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16 UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION

19 SIERRA NEVADA FOREST PROTECTION)
20 CAMPAIGN, PLUMAS FOREST PROJECT,)
21 EARTH ISLAND INSTITUTE, and CENTER)
22 FOR BIOLOGICAL DIVERSITY, non-profit)
23 organizations,)

24 Plaintiffs,)

25 vs.)

26 UNITED STATES FOREST SERVICE; JACK)
27 BLACKWELL, in his official capacity as)
28 Regional Forester, Region 5, United States)
Forest Service; and JAMES M. PEÑA, in his)
official capacity as Forest Supervisor, Plumas)
National Forest,)

Defendants.)

Case No.:

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 **INTRODUCTION**

2 1. This is an action brought pursuant to the National Environmental Policy Act
3 (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, the Herger-Feinstein Quincy Library Group Forest Recovery
4 Act (“QLG Act”), Pub. L. 105-277, Title IV, Sec. 401 (16 U.S.C. § 2104 note), the National Forest
5 Management Act (“NFMA”), 16 U.S.C. § 472a(g), and the Administrative Procedure Act (“APA”),
6 5 U.S.C. §§ 701 *et seq.*, challenging the decision by defendants (collectively “the Forest Service”) to
7 approve the Meadow Valley Defensible Fuel Profile Zone (“DFPZ”) and Group Selection Project
8 (“Meadow Valley Project” or “Project”) within the Plumas National Forest, California, and the
9 Forest Service’s concurrent determination that the Meadow Valley Project will not have a significant
10 effect on the quality of the human environment and does not require an environmental impact
11 statement (“EIS”) pursuant to NEPA.

12 2. The Meadow Valley Project, together with other past, present, and planned timber
13 sales in the project vicinity, will have a significant, adverse effect on the California spotted owl, a
14 sensitive species that is threatened with extinction. The Forest Service has failed adequately to
15 disclose and consider the cumulative impacts of these sales as required by NEPA. Moreover, by
16 failing to prepare an EIS to analyze these significant impacts, the Forest Service has failed to comply
17 with NEPA. Additionally, implementation of the Meadow Valley Project will result in less fire
18 resilient forests, thereby increasing the risk of wildfire, in violation of the QLG Act. Finally, the
19 Forest Service has failed to ensure that its own employees mark the trees to be logged in the Project
20 area, in violation of NFMA.

21 **JURISDICTION AND VENUE**

22 3. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331 (action
23 arising under the laws of the United States) and 5 U.S.C. § 702 (Administrative Procedure Act).

24 4. As described below, plaintiffs have exhausted all administrative remedies available to
25 them, pursuant to 36 C.F.R. Part 215.18(c).

26 5. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) because a
27 substantial part of the events or omissions giving rise to the claims occurred here, the Meadow
28 Valley Project site is located here, and several of the plaintiffs and defendants are based here.

1 6. The defendants’ violations of NEPA, the QLG Act and NFMA are subject to judicial
2 review under the APA, 5 U.S.C. § 702.

3 **INTRADISTRICT ASSIGNMENT**

4 7. Assignment to the Sacramento Division of this Court is proper by virtue of L.R. 3-
5 120(b) because the action arises in Plumas County.

6 **PARTIES**

7 8. The plaintiffs in this action are:

8 a. SIERRA NEVADA FOREST PROTECTION CAMPAIGN (“Campaign”) is
9 a Sacramento-based coalition of over eighty local, regional and national environmental organizations
10 dedicated to protecting and restoring the Sierra Nevada's national forests. The Campaign was
11 formed in 1996 to coordinate and focus the efforts of its member groups and maximize their
12 effectiveness. The Campaign works to protect and restore the ancient forests, wildlands, wildlife
13 and watersheds of the Sierra Nevada through scientific and legal advocacy, public education and
14 outreach, and grassroots forest protection efforts. Among other things, the Campaign has sought to
15 achieve greater protections for the California spotted owl, Pacific fisher, American marten and other
16 old forest dependent species.

17 b. PLUMAS FOREST PROJECT is a non-profit grassroots environmental
18 organization formed in 1989 to monitor activities in the Plumas National Forest. Plumas Forest
19 Project focuses primarily on logging, with its main goal being to ensure that Forest Service projects
20 protect all old growth stands as well as individual, larger, fire-resilient trees important to wildlife and
21 watersheds. Throughout the 1990s, Plumas Forest Project cooperated with other groups interested in
22 similar protections for the Sierra Nevada through its public involvement in the Regional planning
23 process that culminated in the 2001 Sierra Nevada Forest Plan Amendment, otherwise known as the
24 Framework. Plumas Forest Project seeks to ensure that the best science available is used by the
25 Forest Service to address concerns about wildlife, watersheds, and wildfire.

26 c. EARTH ISLAND INSTITUTE (EII) is a non-profit corporation organized
27 under the laws of the state of California with over 15,000 members in the United States, over 3,000
28 of whom use and enjoy the national forests of California for recreational, educational, aesthetic,

1 spiritual and other purposes. EII is headquartered in San Francisco, California. EII's mission is to
2 develop and support projects that counteract threats to the biological and cultural diversity that
3 sustains the environment. Through education and activism, these projects promote the conservation,
4 preservation and restoration of the Earth. One of these projects is the John Muir Project, whose
5 mission is to protect all federal public forestlands from commercial exploitation. EII through its
6 John Muir Project has a longstanding interest in protection of national forests and has recently
7 appealed numerous timber sales on national forests in the Sierra Nevada. EII's John Muir Project
8 and EII members actively participate in governmental decision-making processes with respect to
9 national forest lands in California and rely on information provided through the NEPA processes to
10 increase the effectiveness of their participation.

11 d. CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a non-profit
12 corporation with over 5,000 members and offices in Berkeley, California, among other places. The
13 Center is dedicated to the preservation, protection, and restoration of biological diversity, native
14 species and ecosystems in the western United States and elsewhere. The Center protects endangered
15 species and wild places of western North America and the Pacific through science, policy, education
16 and environmental law. The Center’s efforts to protect and preserve the national forests include
17 comments, petitions, and administrative appeals to the Forest Service on particular projects and
18 programmatic plans. Center members and staff continually use Forest Service lands, including the
19 area within the Plumas National Forest at issue in this suit.

20 9. Members of the Campaign, Plumas Forest Project, EII, and the Center (collectively
21 “plaintiffs”) live and/or work near the site of the Meadow Valley Project in the Plumas National
22 Forest. They use, on a continuing and ongoing basis, the resources in and surrounding the Plumas
23 National Forest near the Project site for recreational, scientific, aesthetic, educational, wildlife
24 preservation, conservation and other purposes such as camping, hiking, bird watching, other wildlife
25 observation, study, contemplation, photography and general enjoyment of the beauty of the wildlife,
26 land, and other resources in the area. These individuals intend to continue using and enjoying these
27 resources in the future.

28 10. In order to safeguard these interests and to carry out their respective missions,

1 plaintiffs and their members have been and continue to be actively involved in planning and resource
2 use issues in Sierra Nevada national forests in general and the Plumas National Forest in particular.
3 For example, plaintiffs commented upon the 2001 Sierra Nevada Forest Plan Amendment draft and
4 final environmental impact statements and record of decision, commented upon and filed an
5 administrative appeal from the 2004 Sierra Nevada Forest Plan Amendment revisions, commented
6 on and filed an administrative appeal from the 2004 Giant Sequoia National Monument Management
7 Plan, and have submitted petitions to list the California spotted owl and Pacific fisher as endangered
8 species pursuant to the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*

9 11. Plaintiffs have been party to all administrative proceedings and reviews of the
10 Meadow Valley Project since its inception, and to the QLG Act pilot project of which the Meadow
11 Valley Project is a component part. Plaintiffs commented on and filed administrative appeals from
12 the QLG Act final environmental impact statement and record of decision, and commented upon and
13 appealed the Meadow Valley Project environmental assessment and decision notice.

14 12. The Forest Service's decision to approve the Meadow Valley Project in violation of
15 NEPA, the QLG Act and NFMA, as alleged below, has harmed and injured, and is continuing to
16 harm and injure, the above-described interests of plaintiffs and their members by causing irreversible
17 harmful effects upon the forest habitat contained within the Meadow Valley Project area and by
18 adversely affecting the California spotted owl and other species that depend upon that habitat.
19 Additionally, defendants' actions deny plaintiffs' members their right to have the laws of the land
20 implemented and enforced, and the satisfaction and peace of mind associated with witnessing the
21 enforcement of this nation's environmental protection laws.

22 13. The above-described recreational, scientific, aesthetic, educational, wildlife
23 preservation, conservation, and other interests of plaintiffs and their respective members have been,
24 are being, and, unless the relief prayed for herein is granted, will continue to be adversely affected
25 and irreparably injured by the Forest Service's decision to approve the Meadow Valley Project in
26 violation of NEPA, the QLG Act, NFMA, and the APA, as alleged below.

27 14. The injuries described above are actual, concrete injuries suffered by plaintiffs.
28 These injuries are caused by the actions and omissions of the defendants, as described herein.

1 Plaintiffs' injuries would be redressed by the relief sought herein. Plaintiffs have no adequate
2 remedy at law.

3 15. The defendants in this action, collectively referred to as "the Forest Service," are:

4 a. The UNITED STATES FOREST SERVICE is an agency within the
5 Department of Agriculture charged with management of the National Forest System.

6 b. JACK BLACKWELL is Regional Forester for Region 5 of the United States
7 Forest Service, which includes the State of California and the Plumas National Forest. He decided
8 the administrative appeals taken by plaintiffs from the decision of defendant JAMES M. PEÑA to
9 approve the Meadow Valley Project and not to prepare an EIS. He is sued in his official capacity.

10 c. JAMES M. PEÑA is the Supervisor for the Plumas National Forest. He
11 approved the Meadow Valley Project and made the determination not to prepare an EIS. He is sued
12 in his official capacity.

13 **FACTUAL BACKGROUND**

14 **The Meadow Valley DFPZ and Group Selection Project.**

15 16. On April 16, 2004, defendant James M. Peña, Forest Supervisor for the Plumas
16 National Forest, approved the Meadow Valley Project within the Mt. Hough Ranger District, Plumas
17 National Forest, about five miles west of Quincy, California, and surrounding the community of
18 Meadow Valley.

19 17. The Meadow Valley Project would, over a five-year period, result in the logging of
20 over 40 million board feet of timber from approximately 6,400 acres. Active logging operations are
21 expected to occur approximately 80 days per year for the four years following adoption of the
22 decision. Total truck traffic for the Meadow Valley Project is estimated to be about 5,000 trips
23 hauling logs and 5,000 trips hauling wood chips.

24 18. The Meadow Valley Project proposes approximately 743 acres of group selection
25 logging in 488 units and approximately 5,700 acres of defensible fuel profile zone ("DFPZ") logging
26 in 37 units.

27 19. Group selection is a form of commercial logging in which all or nearly all trees are
28 removed (*i.e.*, clearcut) in 1/2 to 2-acre patches. On the Meadow Valley Project, all trees up to 30

1 inches in diameter will be removed from the 743 acres of group selection cuts, as well as any larger
2 trees that are considered to be diseased or that “interfere with operability.” Within the group
3 selection units planned for the Meadow Valley Project, there is no requirement to maintain any
4 forest canopy cover, and fewer than three trees on average will remain per acre logged.

5 20. DFPZs are long, 1/4-mile-wide strips, generally following ridgetops and/or roads,
6 where most trees are removed. In approximately 950 acres of DFPZs located within the “defense
7 zone” land allocation, the Meadow Valley Project will allow removal of trees up to 30 inches in
8 diameter (and larger if necessary “for operability”). In DFPZs outside of the defense zone, the
9 Project will allow removal of trees up to 20 inches in diameter. A 40 percent minimum canopy
10 cover requirement is applicable only to stands dominated by trees larger than 24 inches in diameter
11 and with pre-existing canopy cover greater than 40 percent; there appear to be no minimum canopy
12 cover requirements for stands that do not meet these criteria.

13 21. The Forest Service has failed to mark the trees to be removed from the group
14 selection units. Instead, trees to be removed will be determined by the private timber contractor.
15 Thus, compliance with the 30-inch diameter limit will be entrusted to the timber contractor.

16 22. Trees larger than 30 inches in diameter may be removed in both the group selection
17 and DFPZ units for the purposes of “operability,” that is, where landings, roads and skid trails are
18 constructed. The Environmental Assessment for the Project contains no information on precisely
19 where these operational access routes will be constructed or on how many of the largest trees will be
20 removed. The timber contractor will have the discretion to determine which trees will be logged for
21 “operability” reasons.

22 23. A significant number of the Meadow Valley Project’s group selection units as well as
23 a portion of the acreage designated for DFPZ cuts have been previously treated by the Forest Service
24 for purposes of fire risk reduction. These treatments occurred over the last several years and have
25 included thinning and/or prescribed fire to burn underbrush. Thus, some areas recently thinned
26 and/or intentionally burned are now slated unnecessarily to be logged again by the Meadow Valley
27 Project.

28 24. The Forest Service’s decision to create group selection cuts in which all or nearly all

1 trees will be removed will result in the virtual elimination of the forest canopy in most cases, which
2 in turn will create hotter, drier conditions on the ground, will allow increased wind speeds, and will
3 accelerate the growth of flammable brush and of dense, flammable stands of small conifers. These
4 conditions will not result in a more fire resilient forest but instead will increase the potential for and
5 risk of severe fire in the Project area.

6 25. Similarly, the Forest Service's decision to create DFPZs by removing large trees and
7 significantly reducing canopy cover will result in hotter, drier and brushier conditions within the
8 DFPZs and could create hazardous surface fuels in the form of logging slash debris (the immediate
9 removal of which is not required in all areas by the Project), generally increasing the potential for
10 and risk of severe fire in the Project area.

11 26. No peer-reviewed, published scientific literature recommends group selection as
12 prescribed by the Meadow Valley Project as a means of achieving effective fire risk reduction. To
13 the contrary, the Meadow Valley Project Fire/Fuels Report prepared by the Forest Service
14 acknowledges that group selection is not effective in reducing fire risk or severity, and that trees
15 greater than 10-12 inches in diameter are not significant contributors to wildfire.

16 27. The Meadow Valley Project site is directly adjacent to the eastern edge of Bucks
17 Lake Wilderness, directly impacts the Pacific Crest National Scenic Trail, and would allow logging
18 along several tributaries of the Middle Fork Feather National Wild and Scenic River.

19 28. Implementation of the Meadow Valley Project, including the letting of timber sale
20 contracts and the actual cutting of trees, could begin in late September or early October, 2004.

21 **Impacts of the Meadow Valley Project on the California Spotted Owl.**

22 29. The California spotted owl (*Strix occidentalis occidentalis*) ("owl") is a medium-
23 sized raptor with large dark eyes and mottled brown and white coloring. California spotted owls
24 inhabit the Sierra Nevada mountain range from Shasta County south to Kern County, including the
25 Meadow Valley Project site within the Plumas National Forest.

26 30. California spotted owls are habitat specialists that require old growth forests
27 characterized by large trees, dense and multi-storied forest canopies, dense canopy closure, large
28 standing dead trees ("snags"), and downed logs and woody debris for nesting, roosting and foraging.

1 Studies have shown that California spotted owls preferentially select remnants of old growth forests
2 that are 200 to 400 years old. The best scientific information available indicates that high survival of
3 spotted owls is achieved by maintaining large, unfragmented areas of old growth habitat. The Forest
4 Service has designated the California spotted owl as a “sensitive” species due to its close association
5 with older forests.

6 31. The current extent of old forests in the Sierra Nevada, including in the Plumas
7 National Forest and the Meadow Valley Project vicinity, is substantially less than prior to European
8 settlement. The Forest Service has estimated that old forests have declined from 50 to 90 percent in
9 the Sierra Nevada, primarily due to logging, road construction, development, and related activities.

10 32. As a consequence, the owl’s population in the Sierra Nevada is imperiled and
11 declining. A long-term study of the owl population on the Lassen National Forest, directly to the
12 north of the Plumas National Forest, found that the owl’s population appeared to decline
13 substantially between 1990 and 2001.

14 33. Based upon the owl’s decline and a wide range of threats to the owl, including
15 planned and projected logging on Forest Service and private lands, several of the plaintiff
16 organizations have petitioned the U.S. Fish and Wildlife Service to designate the owl as a threatened
17 or endangered species under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*

18 34. The best available research indicates that for nesting and roosting, the owl requires
19 forests dominated by large trees (24 inches in diameter or greater) with canopy cover of 70 percent
20 or greater, and that for foraging, the owl requires forests dominated by medium and large trees (11
21 inches in diameter or greater) with canopy cover of 50 percent or greater.

22 35. The owl is a territorial species that preferentially utilizes areas near and around its
23 nest tree, an area characterized by the Forest Service as the Home Range Core Area (“HRCA”).
24 Logging of suitable owl nesting and foraging habitat, particularly within owl HRCAs, is likely to
25 adversely affect any resident owls and to reduce the likelihood that non-resident owls will utilize the
26 area as foraging habitat.

27 36. Approximately one-third of the group selection units in the Meadow Valley Project
28 are located within HRCAs, some adjacent to owl nest stands (designated by the Forest Service as

1 Protected Activity Centers, or “PACs”). The remaining group selection units are within the
2 biological territories of resident owls.

3 37. Both the group selection and DFPZ logging contemplated by the Meadow Valley
4 Project will degrade or eliminate spotted owl habitat by removing medium and large trees, by
5 reducing canopy cover to levels considered unsuitable for owls, and by removing large snags and
6 downed wood.

7 38. The Meadow Valley Project area contains approximately 972 acres of suitable owl
8 nesting habitat and 3,366 acres of suitable foraging habitat, for a total of approximately 4,338 acres
9 of suitable owl habitat.

10 39. Approximately 67% of the area to be logged by the Meadow Valley Project is
11 suitable nesting and foraging owl habitat. The Forest Service has acknowledged that the Meadow
12 Valley Project’s planned logging activity is expected to render unsuitable 4,280 acres of the 4,338
13 acres of nesting and foraging owl habitat in the area.

14 40. The Meadow Valley Project would log portions of approximately 16 owl HRCAs.
15 Within these HRCAs, approximately 1,000 acres of suitable owl habitat would be rendered
16 unsuitable as a result of group selection and DFPZ logging. Additionally, there are 14 HRCAs near
17 the Meadow Valley Project area that are likely to be indirectly adversely affected by the proposed
18 action.

19 **Cumulative Impacts of the Meadow Valley Project and Other QLG Act Pilot Project Actions.**

20 41. The Meadow Valley Project implements the QLG Act, which directs the Forest
21 Service to conduct a five-year pilot project on approximately 1.5 million acres within the Plumas and
22 Lassen National Forests and the Sierraville Ranger District of the Tahoe National Forest. The stated
23 purpose of the pilot project is to implement and demonstrate the effectiveness of certain resource
24 management activities including “construction of a strategic system of defensible fuel profile zones”
25 and “utilization of group selection and individual tree selection . . . to achieve a desired future
26 condition of all-age, multistory, fire resilient forests.” Pub. L. 105-277, Title IV, Sections 401(b),
27 401(d).

28 42. In its 1999 Final Environmental Impact Statement for the QLG Act pilot project

1 (“1999 QLG FEIS”), the Forest Service concluded that the pilot project would reduce the amount of
2 owl nesting habitat by 7 percent and the amount of owl foraging habitat by an additional 8.5 percent.
3 Because of this, the Forest Service concluded that implementing the pilot project could pose a
4 serious risk to the viability of the owl. The U.S. Fish and Wildlife Service similarly concluded that
5 implementing the QLG Act pilot project would pose a significant threat to the long-term viability of
6 the owl due to the loss, degradation, and fragmentation of suitable habitat.

7 43. Consequently, the Forest Service imposed as mitigation a condition that at the site-
8 specific level, QLG pilot project DFPZs and group selection cuts would be designed and
9 implemented to completely avoid suitable owl habitat, including nesting habitat and foraging habitat.

10 44. In an about-face, however, in its January 2004 Record of Decision on the Sierra
11 Nevada Forest Plan Amendment, the Forest Service determined that the QLG Act pilot project
12 should be fully implemented, and eliminated the prohibition on logging in suitable owl habitat. The
13 Forest Service has conducted no subsequent analysis of the cumulative impacts of the QLG Act pilot
14 project on suitable owl nesting and foraging habitat since the 1999 QLG FEIS.

15 45. As of April 2004, the Forest Service had published a program of work through fiscal
16 year 2009 detailing proposed acreage, treatments and sawlog volumes for over 200 logging projects
17 in Lassen, Plumas and Tahoe National Forests as part of the QLG Act pilot project, none of which
18 will be constrained by the now-eliminated prohibition on logging in suitable owl habitat.

19 46. The Meadow Valley Project is but one of numerous other group selection and DFPZ
20 projects planned as part of the larger QLG Act pilot project.

21 47. The environmental assessment (“EA”) prepared for the Meadow Valley Project
22 discusses the cumulative impacts of the Project together with the impacts of similar past projects
23 within the planning area. However, the EA fails to evaluate the cumulative impacts of the Meadow
24 Valley Project together with numerous other *future* timber sales in the immediate area planned and
25 projected as part of the larger QLG Act pilot project.

26 48. As of February 2004, 24 projects were planned for the Plumas National Forest in
27 fiscal years 2004 and 2005, including over 35,000 acres of DFPZ logging and 6,373 acres of group
28 selection logging. Of these projects, those near Meadow Valley include, but are not limited to, the

1 Empire Vegetation Management, Basin Group Selection, Watdog Defensible Fuel Profile
2 Zone/Group Selection, Slapjack Defensible Fuel Profile Zone/Group Selection, Sugar Etals Group
3 Selection, and Bald Mountain Group Selection Projects.

4 49. To the best of plaintiffs' information and belief, the Empire Vegetation Management
5 Project proposes a combination of group selection, DFPZ construction, and individual tree selection
6 on over 13,000 acres of suitable owl habitat directly northeast of the Meadow Valley Project, in the
7 Mount Hough Ranger District. In the adjacent Feather River Ranger District, the proposed Basin
8 Group Selection Project includes plans for group and individual tree selection logging on 1,295 acres
9 of national forest land directly southwest of, and adjacent to, the Meadow Valley Project. The
10 majority of this land is suitable owl nesting or foraging habitat, and 24 nest stands ("PACs") will be
11 adversely affected. As of April 2004, the proposed Watdog Defensible Fuel Profile Zone/Group
12 Selection Project included 3,700 acres of DFPZ construction, 200 acres of group selection, and 800
13 acres of individual tree selection adjacent to the Basin Group Selection Project; the Slapjack
14 Defensible Fuel Profile Zone/Group Selection Project proposed 5,200 acres of DFPZs, 250 acres of
15 group selection, and 900 acres of individual tree selection just south of the Watdog Project; and the
16 Sugar Etals and Bald Mountain Projects planned an additional 1,650 acres of group selection and
17 1,300 acres of individual tree selection in the same ranger district.

18 50. The EA acknowledges that "[i]f future projects employ prescriptions similar to those
19 of the proposed action, the present action can be viewed as initiating a cumulative reduction in
20 available spotted owl habitat." However, the EA completely fails to analyze the potential
21 cumulative reduction in owl habitat, despite the fact that other projects in the vicinity are already in
22 the planning stage and that such projects also involve substantial loss of suitable owl habitat through
23 similarly prescribed group selection cuts and DFPZs.

24 51. Although the EA acknowledges that the Meadow Valley Project will result in the loss
25 of suitable owl habitat, it concludes that this loss of habitat will not result in a reduction in owl
26 occupancy or cumulative population loss. This conclusion is unsubstantiated and inconsistent with
27 the best available science and runs counter to the 1999 FEIS for the QLG Act, from which this
28 Project emerges. In that document, the Forest Service acknowledged that a reduction in habitat

1 quality and quantity between owl PACs, and especially within home ranges, could reduce owl
2 densities and limit successful mate finding and dispersal.

3 52. Loss of suitable habitat due to logging prescribed in the Meadow Valley Project and
4 in other projects will increase the risk of owl habitat fragmentation. Habitat fragmentation decreases
5 the chances for successful dispersal and mate finding and can also adversely affect the owl's prey
6 base. Since 1990, habitat fragmentation has been identified as a primary factor in the decline of owl
7 populations. The Plumas National Forest has the lowest proportion of remaining old forests of all
8 national forests in the Sierra Nevada and as a consequence, maintaining these forests in an intact
9 condition is particularly important for owls and other species that depend on them.

10 53. The cumulative impacts on the owl and its habitat of implementing the Meadow
11 Valley Project, together with other planned and reasonably foreseeable projects, are likely to be
12 highly adverse and will result in reduction of the owl's distribution and viability in the area.

13 **PROCEDURAL BACKGROUND**

14 54. On February 12, 2004, Plumas National Forest Supervisor James M. Peña circulated
15 an environmental assessment on the Meadow Valley Project for comment. The EA contained three
16 alternatives. On March 19, 2004, the Campaign and Plumas Forest Project submitted comments on
17 the proposed action, as did EII and the Center.

18 55. In a Decision Notice and Finding of No Significant Impact issued on April 16, 2004,
19 the Forest Supervisor decided to select and implement Alternative C in the EA, the alternative
20 resulting in the most amount of logging and the greatest adverse impact on spotted owl habitat
21 among any of the alternatives described in the EA.

22 56. In his April 16, 2004 Decision Notice, the Forest Supervisor also determined that the
23 Meadow Valley Project will not have a significant effect on the quality of the human environment
24 and that an environmental impact statement would not be prepared.

25 57. On June 7, 2004, the Campaign and Plumas Forest Project filed a timely
26 administrative appeal of this decision to defendant Jack Blackwell, Regional Forester, Region 5,
27 United States Forest Service, pursuant to 36 C.F.R. Part 215. On June 10, 2004, EII and the Center
28 also filed a timely appeal to the Regional Forester.

1 58. On July 22, 2004, Bernard Weingardt, Deputy Regional Forester, acting on behalf of
2 defendant Jack Blackwell, issued his decision denying the appeals and affirming the Forest
3 Supervisor’s decision to approve the Meadow Valley Project and not to prepare an environmental
4 impact statement.

5 **STATUTORY AND REGULATORY FRAMEWORK**

6 **THE HERGER-FEINSTEIN QUINCY LIBRARY GROUP FOREST RECOVERY ACT**

7 59. On October 21, 1998, the Herger-Feinstein Quincy Library Group Forest Recovery
8 Act (“QLG Act”) was signed into law. Pub. L. 105-277, Div. A, § 101(e), Title IV, § 401 (16 U.S.C.
9 § 2104 note).

10 60. The purposes of the QLG Act included, among other things, to demonstrate the
11 effectiveness of DFPZs and group selection in reducing accumulated surface fuel loads in the pilot
12 project area thereby reducing the potential for a crown fire. The QLG Act provided that group
13 selections, in particular, should “achieve a desired future condition of all-age, multistory, fire
14 resilient forests. . . .” *Id.* at Section 401(d)(2).

15 61. The QLG Act provided that the pilot project, including DFPZ and group selection
16 logging projects, can only be implemented “consistent with applicable law,” *id.* at Section 401(c)(3),
17 and that “[n]othing in this [Act] exempts the pilot project from any Federal environmental law.” *Id.*
18 at Section 401(l).

19 62. The QLG Act provided that, prior to implementing the pilot project, the Forest
20 Service was to prepare an environmental impact statement evaluating the environmental impacts of
21 the five-year pilot project. *Id.* at Section 401(b)(l).

22 63. In August 1999, the Forest Service published a final environmental impact statement
23 and a Record of Decision on the construction of up to 300,000 acres of DFPZs and commercial
24 harvest of approximately 43,500 acres of forest by group selection within the pilot project area.

25 64. In its Record of Decision that accompanied the final environmental impact statement,
26 the Forest Service acknowledged that unless mitigated, the chosen alternative for implementing the
27 pilot project would reduce the amount of California spotted owl nesting habitat by 7 percent and the
28 amount of California spotted owl foraging habitat by an additional 8.5 percent, and that this amount

1 of reduction of suitable owl habitat “could pose a serious risk to the viability of the California
2 spotted owl in the planning area. . . .” August 20, 1999 Record of Decision at 7. Consequently, the
3 Forest Service imposed as mitigation a condition that “[a]t the site-specific level, defensible fuel
4 profile zones, group selection harvest areas, and individual tree selection harvest areas will be
5 designed and implemented to completely avoid suitable California spotted owl habitat, including
6 nesting habitat and foraging habitat.” *Id.* at 6.

7 65. On February 20, 2003, in a rider attached to the 2003 Consolidated Appropriations
8 Resolution, Congress “extend[ed] the expiration of the Quincy Library Group Act by 5 years.” Pub.
9 L. 108-7, Div. F, Title III, § 338, 117 Stat. 278 (16 U.S.C. § 2104 note).

10 NATIONAL ENVIRONMENTAL POLICY ACT

11 66. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. §
12 1500.1. Its purposes include: “To declare a national policy which will encourage productive and
13 enjoyable harmony between man and his environment; to promote efforts which will prevent or
14 eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
15 [and] to enrich the understanding of the ecological systems and natural resources important to the
16 Nation.” 42 U.S.C. § 4321.

17 67. To accomplish these purposes, NEPA requires all agencies of the federal government
18 to prepare a “detailed statement” that discusses the environmental impacts of, and reasonable
19 alternatives to, all “major Federal actions significantly affecting the quality of the human
20 environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental
21 impact statement (“EIS”).

22 68. The EIS process is intended “to help public officials make decisions that are based on
23 understanding of environmental consequences, and to take actions that protect, restore, and enhance
24 the environment” and to “insure that environmental information is available to public officials and
25 citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b)-(c).

26 69. To determine whether the effects of an agency action will be “significant,” thus
27 requiring preparation of an EIS, an agency may first prepare an environmental assessment (“EA”).
28 40 C.F.R. § 1501.4(b). An EA should be a concise analysis of the need for the proposed action, of

1 alternatives thereto, and of the environmental impacts of both the action and the alternatives.
2 40 C.F.R. § 1508.9. If the EA indicates that the federal action may significantly affect the quality of
3 the human environment, the agency must prepare an EIS. 40 C.F.R. § 1501.4; 42 U.S.C. §
4 4332(2)(C).

5 70. Council on Environmental Quality (“CEQ”) regulations implementing NEPA list a
6 number of factors that an agency must consider in deciding whether to prepare an EIS. *See* 40
7 C.F.R. § 1508.27. Among other things, an action “significantly” affects the quality of the human
8 environment, and therefore an EIS must be prepared, if: the action affects public health or safety;
9 the geographic area has “unique characteristics” such as proximity to park lands, wetlands, wild and
10 scenic rivers, or “ecologically critical areas”; “the effects on the quality of the human environment
11 are likely to be highly controversial”; the possible effects on the environment “are highly uncertain”
12 or involve “unique or unknown risks”; “the action may establish a precedent for future actions with
13 significant effects”; or “the action is related to other actions with individually insignificant but
14 cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(2)-(9).

15 71. The CEQ regulations further provide that: “Significance exists if it is reasonable to
16 anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by
17 terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. §
18 1508.27(b)(7).

19 72. The CEQ regulations further provide that “[i]mpacts may be both beneficial and
20 adverse. A significant effect may exist even if the Federal agency believes that on balance the effect
21 will be beneficial.” 40 C.F.R. § 1508.27(b)(1).

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of NEPA and APA:** 24 **Failure to Evaluate Cumulative Impacts in the Environmental Assessment**

25 73. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
26 the preceding paragraphs.

27 74. NEPA requires all federal agencies, including the Forest Service, to consider and
28 evaluate in an EA on a single action the cumulative impacts of that action together with past, present

1 and reasonably foreseeable future actions. Cumulative impact “is the impact on the environment
2 which results from the incremental impact of the action when added to other past, present, or
3 reasonably foreseeable future actions.” 40 C.F.R. § 1508.7. Cumulative impacts “can result from
4 individually minor but collectively significant actions taking place over a period of time.” *Id.*

5 75. While the EA for the Meadow Valley Project purported to consider and evaluate the
6 cumulative impacts of the Meadow Valley Project together with past similar projects within the
7 planning area, it completely failed to consider and evaluate the cumulative impacts of the Project
8 together with numerous other reasonably foreseeable *future* DFPZ and group selection projects
9 comprising parts of the QLG Act pilot project that have been or will be proposed both in the
10 immediate Meadow Valley Project area and in the larger QLG Act pilot project area.

11 76. The Meadow Valley Project and similar past and future DFPZ and group selection
12 projects promulgated as component parts of the QLG Act pilot project are cumulative actions having
13 cumulatively significant impacts within the meaning of 40 C.F.R. § 1508.25(a)(2).

14 77. The Meadow Valley Project and similar future DFPZ and group selection projects
15 promulgated as component parts of the QLG Act pilot project are connected actions within the
16 meaning of 40 C.F.R. § 1508.25(a)(1) because, among other reasons, they are closely related
17 interdependent parts of a larger action and depend on the larger action for their justification.

18 78. The Forest Service’s failure to consider and evaluate in the EA the cumulative
19 impacts of the Meadow Valley Project together with the impacts of reasonably foreseeable future
20 projects violated and is continuing to violate Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

21 79. The Forest Service’s failure to consider and evaluate in the EA the cumulative
22 impacts of the Meadow Valley Project together with the impacts of reasonably foreseeable future
23 projects was arbitrary, capricious, an abuse of discretion, not in accordance with law, and without
24 observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and
25 should therefore be declared unlawful and set aside by this Court.

1 **SECOND CLAIM FOR RELIEF**

2 **Violation of NEPA and APA:**
3 **Failure to Prepare an Environmental Impact Statement for the Project**

4 80. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
5 the preceding paragraphs.

6 81. The Forest Service’s approval of the Meadow Valley Project was a major federal
7 action significantly affecting the human environment within the meaning of section 4332(2)(C) for
8 at least the following reasons:

- 9 a. The Meadow Valley Project affects public health or safety within the meaning
10 of 40 C.F.R. § 1508.27(b)(2);
- 11 b. The Meadow Valley Project area has “[u]nique characteristics . . . such as
12 proximity to historic or cultural resources, park lands, prime farmlands,
13 wetlands, wild and scenic rivers, or ecologically critical areas” within the
14 meaning of 40 C.F.R. § 1508.27(b)(3);
- 15 c. The effects of the action on the quality of the human environment are likely to
16 be “highly controversial” within the meaning of 40 C.F.R. § 1508.27(b)(4);
- 17 d. The possible effects on the human environment are “highly uncertain” and
18 involve “unique [and] unknown risks” within the meaning of 40 C.F.R. §
19 1508.27(b)(5);
- 20 d. The action “may establish a precedent for future actions with significant
21 effects” within the meaning of 40 C.F.R. § 1508.27(b)(6); and
- 22 e. The action is “related to other actions with individually insignificant but
23 cumulatively significant impacts” within the meaning of 40 C.F.R. §
24 1508.27(b)(7).

25 Consequently, the Forest Service was obligated to prepare an EIS on the Meadow Valley Project.

26 82. The Forest Service’s failure to prepare an EIS before approving the Meadow Valley
27 Project violated and is continuing to violate Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

28 83. The Forest Service’s decision not to prepare an EIS for the Meadow Valley Project

1 was arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance
2 of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and should
3 therefore be declared unlawful and set aside by this Court.

4 **THIRD CLAIM FOR RELIEF**

5 **Violation of the QLG Act and APA:** 6 **Failure to Prescribe Group Selections that Will Achieve More Fire Resilient Forests**

7 84. The QLG Act provides that group selection activities in any pilot project action must
8 “achieve a desired future condition of . . . fire resilient forests.” Pub. L. 105-277, Title IV, Section
9 401(d)(2).

10 85. The group selection prescriptions called for in the Meadow Valley Project will not
11 achieve fire resilient forests because they call for the removal of large fire-resistant trees and the
12 removal of the forest canopy to an extent that will induce the increased growth and accumulation of
13 small trees, shrubs and other surface and ladder fuels, as described above.

14 86. The Forest Service’s failure to prescribe group selections in the Meadow Valley
15 Project that will achieve fire resilient forests violated and is continuing to violate Section 401(d)(2)
16 of the QLG Act.

17 87. The Forest Service’s failure to prescribe group selections in the Meadow Valley
18 Project that will achieve fire resilient forests was arbitrary, capricious, an abuse of discretion, not in
19 accordance with law, and without observance of procedure required by law within the meaning of
20 the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

21 **FOURTH CLAIM FOR RELIEF**

22 **Violation of NFMA, 16 U.S.C. § 472a(g):** 23 **Failure To Mark Trees To Be Removed**

24 88. Section 472a(g) of NFMA, 16 U.S.C. § 472a(g), provides that “[d]esignation,
25 marking when necessary, and supervision of harvesting of trees, portions of trees, or forest products
26 shall be conducted by persons employed by the Secretary of Agriculture. Such persons shall have no
27 personal interest in the purchase or harvest of such products and shall not be directly or indirectly in
28 the employment of the purchaser thereof.”

89. The Forest Service has failed to mark any of the trees that will be removed in group

1 selection units within the Meadow Valley Project, and has failed to mark which trees over 30 inches
2 in diameter will be removed in group selection and DFPZ units, leaving removal and compliance to
3 the discretion of the private, self-interested timber contractor.

4 90. The Forest Service's failure to mark the trees to be removed violates 16 U.S.C. §
5 472a(g).

6 91. The Forest Service's failure to mark the trees to be removed in violation of 16 U.S.C.
7 § 472a(g) was arbitrary, capricious, an abuse of discretion, not in accordance with law, and without
8 observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and
9 should therefore be declared unlawful and set aside by this Court.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, plaintiffs respectfully request that the Court grant the following relief:

12 A. Issue a declaratory judgment that:

13 1. The Forest Service's action in approving the Meadow Valley Project without
14 first preparing an EIS on the impacts of and alternatives to the Meadow Valley Project, and without
15 fully evaluating the cumulative impact of the Meadow Valley Project together with the impacts of
16 reasonably foreseeable projects both in the immediate Meadow Valley Project area and in the larger
17 QLG Act pilot project area, as described above, violated Section 102(2)(C) of NEPA, 42 U.S.C. §
18 4332(2)(C), and was arbitrary, capricious, an abuse of discretion, not in accordance with law, in
19 excess of statutory authority and without observance or procedure required by law, in violation of
20 the APA, 5 U.S.C. § 706(2);

21 2. The Forest Service failed to demonstrate the effectiveness of the group
22 selection logging proposed in the Meadow Valley Project in achieving a more fire resilient forest, in
23 violation of Section 401(d)(2) of the QLG Act; and

24 3. The Forest Service failed to mark trees for removal by the Meadow Valley
25 Project, in violation of NFMA, 16 U.S.C. § 472a(g);

26 B. Set aside the action of the Forest Service in approving the Meadow Valley Project,
27 and remand the matter to the Forest Service for further action in accordance with the Court's order;

28 C. Order the Forest Service to prepare an EIS pursuant to Section 102(2)(C) of NEPA,

1 42 U.S.C. § 4332(2)(C), for the Meadow Valley Project that includes the cumulative impact of the
2 Meadow Valley Project together with the impacts of reasonably foreseeable projects both in the
3 immediate Meadow Valley Project area and in the larger QLG Act pilot project area, as described
4 above, and all reasonable alternatives to the current Meadow Valley Project, before approving the
5 Meadow Valley Project;

6 D. Order the Forest Service to demonstrate the effectiveness of its chosen alternative in
7 achieving fire resilient forests, as required by Section 401(d)(2) of the QLG Act;

8 E. If, after preparing an EIS as ordered above, the Forest Service determines to proceed
9 with some form of group selection and DFPZ logging in Meadow Valley, order the Forest Service to
10 mark all trees to be removed, as required by NFMA, 16 U.S.C. § 472a(g);

11 F. Enjoin the Forest Service from approving any portion of the Meadow Valley Project,
12 except for prescribed burning and undergrowth thinning activities (that is, removal of brush and
13 small trees under 10-12 inches in diameter, as described in the Meadow Valley Fire/Fuels Report),
14 and from advertising the Project, soliciting bids or awarding contracts for it, or in any way
15 authorizing the commencement of logging or other activities pursuant to the Project until the Forest
16 Service has prepared an adequate EIS on the Project pursuant to NEPA, has demonstrated that the
17 prescribed group selection cuts will achieve fire resilient forests pursuant to the QLG Act, and has
18 marked the trees to be removed pursuant to NFMA, all as ordered above;

19 G. Award plaintiffs their costs, expenses and reasonable attorney fees; and

20 H. Award plaintiffs such further relief as the Court deems appropriate.

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1 DATED: September 24, 2004

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