing to sue the federal government on behalf of the State's citizens–should be followed here. In addition to the Ninth Circuit, the Tenth, Eighth, and D.C. Circuits have similarly followed the direction of Snapp. See Wyoming ex rel. Sullivan v. Lujan, 969 F.2d 877, 882-83 (10th Cir. 1992) (challenge to DOI's exchange of federally-owned coal for conservation easement); Iowa ex rel. Miller v. Block, 771 F.2d 347, 354-55 (8th Cir. 1985) (challenge to USDA's federal disaster relief programs); Maryland People's Counsel v. FERC, 760 F.2d 318, 320 (D.C. Cir. 1985) (explaining prior denial of *parens patriae* suit against the Small Business Administration").

To support its notion that "some courts have held that a State *may* sue the federal government when the State seeks to require the federal government to comply with federal law," Plaintiff cites a single decision. City of New York v. Heckler, 578 F. Supp. 1109 (E.D.N.Y. 1984). Pl.'s Opp. at 11 n.11. However, the Heckler decision should not be viewed as persuasive authority. Not only is Heckler non-binding precedent from a district court in another Circuit, the decision was based, in part, on a Ninth Circuit case that was subsequently overruled. See Heckler, 578 F. Supp. at 1123 (explaining that the situation in Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975) is "the situation we face."). In Nevada, the Ninth Circuit expressly stated that its "earlier case of Washington Utilities & Transportation Commission . . . must of course, give way to the Court's clear statement in Snapp" that a State does not have standing to bring action against the Federal Government. Nevada, 918 F.2d at 858. It is the Ninth Circuit's view as expressed in Nevada that has binding authority over *this* Court.

Plaintiff argues that the Ninth Circuit's decision in American Rivers v. FERC, 201 F.3d 1186 (9th Cir. 2000), suggests that the ability of a State to raise a *parens patriae* claim against the United States remains an unresolved issue in this Circuit. Pl. Opp. at 11 n.11. Plaintiff's argument must fail. In American Rivers, the Ninth Circuit determined that the Oregon Department of Fish and Wildlife ("ODFW") had standing to challenge the Federal Energy

Regulatory Commission's ("FERC") "Section 18 determination" under the Federal Power Act ("FPA"). 201 F.3d at 1205. Although the Ninth Circuit did use the term "*parens patriae*" in describing ODFW's standing, it did so without analysis and within the context of a different statutory scheme. As the Court stated, "Section 18 of the FPA requires [FERC] to include in a [hydroelectric project] license 'fishways' prescribed by the Secretaries of Interior of Commerce." Id. at 1192 n.10. The FPA directs that the Commission's license conditions be "based on recommendations" from State wildlife agencies, among other sources. Id. In challenging the Section 18 decision, therefore, ODFW was alleging that its interests in the licensing decision, *i.e.*, the interests of the state agency with wildlife expertise, were injured. Here, in contrast, the Attorney General is alleging that the interests of the State's citizens are injured. This Court should follow the clear direction of the Supreme Court and this Circuit and conclude that Plaintiff lacks standing to raise these claims. See Snapp, 458 U.S. at 610 n.16; Nevada, 918 F.2d at 858.

B. Plaintiff Has Not Cited Any Proper Authority to Bring This Suit.

Plaintiff has cited California Government Code section 12607 as well as the "Attorney General's independent state constitutional, common law, and statutory authority to represent the public interest" as the authority for its NEPA and APA claims. Compl. ¶ 10; see also Pl. Opp. at 5. These sources of power provide the Attorney General with authority to enforce the State's laws and represent the State's people in certain lawsuits. They do not, however, authorize this action.

The text and legislative history of California Government Code § 12607 demonstrate that it does not authorize lawsuits against the federal government. First. the plain text does not support Plaintiff's argument. While the term "*parens patriae*" does not appear within the statute, the legislature explained that "[i]t is in the public interest *to provide the people of the State of California* through the Attorney General with adequate remedy to protect the natural resources of the State of California from pollution, impairment, or destruction." Cal. Gov't Code § 12600(b) (emphasis added). The statute states that the Attorney General may bring a lawsuit "*in the name of the people* of the State of California *against any person* for the protection of the natural resources of the state from pollution, impairment, or destruction." Id. § 12607 (emphasis added).

The California legislature defined "person"as "any person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of such entities."[2]/ Id. § 12604. Noticeably absent from this definition of "person" is the federal government. Having written such a precise definition, had the California State legislature intended to authorize the Attorney General to sue the federal government under the authority established in section 12607, it would have included the federal government in the list of who were potentially subject to suit. While the list provided under section 12604 does not claim to be exhaustive, "the omission [of the federal government from the definition of 'person'] has to be seen as a pointed one when so many other governmental entities are specified." Cf. United States Dept. of Energy v. Ohio, 503 U.S. 607, 617-18 (1992) (analyzing the statutory construction of Clean Water Act and Resource Conservation and Recovery Act provisions defining "person"). Therefore, the Court need not look beyond the statutory text to conclude that the statute was intended to allow the Attorney General to bring certain environmental suits on behalf of the State's people and that these *parens patriae* actions were not intended to be directed at the federal government.

Second, the legislative history of section 12607 also demonstrates that it was not intended to advance a State's proprietary interests against the federal government. California Government Code section 12607 was added in 1971 with the enactment of Senate Bill 678. See Cal. Gov't Code § 12607. This provision "was intended to ensure that the Attorney General would have the right but not necessarily the exclusive right to bring environmental actions *on behalf of the people* of the state where appropriate." People ex rel. California Dep't of Transp. v. S. Lake Tahoe, 466 F. Supp. 527, 533 (E.D. Cal. 1978) (emphasis added). Senate Bill 678 passed during a legislative session in which competing bills would have provided standing to any citizen to bring environmental actions, regardless of whether he could demonstrate personal injury. See Letter by

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[2]/ The California legislature has taken care that this definition of "person" accurately reflects their intent. See Cal. Gov't Code § 12604 note (definition was updated in 1994 to make clear that limited liability companies were among the "persons" subject to suit).

Sen. Lagomarsino to Governor Reagan 2 (Nov. 4, 1971) (attached hereto as Def. Ex. A). In contrast, Senate Bill 678 authorized only the Attorney General to bring certain lawsuits to advance the interests of the state's citizens. See Cal. Gov't Code § 12600(b). Nothing in the text or legislative history of the Senate Bill 678 suggests the statute was intended to be a vehicle for the Attorney General to represent the *State*'s proprietary or procedural interests. Indeed, Plaintiff has not cited any basis for its representation of the *State*'s sovereign interests. Because Plaintiff has relied solely upon section 12607 as its authority to bring this lawsuit, Plaintiff should be barred from representing the *State*'s interests. See Pl. Opp. at 3, 5.

Finally, Plaintiff asserts in its Complaint that the Attorney General has "independent constitutional, common law, and statutory authority to represent the public interest." Compl. ¶ 10. However, none of these potential sources of authority are a proper basis for this lawsuit. First, the Attorney General has not cited any particular constitutional provision to support this action. Under the California Constitution, "[s]ubject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State." Cal. Const. Art. 5 § 13. As such, the Attorney General is charged with ensuring that the "laws of the State are uniformly and adequately enforced." Id. There is no alleged violation of state law in this case. Therefore, the Attorney General has failed to show how its "independent constitutional" authority supports its standing in this case. Second, the Attorney General's "common law" powers to protect the public interest are not a basis for this suit. The Attorney General has not shown how its "common law" authority to represent the public interest is anything but *parens patriae* authority, which–as described above–is an inadequate basis for standing in this case. Third, the only statutory authority cited by Plaintiff is section 12607 of the California Government Code. As previously addressed, this statute only authorizes *parens patriae* suits and cannot form the basis for a lawsuit against the federal government. Plaintiff has cited no other statutory provision and thus has not demonstrated it has statutory authority for this suit.

In sum, none of the sources of authority cited by Plaintiff authorize this action.

III. PLAINTIFF'S CLAIMS REGARDING THE STATE OF CALIFORNIA'S INTERESTS DO NOT DEMONSTRATE ARTICLE III STANDING

Plaintiff claims that the State of California has certain proprietary and sovereign interests. Pl. Opp. at 5-9, 11-13. However, these allegations fail to establish Article III standing. First, Plaintiff has not alleged in its Complaint any authority for raising the State's interests in this lawsuit. Second, Plaintiff has failed to demonstrate an actual or threatened injury that is likely to be redressed by the requested relief.

A. Plaintiff Cannot Base Its Standing in This Suit on the State's Rights and Interests.

To the extent that Plaintiff seeks to protect resources on behalf of the State's citizens, Plaintiff is barred by the *parens patriae* doctrine as previously discussed. To the extent that Plaintiff bases its claims on injury to the sovereign interests of the State, Plaintiff has failed to show that it has the authority to do so in this case.

The California Attorney General has statutory authority to represent the State as counsel for the State's agencies and employees. See Cal. Gov't Code § 11040. In this case Plaintiff is not filing suit on behalf of a state agency or employee. Pl. Opp. at 5. Instead, Plaintiff brings this suit in the California Attorney General's "independent" capacity. Id.

Plaintiff cites D'Amico v. Bd. of Med. Examiners, 11 Cal. 3d 1 (Cal. 1974), in support of its assertion that Plaintiff is authorized to raise the State's rights and interests in order to establish Article III standing. Pl. Opp. at 5 ("the Attorney General is authorized to act to protect the State's natural resources."). D'Amico does not support Plaintiff's argument. In D'Amico, the Supreme Court of California evaluated the Attorney General's "dual role" as a representative of the public interest (the interest of the "people" of the State) on one hand, and a representative of the state agencies and employees on the other. 11 Cal. 3d at 14-15. The D'Amico Court explained that the Attorney General's representation of the public interest is based not only in his role as "the chief law officer of the state" and in specific statutory grants of power, but is also "derived from the common law relative to the protection of the public interest." 11 Cal. 3d at 14.

Contrary to the D'Amico decision, Plaintiff in this case equates the Attorney General's common law power to protect the public with the right to sue on behalf of the State's proprietary

interests. Plaintiff highlights the D'Amico court's statement that the Attorney General may, in the absence of legislative restriction, file an action "directly involving the rights and interests of the state." Pl. Opp. at 5 (citing D'Amico, 11 Cal. 3d at 14). However, the full passage from the opinion clarifies that the Attorney General is authorized to file such a suit, not to protect the State's interests, but on behalf of the people of the State for "the protection of the public interest." D'Amico, 11 Cal. 3d at 14-15. The D'Amico Court stated that the Attorney General possesses

> broad powers derived from the common law relative to the protection of the public interest. "[H]e represents *the interest of the people* in a matter of public concern." Thus, "in the absence of any legislative restriction, [he] has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interest."

Id. (internal citations omitted) (emphasis added). Plaintiff reliance on D'Amico is therefore misplaced.

In sum, Plaintiff has not identified any basis in law for its assertion that the Attorney General has authority to independently initiate a lawsuit against the federal government to allegedly protect the State's sovereign interests. Accordingly, Plaintiff's purported claims regarding the State's interests should be rejected by this Court.

B. Plaintiff's Allegations of the State's Interests Do Not Establish Article III Standing.

Plaintiff bears the burden of demonstrating that the Article III constitutional standing requirements have been satisfied. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Constitutional standing requires a demonstration of "injury in fact" – "an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical." Id. Plaintiff fails to meet this requirement.

First, Plaintiff's Complaint is void of any specific facts establishing a concrete and particularized injury. The lack of specific facts renders Plaintiff's Complaint deficient to establish standing. Statements of interest in the use, enjoyment, and preserving and protection of the national forests of the Sierra (Complaint ¶ 8, Pl. Opp. at 9) as well as general descriptions of the natural resources (Pl. Opp. at 5-9) do not constitute factual uses or demonstrate injury. To

establish jurisdiction, the plaintiff must clearly alleged specific facts establishing an imminent risk of substantial and irreparable harm. See Whitmore v. Arkansas, 495 U.S. 149 (1990). As held by the Ninth Circuit:

> The liberal reading accorded complaints on 12(b)(6) motions is [still] ... subject to the requirement that the *facts* demonstrating standing must be *clearly alleged* in the complaint. We cannot construe the complaint so liberally as to extend our jurisdiction beyond its constitutional limits.

Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981), cert. denied, 454 U.S. 1031 (1981) (Emphasis added) (citation omitted)). In the absence of such specific factual allegations, the court may not assume that jurisdiction exists by "embellishing otherwise deficient allegations of standing." Whitmore v. Arkansas 495 U.S. at 156.

Plaintiff's new allegations of injury to the State's proprietary interests, as raised in its Opposition, of (1) the State's natural resources and (2) certain State-owned properties (Pl. Opp. at 11-13), is an attempt to reformulate its claims to avoid the *parens patriae* doctrine. As already mentioned, these new allegations were not set forth in the Complaint[3]/ and in any event fail to establish standing. Article III standing doctrine requires that Plaintiff demonstrate a concrete and particularized and actual or imminent injury to its interests. Plaintiff has failed to do so here.

Plaintiff's Opposition consists of unsupported general and speculative allegations. Plaintiff asserts that "the Forest Service's decision to adopt the 2004 Framework "*promises* to degrade wildlife habitat ... and to impact water availability" (Pl. Opp. at 2) and "*may* have impacts on nearby lands" owned or held in trust by the State. Pl. Opp. at 3 (emphasis added). Plaintiff fails, however, to set forth any specific facts in support of its broad allegations of injury to the State's natural resources or property. For example, Plaintiff cites to nothing in support of its contention that the 2004 Framework will "adversely affect the Sierra's sensitive species." Pl. Opp. at 12; see also Pl. Opp. at 6. Similarly, Plaintiff does not support its allegation with any specific facts that the 2004 Framework "promises to adversely impact both the quantity and quality of the State's water supply." Pl. Opp. at 7.

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[3]/ Plaintiff has not formally moved to amend its complaint.

In a few instances, Plaintiff attempts to buttress its allegations with various excerpts from the 2001 Framework Final Environmental Impact Statement ("FEIS") (not the 2004 Framework Final Supplemental Environmental Impact Statement ("FSEIS")) that do not speak to any concrete, particularize or actual harm, but simply provide descriptions of natural resources.[4]/ This is not sufficient to satisfy Article III standing. While a State or municipality may sue to protect a variety of "proprietary interests," including the municipality's natural resources, see City of Sausalito v. O'Neill, 386 F.3d 1186, 1197-99 (9th Cir. 2004), it still must satisfy Article III's requirement that it demonstrate "injury in fact" to those proprietary interests. In contrast to Plaintiff in this case, in City of Sausalito, the plaintiff supported its allegations of injury by citing directly to sections of the FEIS that identified actual concrete harm should the plan that plaintiff challenged be implemented. Id. at 1199. ("The FEIS itself acknowledges that implementation of the [challenged] Plan will result in an increase in local traffic, an increase in air pollutants emissions, and an incremental contribution to the cumulative noise environment."). Here Plaintiff provides no comparable references, and directly cites to the 2004 Framework FSEIS only once in its Opposition, yet the 2004 Framework is the government action that Plaintiff suggests will inflict harm.

Plaintiff has not submitted any evidence, such as a declaration from any of its State agency employees, to support its contention that the State's properties and natural resources have suffered an actual or threatened injury from Defendants' action. Plaintiff has not meet the Article III standing requirement to show injury. At best, Plaintiff can be credited as showing that the California Attorney General disagrees with the management direction of the 2004 Framework. In

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[4]/ The 2001 FEIS provides an in-depth discussion of the Sierra Nevada ecosystems, the physical, environmental and biological systems, species of the Sierra Nevada, land a resource uses, and cultural and economic values. See e.g., FEIS, Vol. 2, Ch.3, parts 2-6 (AR, CD #6). Plaintiff has repeatedly cited to sections of the FEIS that describe the Sierra Nevada ecosystem, and existing conditions of the physical environment and biological systems. For example, Plaintiff cites to various sections of the FEIS (Vol. 2, Ch. 3, part 3) that describes the Sierra Nevada waters. Pl. Opp. at 6-7. Plaintiff cites to sections of the FEIS (Vol. 3, Ch. 3 part 4) describing the vertebrate species of the Sierra Nevada. Pl. Opp. 6. However, these descriptive sections do not identify concrete or particularized injuries to the State. Building upon the 2001 FEIS, the 2004 FSEIS (AR Vol. 6) also provides in-depth discussions including those of the environmental consequences of the 2004 Framework to which Plaintiff cites to but once in its Opposition. See Pl.'s Opp. at 2, n.6.

particular, Plaintiff dislikes that the 2004 Framework contemplates an increase in timber harvesting compared to that under the 2001 Framework.[5]/ However, "the presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III's requirements." Diamond v. Charles, 476 U.S. 54, 62 (1986); State of Nevada, 918 F.2d at 857; Allen v. Wright, 468 U.S. 737, 754 (1981) ("[A]n asserted right to have the Government act in accordance with the law is not sufficient, standing alone, to confer jurisdiction on a federal court.").

Plaintiff's alleged injury is, if anything, speculative. This does not meet the standing requirements. State of Nevada, 918 F.2d at 857 (quoting Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976) ("Unadorned speculation will not suffice to invoke the federal judicial power.")). The 2004 Framework does not strip Plaintiff of its rights to challenge proposed site-specific projects that may occur at a later time to achieve some desired future condition recommended by the 2004 Framework. The 2004 Framework itself creates no legal rights or obligations and does not inflict harm on the alleged interests of Plaintiff since Plaintiff would have opportunity later to bring legal challenge at the time of proposal of site-specific projects. See Ohio Forestry Ass'n, Inc., v. Sierra Club, 523 U.S. 726 734 (1998) ("Nor have we found that the [Land and Resource Management Plan] Plan now inflicts significant practical harm upon the interest that the Sierra Club advances...."). Plaintiff has not demonstrated an actual or imminent injury, and, thus, has failed to meet the Article III standing requirements.

Plaintiff's Complaint should therefore be dismissed.

IV. CONCLUSION

For the foregoing reasons, Plaintiff is unable to satisfy the Court's jurisdictional requirements. Accordingly, Plaintiff's Complaint must be dismissed.

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[5]/ See Pl.'s Opp. at 2 n.6. (Referencing the 2004 Framework FSEIS, Plaintiff describes the 2004 Framework as increasing timber harvesting of "4.7 fold over projected 2001 Framework levels in the first decade and 6.4-fold in the second decade."). In comparing the timber harvest inventory under the 2001 Framework and the 2004 Framework ("alternative S1" and "alterative S2," respectively), the 2004 Framework FSEIS states is that "[t]he volume harvested under either alternative would be negligible; the removal of 4-21% of growth in each decade ... would have little effect on the accumulation of volume in the bioregion." See FSEIS, vol 1, ch. 4, pt. 4.4.1 at p. 320 (AR Vol. 6, SNFPA 03390).

Respectfully submitted this 13th day of June, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2005, I electronically filed the foregoing FEDERAL DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which will send notification to the individuals listed below:

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