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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, TULE RIVER CONSERVANCY, SIERRA NEVADA FOREST PROTECTION CAMPAIGN, EARTH ISLAND INSTITUTE, SEQUOIA FORESTKEEPER, and CENTER FOR BIOLOGICAL DIVERSITY, non-profit organizations, Plaintiffs, v. DALE BOSWORTH, in his official capacity as Chief of the United States Forest Service, JACK BLACKWELL, in his official capacity as Regional Forester, Region 5, United States Forest Service, KENT CONNAUGHTON, in his official capacity as Deputy Regional Forester, Region 5, United States Forest Service, ARTHUR GAFFREY in his official capacity as Forest Supervisor, Sequoia National Forest, UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture, MIKE JOHANNS, in his official capacity as Secretary of the U.S. Dept. of Agriculture, and UNITED STATES DEPARTMENT OF AGRICULTURE, Defendants.	Case No.: **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (Administrative Procedure Act Case)

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INTRODUCTION

1. Plaintiffs bring this action to protect the magnificent Giant Sequoia National Monument ("Sequoia Monument") from the unlawful actions of the U.S. Forest Service and Department of Agriculture and their responsible officials. The Sequoia Monument is an exceptionally popular national treasure, containing approximately two-thirds of all of the giant sequoia trees in the world. Most of the world's remaining giant sequoias are located in the adjacent Sequoia National Park. In stark contrast to the very successful management techniques used for decades by the National Park Service in the Sequoia National Park, Defendants approved a "Giant Sequoia National Monument Management Plan" and associated final environmental impact statement ("FEIS") that would permit extensive logging and cause the degradation of old forest habitat and irreparable harm to the Sequoia Monument's wildlife, directly conflicting with the purposes of the Monument. Defendants' actions also threaten to exacerbate rather than lessen the risk posed by wildland fire to the Monument and nearby communities. In contrast, the National Park Service has been using prescribed fire for decades in the Sequoia National Park to protect communities, reduce fuels, sustain biological diversity and stimulate the growth of young giant sequoia trees. Defendants' actions violate the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), *inter alia*, because they contradict sound science and failed to provide accurate and meaningful information to the public concerning the Management Plan's scope, purpose, and environmental effects. Plaintiffs seek an order vacating and remanding defendants' actions to remedy their violations of NEPA.

JURISDICTION

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (action arising under the laws of the United States), 5 U.S.C. §§ 701 *et seq*. (Administrative Procedure Act) and

28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment Act). Plaintiffs have exhausted all administrative remedies and the violations of law claimed below are ripe for judicial review.

VENUE AND INTRADISTRICT ASSIGNMENT

3. Pursuant to Civil Local Rule 3-2(c), plaintiffs state that they base venue in this district and assignment to the San Francisco Division on the following: 1) plaintiffs Sierra Club and Earth Island Institute are incorporated in California and reside and maintain their headquarters in San Francisco County in this judicial district; 2) this action seeks relief against federal officials acting in their official capacities; and 3) 28 U.S.C. §§ 1361 and 1391(e) provide for venue in the judicial district of a plaintiff's residence, including the San Francisco Division.

PARTIES

4. Plaintiff Sierra Club is a nonprofit corporation organized under California law, with more than 700,000 members nationwide. The Sierra Club is closely identified with the magnificent giant sequoia tree; an image of the giant sequoia forms the organization's official logo. Beginning in 1901, when John Muir lobbied for the expansion of Sequoia National Park to encompass the entire range of the giant sequoia, the Sierra Club has advocated for the protection of giant sequoia ecosystems in their entirety. Members of the Sierra Club's Tehipite and Kern-Kaweah chapters and Sequoia Task Force have participated in numerous legal and regulatory actions to protect the giant sequoia, including: a 1986 administrative appeal to stop first entry logging into the Freeman Creek Grove; a federal lawsuit that secured an injunction on sequoia grove logging in 1988; participation in all phases of planning for the Sequoia National Forest Land and Resource Management Plan (LRMP) in the 1980's; an administrative appeal of the 1988 LRMP; negotiation of the 1990 Mediated Settlement Agreement resolving the 1988 LRMP appeal; support and lobbying for Congressman Brown's bill, HR 2153, which was the foundation for the eventual Sequoia Monument Proclamation; support and lobbying for President Clinton's Proclamation on April 15, 2000 establishing the Sequoia Monument; the submission of

detailed recommendations to both the Sequoia National Forest and the Science Advisory Board during the development of the Sequoia Monument Management Plan and FEIS; and an administrative appeal of the Record of Decision approving the Management Plan and FEIS.

5. Plaintiff Tule River Conservancy ("TRC") is a nonprofit corporation organized under California law, with more than 200 members who live, own property, or recreate in the immediate environs of Sequoia National Forest. The Tule River Conservancy was organized specifically to foster responsible, sound management of Sequoia National Forest and to educate the public about how they can help encourage protection of forest resources. Since its establishment, TRC has regularly and routinely submitted comments regarding projects proposed in Sequoia National Forest and Sequoia National Monument. During the 1990's, TRC provided educational tours for Congressional members of Forest Service logging practices in Giant Sequoia groves. They have analyzed and compiled extensive records documenting logging damages on lands now within the Monument. They provided background information to the administration leading to President Clinton's Proclamation on April 15, 2000 establishing the Giant Sequoia National Monument. TRC was a member of the coalition of environmental groups that opposed the lawsuit that sought to dismantle the Giant Sequoia National Monument. TRC submitted detailed recommendations to both the Sequoia National Forest and the Science Advisory Board during the development of the Sequoia Monument Management Plan and draft EIS; and filed an administrative appeal of the Record of Decision approving the Management Plan and FEIS.

6. Plaintiff Sierra Nevada Forest Protection Campaign is a coalition of over eighty local, regional and national environmental organizations dedicated to protecting and restoring the Sierra Nevada's forests, including the Sequoia Monument. The Campaign works to protect and restore the ancient forests, wildlands, wildlife and watersheds of the Sierra Nevada through scientific and legal advocacy, public education and outreach, and grassroots forest protection

efforts. Among other things, the Campaign has sought to achieve greater protections for the California spotted owl, Pacific fisher, American marten and other old forest-dependent species. Since the late 1980s, the Campaign has been involved in major policy decisions and research initiatives relating to Sierra Nevada national forest management and species conservation, including the California Spotted Owl Sierran Province Interim Guidelines of 1993, the Sierra Nevada Ecosystem Project of 1996, the Herger-Feinstein Quincy Library Group Forest Recovery Act (1998) and pilot project (1999), the 2001 Sierra Nevada Framework, and the 2004 Framework revisions. The Campaign actively participated in the planning process for the Sequoia Monument Management Plan, commented on the draft EIS and administratively appealed defendants' approval of the Management Plan.

7. Plaintiff Earth Island Institute (EII) is a nonprofit corporation organized under California law. EII is headquartered in San Francisco, California. EII's mission is to develop and support projects that counteract threats to the biological and cultural diversity that sustains the environment. Through education and activism, these projects promote the conservation, preservation and restoration of the Earth. One of these projects is the John Muir Project – whose mission is to protect all federal public forest lands from commercial exploitation. EII a membership organization with over 15,000 members in the U.S., over 3,000 of whom use and enjoy the national forests of California for recreational, educational, aesthetic, spiritual and other purposes. EII has recently appealed numerous timber sales on national forests in the Sierra Nevada. EII through its John Muir Project has a longstanding interest in the protection of national forests. They accomplish this goal through ensuring that the Forest Service relies upon and addresses all scientific evidence in its decision-making process and that its decisions comply with all federal environmental laws. EII's John Muir Project and EII members actively participate in governmental decision-making processes with respect to national forest lands in California and rely on information provided through NEPA processes to increase the

effectiveness of their participation. EII's John Muir Project actively participated in the NEPA process associated with the development of the Giant Sequoia National Monument Management Plan and FEIS, including submitting comments on the proposed plan and administratively appealing the decision.

8. Plaintiff Sequoia Forestkeeper (SFK) is a non-profit corporation organized under California law. SFK is headquartered in Kernville, California. SFK's mission is to protect and restore the ecosystems of the southern Sierra Nevada including, but not limited to, the Giant Sequoia National Monument, Sequoia National Forest and Mountain Home State Forest through monitoring, enforcement, education, and litigation. Many SFK members have been actively involved in formulating management policies for public lands and preserving local areas, including participating in the establishment and development of the Giant Sequoia National Monument. SFK actively participated in the development and review of the Giant Sequoia National Monument Management Plan and FEIS, attending public meetings, submitting verbal and written comments on the proposed Plan, and administratively appealing the decision.

9. Plaintiff Center for Biological Diversity is a non-profit corporation with over 5,000 members, and offices in San Diego, Idyllwild and Berkeley, California; Tucson and Phoenix, Arizona; Shaw Island, Washington; and Silver City, New Mexico. The Center for Biological Diversity is dedicated to the preservation, protection, and restoration of biological diversity, native species and ecosystems in the western United States and elsewhere. The Center for Biological Diversity protects endangered species and wild places of western North America and the Pacific through science, policy, education and environmental law. The Center's efforts to protect and preserve national forests include comments, petitions, and administrative appeals to the Forest Service on particular projects, as well as on more programmatic plans. The Center participated in the planning process and administrative appeals concerning the Management Plan.

10. The plaintiff organizations described above have members who live or work in communities located near or adjacent to the Sequoia Monument. The plaintiff organizations' members use and enjoy the Sequoia Monument for a variety of purposes including, but not limited to, hiking, backpacking, photography, scientific study, wildlife observation, hunting and fishing. They intend to continue to do so in the future. Plaintiffs' members derive recreational, spiritual, professional, aesthetic, educational and other benefits and enjoyment from these activities.

11. Defendants' approval of the Giant Sequoia National Monument Management Plan and FEIS is harming and injuring the interests of plaintiffs and their members by causing or threatening irreversible adverse effects to the Sequoia Monument and to the wildlife and other objects of interest in the Monument. Defendants' actions would deprive plaintiffs and their members of the recreational, spiritual, professional, aesthetic, educational and other benefits they presently derive from the Monument. Additionally, defendants' actions deny plaintiffs' members their right to have the laws implemented and enforced, and the satisfaction and peace of mind associated with witnessing the enforcement of this nation's environmental protection laws.

12. Plaintiffs and their members are adversely affected and irreparably injured by the defendants' approval of the Giant Sequoia National Monument Management Plan and FEIS. These injuries are actual and concrete and would be redressed by the relief sought herein. Plaintiffs have no adequate remedy at law.

13. Defendant Dale Bosworth is the Chief of the Forest Service. The Chief is the highest ranking officer in the Forest Service. The Chief has the responsibility to ensure that the Forest Service acts in accordance with applicable laws and regulations. He is sued in his official capacity.

14. Defendant Jack Blackwell is the Regional Forester for the Forest Service's Pacific Southwest Region, which encompasses the Sequoia National Forest, and in that capacity has the responsibility to ensure that the Forest Service acts in accordance with applicable laws and regulations. Mr. Blackwell's office denied the plaintiffs' administrative appeals of the Record of Decision approving the Giant Sequoia National Monument Management Plan and FEIS. He is sued in his official capacity.

15. Defendant Kent Connaughton is the Deputy Regional Forester for the Forest Service's Pacific Southwest Region and was the Appeal Reviewing Officer who signed the letters denying the plaintiffs' administrative appeals of the Record of Decision approving the Giant Sequoia National Monument Management Plan and FEIS. In his capacity as the Deputy Regional Forester and Appeal Reviewing Officer, he has the responsibility to ensure that the Forest Service acts in accordance with applicable laws and regulations. He is sued in his official capacity.

16. Defendant Arthur Gaffrey is the Forest Supervisor for the Sequoia National Forest and was the official who initially approved the Record of Decision for the Giant Sequoia National Monument Management Plan and FEIS. In his capacity as Forest Supervisor, he has the responsibility to ensure that the Forest Service acts in accordance with applicable laws and regulations. He is sued in his official capacity.

17. Defendant United States Forest Service is an agency of the United States government within the United States Department of Agriculture. Defendant Forest Service has been delegated authority to administer the national forest system of the United States. In that capacity, the Defendant Forest Service must comply with NEPA in planning and implementing projects which may have a significant effect on the environment.

18. Defendant Mike Johanns is the Secretary of the U.S. Department of Agriculture, and in that capacity he has the responsibility to ensure that the Department acts in accordance with applicable laws and regulations. He is sued in his official capacity.

19. Defendant United States Department of Agriculture administers the national forest system. In that capacity, the Department must comply with NEPA in planning and implementing projects which may have a significant effect on the environment.

BACKGROUND OF AGENCY PROCEEDINGS

20. Beginning in the late 1980s, the Forest Service has developed land and resource management plans ("LRMPs") for each of the national forests in the Sierra Nevada pursuant to the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1604, *et seq*.

21. In 1988, the Sequoia National Forest adopted an LRMP governing the management of the Sequoia National Forest, including the giant sequoia groves now included in the Sequoia Monument. The Sierra Club and other organizations administratively appealed the LRMP, *inter alia*, because it did not contain adequate conservation measures for the giant sequoia groves.

22. In 1990, the administrative appeal of the 1988 Sequoia National Forest LRMP was resolved in a Mediated Settlement Agreement ("Mediated Settlement"). The Mediated Settlement required the preparation of individual, grove-specific plans prior to any logging in giant sequoia groves. The Mediated Settlement obligated the Forest Service to prepare an additional LRMP amendment to incorporate the terms of the Mediated Settlement. The Forest Service never prepared grove-specific plans and never amended the LRMP to incorporate the requirements of the Mediated Settlement.

23. Beginning in 1992, a series of studies examined the status of the California spotted owl, Pacific fisher, American marten, and other wildlife in the Sierra Nevada range, including the Sequoia National Forest. These studies included the congressionally-authorized

Sierra Nevada Ecosystem Project ("SNEP") Report. These studies concluded that old forest habitat and old forest-dependent wildlife in the Sierra Nevada suffer from serious decline, and that special management measures are needed to conserve the Sierra Nevada forests and their wildlife.

24. On April 15, 2000, President Clinton issued a Presidential Proclamation creating the Giant Sequoia National Monument ("Sequoia Monument Proclamation"), citing the magnificent resources of the giant sequoia groves and surrounding forest, as well as the rare wildlife and significant cultural and archaeological resources in the area. The Sequoia Monument Proclamation directed the Secretary of Agriculture to prepare a management plan for the Sequoia Monument.

25. On January 12, 2001, Regional Foresters Bradley E. Powell (Pacific Southwest Region) and Jack Blackwell (Intermountain Region) signed a Record of Decision adopting a region-wide plan amendment for all of the Sierra Nevada national forests (the "2001 Framework"). The 2001 Framework was approved as an amendment to the LRMPs of all eleven national forests in the Sierra Nevada, including the Sequoia National Forest.

26. The 2001 Framework established a system of "old forest emphasis areas" which included approximately 40 percent of national forest lands in the Sierra Nevada, within which logging would generally be limited to removal of trees smaller than 12 inches in diameter. Outside of these areas, logging would generally be limited to removal of trees smaller than 20 inches in diameter. To protect species associated with old forests, the plan established specially protected habitat zones; required that logging projects should maintain at least 50 percent canopy cover in westside forests outside of a quarter mile defense zone in the urban-wildland interface; and restricted incremental canopy cover reductions to 20 percent.

27. In June 2003, the Forest Service issued a draft environmental impact statement ("DEIS") for the Giant Sequoia National Monument Management Plan. The DEIS was harshly

criticized for weakening conservation measures adopted in the 2001 Framework by, *inter alia*, allowing the logging of trees up to 30 inches in diameter and allowing significant reductions in forest canopy. Several wildlife experts criticized the DEIS for failing to evaluate and disclose harmful impacts to wildlife dependent on old forest habitat.

28. In July 2003, the Regional Forester approved a stand-alone "Fire Plan" for the Sequoia National Forest without preparing an environmental impact statement or conducting public review under NEPA. The Fire Plan is a major federal action that, *inter alia*, divides the Sequoia National Forest, including the Sequoia Monument, into "fire management zones" and lays out fire management strategies for each zone, such as prescribed fire, logging and fire suppression.

29. In December 2003, the Forest Service approved the FEIS and Record of Decision ("ROD") adopting "Modified Alternative 6" from the FEIS as the final Giant Sequoia National Monument Management Plan ("Sequoia Monument Management Plan" or "Management Plan"). The Sequoia Monument Management Plan was adopted as an amendment to the Sequoia National Forest LRMP. The major flaws in the Management Plan identified by wildlife experts and others were not corrected in the FEIS and ROD. Nor did the Forest Service adequately address why it plans to manage the Sequoia Monument contrary to the scientifically-based, successful management of the nearby Sequoia National Park.

30. On January 21, 2004, the Forest Service adopted a record of decision approving substantial revisions to the 2001 Framework (the "2004 Framework Revisions"). Like the 2001 Framework, the 2004 Framework Revisions were adopted as an amendment to the LRMPs of all eleven national forests in the Sierra Nevada, including Sequoia National Forest.

31. On March 1, 2004, numerous administrative appeals were filed challenging the FEIS and ROD for the Sequoia Monument Management Plan, charging that the Forest Service

yet again failed to provide adequate conservation measures for the giant sequoia ecosystems and resident wildlife.

32. In April 2004, the People of the State of California, through California Attorney General Bill Lockyer, filed suit in the U.S. District Court for the Northern District of California challenging the Forest Service's approval of the Sequoia National Forest Fire Plan on the grounds that the Fire Plan underwent no NEPA review prior to approval. That lawsuit is pending.

33. On January 11, 2005, the Deputy Regional Forester of the Forest Service's Pacific Southwest Region, which encompasses Sequoia National Forest, denied all administrative appeals of the FEIS and ROD on the Sequoia Monument Management Plan. In his denial of the appeals, the Deputy Regional Forester asserted, *inter alia*, that the Sequoia Monument Management Plan is unaffected by the 2004 Framework Revisions and continues to be governed by the 2001 Framework.

THE NATIONAL ENVIRONMENTAL POLICY ACT

34. Congress enacted the National Environmental Policy Act EPA "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation." 42 U.S.C. § 4321.

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

environmental impact statement ("EIS"). The EIS must describe the adverse environmental effects of the proposed action and alternatives to the proposed action. *Id.*

36. The Council on Environmental Quality (CEQ) has promulgated regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1. The CEQ regulations establish additional requirements for environmental impact statements. 40 C.F.R. § 1508.9.

37. The EIS process is intended "to help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment" and to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b)-(c). The EIS must "provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

38. An EIS must be clear and supported by evidence that the agency has made the necessary environmental analyses. 40 C.F.R. § 1502.1.

39. NEPA requires that an EIS properly define the proposed action and describe the existing environment affected by the proposed action. 40 C.F.R. §§ 1502.4, 1502.15.

40. An EIS must evaluate the significance of the direct and indirect environmental effects of the proposed action, as well as any conflicts between the proposed action and other federal, state or local laws or policies for the same geographic area. 40 C.F.R. § 1502.16, 1506.2.

41. NEPA requires that an EIS consider the cumulative impacts of the proposed federal agency action together with past, present and reasonably foreseeable future actions,

including all federal and non-federal activities. 40 C.F.R. § 1508.7. Cumulative impact "is the impact on the environment which results from the incremental impact of the action when added to other past, present or reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* Cumulative impacts "can result from individually minor but collectively significant actions taking place over a period of time." *Id.*

42. The alternatives analysis is considered the "heart" of an EIS. 40 C.F.R. § 1502.14. An EIS "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear choice among options by the decision-maker and the public." *Id.* The Forest Service is required to "rigorously explore and objectively evaluate all reasonable alternatives," 40 C.F.R. § 1502.14(a), and must "devote substantial treatment to each alternative . . . so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14(b).

43. NEPA requires that the agency use the best available data and ensure the scientific integrity of an EIS, disclose opposing scientific viewpoints and follow specified procedures to address gaps in data and scientific uncertainty. 40 C.F.R. §§, 1500.1, 1502.9, 1502.22, 1502.24.

44. Agencies must circulate an EIS for public comment and must respond meaningfully to comments. 40 C.F.R. Part 1503. An agency that wishes to tier an EIS to a prior document must follow specified procedures. 40 C.F.R. § 1502.20.

CLAIM FOR RELIEF
(Violations of NEPA, NEPA Regulations and the APA)

45. Plaintiffs incorporate by reference here the allegations of the preceding paragraphs of this Complaint.

46. The draft environmental impact statement ("DEIS") and/or final environmental impact statement ("FEIS") for the Sequoia Monument Management Plan failed to provide sufficient information to decision-makers and the public, in violation of NEPA.

47. The DEIS, FEIS and Record of Decision ("ROD") are vague and unintelligible in many respects, and fail to describe the major federal action consistently or in enough detail to allow meaningful public review, including but not limited to a failure to define management standards and guidelines for the Sequoia Monument in sufficient detail. The incomplete and inaccurate description of the federal action cause the entirety of the DEIS, FEIS and ROD to violate NEPA.

48. The DEIS, FEIS and ROD did not properly analyze and address how the proposed action will meet the purpose and need of the Sequoia Monument Proclamation, including but not limited to how the Management Plan's weakening of conservation measures in old forest areas and sensitive habitat and overbroad definitions of wildland-urban interface zones will promote the Proclamation's dominant objective of protecting the natural objects and ecological integrity of the Sequoia Monument.

49. The DEIS, FEIS and ROD did not properly analyze and address how the proposed action will meet the purpose and need of achieving fire management and restoration objectives, including but not limited to how the logging of large trees and reduction in forest canopy cover will promote these objectives.

50. The DEIS, FEIS and ROD did not properly analyze and address the existing environment affected by the Management Plan, including but not limited to the current status of imperiled wildlife such as the Pacific fisher, California spotted owl and American Marten and their habitat; the status and trends of other sensitive species and management indicator species; the zones of ecological influence for giant sequoia groves; and the significance of extensive,

preexisting disturbances in the Sequoia Monument resulting from past logging and fire management activities.

51. The DEIS, FEIS and ROD did not properly analyze and address the direct and indirect environmental effects of the Management Plan, including but not limited to effects on wildlife such as the Pacific fisher, American marten and California spotted owl; the effects of logging on fire behavior; effects on roadless and unroaded wilderness areas within the Monument; effects caused by grazing; and effects caused by extensive road use within the Monument.

52. The DEIS, FEIS and ROD did not properly analyze and address the inconsistency of the Management Plan with the Sequoia Monument Proclamation, including but not limited to the conflict between the Plan's projected commercial harvest of timber, removal of large trees and reductions in forest canopy on the one hand, and the Proclamation's strict prohibitions on tree removal and emphasis on the conservation of natural objects such as the Monument's imperiled wildlife.

53. The DEIS, FEIS and ROD did not properly analyze and address the inconsistency of the Sequoia Monument Management Plan with the 2001 Framework, including but not limited to the discrepancies between the Plan and the 2001 Framework concerning diameter limits on tree removal, restrictions on forest canopy reduction, and disturbance of specially-designated wildlife habitat zones such as home range core areas.

54. The DEIS, FEIS and ROD did not properly analyze and address the inconsistency of the Sequoia Monument Management Plan with the 1990 Mediated Settlement, including but not limited to the Plan's failure to require grove-specific plans prior to any logging in giant sequoia groves.

55. The DEIS, FEIS and the ROD did not properly analyze and address the

cumulative environmental effects of the Management Plan, including but not limited to the cumulative effects on the Pacific fisher and other wildlife from logging proposed in the Management Plan, in conjunction with past, present and reasonably foreseeable projects in the southern Sierra Nevada including projects implementing the 2004 Framework Revisions, logging on private lands, and the Kings River Administrative Study Proposal.

56. The DEIS, FEIS and ROD did not properly analyze and address project alternatives, including but not limited to failing to include a rigorous and objective analysis of alternatives to the adopted Management Plan, failing to address why the Sequoia National Park's management practices should not be adopted and approving an action that was significantly different from the alternatives examined in the DEIS.

57. The DEIS, FEIS and ROD did not properly analyze and address significant gaps and uncertainty in the scientific data relating to conditions in the Sequoia Monument and the environmental effects of the approved action, including but not limited to modeled effects on wildlife and modeled fuels and fire behavior.

58. The DEIS, FEIS and ROD failed to use the best available scientific data, including but not limited to the best population and habitat data for wildlife such as the Pacific fisher, American marten and California spotted owl; data relating to the role of large trees and canopy cover in fire behavior and fuels management; data concerning the relationship between tree size and age; data on sequoia regeneration; and data relating to wildlife behavior and habitat needs following wildfires.

59. The DEIS, FEIS and ROD did not properly disclose, address and meaningfully respond to contrary scientific opinion and evidence submitted to the Forest Service on several aspects of the Management Plan, including but not limited to scientific opinions and evidence submitted to the agency: advising against the selected alternative because of its adverse impacts

to Pacific fisher and California spotted owl populations; advising against the selected alternative because of the adverse effects of mechanical thinning on fire behavior; advising against the selected alternative because of the adverse effects of patch clearcuts on giant sequoia regeneration; questioning the validity and accuracy of Forest Service fire susceptibility models; dissenting from the agency's approach on behalf of the Sequoia Monument's Scientific Advisory Board; and other scientific studies which contravene and do not support the selected alternative.

60. The DEIS, FEIS and ROD improperly tiered to the 2003 Sequoia National Forest Fire Plan because that Plan did not undergo review by decision-makers and the public under NEPA.

61. Defendants failed to respond adequately to public comments on the DEIS.

62. In sum, Defendants' DEIS, FEIS and ROD are major federal actions approved contrary to NEPA, 42 U.S.C. § 4332(2)(C), and its implementing regulations. Defendants failed to take the required "hard look" at the foreseeable consequences of their actions. Defendants' failures to comply fully with NEPA and its regulations were arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law, and without observance of procedure required by law, thereby subject to reversal under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq*. ("APA").

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter judgment in favor of plaintiffs and grant the following relief:

A. Issue a declaratory judgment that:

1. Defendants' approval of the Sequoia Monument Management Plan and the associated Record of Decision and Final Environmental Impact Statement violated the National Environmental Policy Act, its implementing regulations, and the APA;

2. Defendants' approval of the Sequoia Monument Management Plan and the associated Record of Decision and Final Environmental Impact Statement were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and without observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A)-(F);

B. Pursuant to the APA, 5 U.S.C. § 706(2)(A), set aside and vacate the Sequoia Monument Management Plan and associated Record of Decision and Final Environmental Impact Statement and enjoin implementation of the Management Plan, including any projects approved pursuant to or implementing the Management Plan;

C. Award plaintiffs their costs and expenses (including reasonable attorney, expert witness and consultant fees); and

D. Award plaintiffs such other relief as the Court deems appropriate.

DATED: January ____, 2005 Respectfully submitted,

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RACHEL M. FAZIO
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Attorney for Plaintiffs Earth Island Institute and Sequoia Forestkeeper.

CERTIFICATION OF INTERESTED PARTIES OR ENTITIES

Pursuant to Civil L.R. 3-16, the undersigned certify that as of this date, other than the named parties, there is no such interest to report.

Dated: January _____, 2005

_____
Patrick Gallagher
Eric Huber
Sierra Club
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Deborah Reames
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