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25 FOR THE NORTHERN DISTRICT OF CALIFORNIA
26 OAKLAND DIVISION

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27 DEFENDERS OF WILDLIFE, SIERRA CLUB,
28 THE WILDERNESS SOCIETY, and
VERMONT NATURAL RESOURCES
COUNCIL,

Case No. **C08-02326**

Plaintiffs,

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

vs.

ED SCHAFER, Secretary, U.S. Department of
Agriculture, in his official capacity; GAIL
KIMBELL, Chief, U.S. Forest Service, in her
official capacity; and U.S. FOREST SERVICE,

Defendants.

INTRODUCTION

1
2 1. This case involves the continuing efforts of the current U.S. Department of
3 Agriculture, acting through its agency the U.S. Forest Service (both agencies referred to collective
4 here as “Forest Service”), to revoke important and longstanding regulatory protections for the 193-
5 million-acre National Forest System. Through its action challenged in this case, the Forest Service
6 has once again eliminated from the regulations governing planning and management of the national
7 forests (referred to generically as “NFMA Regulations”) environmentally protective standards
8 required to be in these regulations by the National Forest Management Act (“NFMA”), 16 U.S.C. §
9 1600 *et seq.* The NFMA Regulations govern virtually every significant action on every acre of each
10 of the 155 national forests and 20 national grasslands. Defendants have accomplished this
11 abandonment of resource protection standards contained in prior versions of the NFMA Regulations
12 through the deletion of such standards from their latest version of revised NFMA Regulations
13 published in the Federal Register April 21, 2008. 73 Fed. Reg. 21468. Plaintiffs challenge the
14 rulemaking that concluded with that publication of the revised regulations and accompanying Record
15 of Decision, as well as the Final Environmental Impact Statement (“FEIS”) prepared on that
16 rulemaking. *Id.*

17 2. Since their adoption in 1982, a set of NFMA Regulations (“1982 Rule”) have
18 mandated a number of vital protections for the natural environments of the national forests,
19 including regulations that require that each national forest be managed to maintain viable
20 populations of existing native species, that “management indicator species” be identified and
21 monitored as indicators of the health of forest ecosystems, that harmful management practices not be
22 employed within 100-foot buffer zones around water bodies to protect water conditions and fish
23 habitat, and that wildlife habitat needs be accounted for in livestock grazing decisions. Further, the
24 1982 Rule provides detailed standards and procedures for identifying national forest lands not
25 suitable or appropriate for timber production. These and associated regulations have operated for
26 more than two decades to protect wildlife and fish, soils, water quality and quantity, slope stability,
27 outdoor recreation, scenic vistas, and other public resources of the National Forest System. The
28 1982 Rule imposes an important check on national forest management, ensuring that the agency’s

1 authorization of logging, oil and gas drilling, and other development activities does not lead to the
2 destruction of valuable environmental resources.

3 3. However, in the years since the 1982 Rule was promulgated, the Forest Service has
4 repeatedly violated its protective provisions, most particularly by failing in a number of instances to
5 take legally required steps to ensure that environmentally harmful activities on the national forests
6 do not push wildlife populations past the point of viability. Despite a series of judicial decisions
7 finding the Forest Service in violation of the 1982 Rule, the agency generally has not attempted to
8 modify its actions to ensure compliance with the wildlife viability regulations. Instead, the Forest
9 Service under the current administration has sought to repeal nearly all of the detailed resource
10 standards in the 1982 Rule through a radical revision of the NFMA Regulations that itself does not
11 comport with the requirements of NFMA.

12 4. The rulemaking challenged here is not the current administration’s first attempt to
13 revise the NFMA Regulations to eliminate existing resource protection standards. On January 5,
14 2005, the Department published a final rule revising the NFMA Regulations (“2005 Rule”) in a
15 manner that stripped them of virtually all of the resource protection standards that the NFMA
16 expressly requires these regulations to provide. Such protections were contained in the 1982 Rule
17 and, in a different form, in a revised set of NFMA regulations published in November 2000 (“2000
18 Rule”). The 2000 Rule has never been used to guide the adoption or revision of management plans
19 for the individual national forests because of the change of administrations shortly after their
20 publication and the new administration’s subsequent suspension of that rule. The plaintiffs in this
21 action challenged the 2005 Rule as having been promulgated in violation of the Administrative
22 Procedure Act (“APA”), 5 U.S.C. §§ 553, 701-706, and the National Environmental Policy Act
23 (“NEPA”), 42 U.S.C. § 4321 *et seq.* *Defenders of Wildlife, et al. v. Johanns, et al.*, no. 04-4512 PJH,
24 First Supplemental Complaint (N.D. Cal., filed Feb. 17, 2005). A second case challenging the 2005
25 regulations also alleged that the regulations had been promulgated in violation of the Endangered
26 Species Act, 16 U.S.C. § 1530 *et seq.* (“ESA”). *Citizens for Better Forestry, et al. v. U.S. Dept. of*
27 *Agriculture, et al.*, no. 05-1144 PJH, Complaint (N.D. Cal., filed Mar. 21, 2005). Following
28 consolidated briefing and argument on motions for summary judgment in these two cases, the

1 District Court ruled that the 2005 Rule had been promulgated in violation of the APA, NEPA, and
2 ESA, set aside the regulations, and issued an injunction against their implementation until such time
3 as the statutory violations were cured. *Citizens for Better Forestry v. USDA*, 481 F.Supp.2d 1089,
4 1100 (N.D. Cal. 2007).

5 5. The rulemaking challenged in this case is the final rule revising the NFMA
6 Regulations in a manner that once again strips the regulations previously in effect of many resource
7 protection standards. With minor exceptions, it is substantially identical to the 2005 Rule. The new
8 NFMA rulemaking is referred to herein as the “2008 Rule.”

9 6. Defendants’ promulgation of the 2008 Rule violated NEPA though their failure to
10 prepare an adequate environmental impact statement on the 2008 Rule, despite the far-reaching
11 environmental impacts that the 2008 Rule’s abandonment of environmentally protective standards
12 will have on national forests across the country. The FEIS prepared on the rulemaking contains no
13 analysis whatsoever of the potential impacts on the natural resources of the national forests of
14 adopting the 2008 Rule as compared to other regulatory regimes put forth as alternatives, including
15 the 1982 Rule and the 2000 Rule.

16 7. If plaintiffs prevail on the merits of their claims, they intend to seek attorneys’ fees
17 and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

18 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

19 8. Plaintiffs bring this action pursuant to the APA, 5 U.S.C. §§ 701-706. This Court has
20 jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question) and may issue a
21 declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02. An actual controversy
22 exists between plaintiffs and defendants.

23 9. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e) because plaintiff
24 Sierra Club is incorporated in this district and maintains its headquarters in the County of San
25 Francisco. Moreover, more than 1.5 million acres of national forest lands lie within the Northern
26 District of California.

27 10. Assignment to the Oakland Division of this judicial district is proper because there
28 are national forests in the counties of Del Norte, Humboldt, and Mendocino. Civil L. R. 3-2(c), (d).

1 **PARTIES**

2 11. Plaintiff Defenders of Wildlife (“Defenders”) is a non-profit conservation
3 organization founded in 1947 and based in Washington, D.C., with offices across the country.
4 Defenders has more than 530,000 members and supporters across the nation. Defenders is dedicated
5 to protecting and restoring all native wild animals and plants in their natural communities.

6 12. Plaintiff Sierra Club is a non-profit conservation organization founded in 1892, with
7 headquarters in San Francisco, California, and more than 1,300,000 members and supporters
8 nationwide. The mission of the Sierra Club is: “To explore, enjoy and protect the wild places of the
9 earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to
10 educate and enlist humanity to protect and restore the quality of the natural and human
11 environments.”

12 13. Plaintiff The Wilderness Society (“TWS”) is a non-profit environmental organization
13 founded in 1935, with its headquarters in Washington, D.C. TWS has approximately 200,000
14 members and nine regional offices. TWS works to protect America’s wilderness and inspire people
15 to care for wild places. Protecting national forest areas is vital to achieving TWS's mission.

16 14. Plaintiff Vermont Natural Resources Council (“VNRC”) is a non-profit conservation
17 organization founded in 1963, representing approximately 5,000 members who support the
18 protection and maintenance of the ecological health and integrity of Vermont’s natural resources,
19 including the Green Mountain National Forest. Maintaining the diversity of species in Vermont,
20 protection of sensitive ecological areas, maintaining intact blocks of forestland, and promoting
21 sustainable forestry are key conservation components in VNRC’s forest program.

22 15. All of the plaintiff organizations commented on both the rulemaking that led to the
23 2008 Rule and on the inadequacies of the draft EIS on the 2008 Rule. Plaintiffs Defenders, Sierra
24 Club, and TWS also informed their members of and encouraged them to participate in the
25 rulemaking process.

26 16. Plaintiffs and their members use the lands in the National Forest System for
27 recreational, scientific, aesthetic, conservation, and commercial purposes. Plaintiffs and their
28 members have a strong interest in the environmental protections afforded to national forest lands by

1 the NFMA and by the Forest Service’s prior NFMA regulations, which regulations defendants have
2 sought to rescind and replace through the rulemaking challenged in this case. This strong interest
3 includes an interest in those provisions of the 1982 Rule containing standards that, among other
4 things, required the NFMA-required plan for each unit of the National Forest System (“forest plan”)
5 to provide for maintaining viable populations of existing native and desired non-native vertebrate
6 species, required the identification and monitoring of “management indicator species” as indicators
7 of the health of forest ecosystems, proscribed management practices within 100-foot buffer zones
8 around water bodies to protect water conditions and fish habitat, required wildlife habitat needs to be
9 accounted for in grazing decisions, and provided detailed guidance for identifying national forest
10 lands not suitable or appropriate for timber production. Similarly, plaintiffs have a strong interest in
11 parallel provisions of the 2000 NFMA Regulations, under which no forest plan has been
12 promulgated or revised to date, which the 2008 Rule is also intended to supplant. These provisions
13 include requirements that forest plans provide a high likelihood that habitat conditions will support
14 viable populations of all native and desired non-native species of all taxa, that “focal species”
15 indicative of the integrity of the larger ecosystems they inhabit will be identified and monitored, that
16 the first priority for national forest management is to maintain and restore ecological integrity of the
17 national forests, and that detailed information will be gathered on a variety of resources to assist in
18 maintaining and restoring ecological integrity.

19 17. Plaintiffs and their members seek to view, study, hunt, fish, and otherwise enjoy
20 wildlife and signs of the presence of wildlife, including rare, imperiled, and sensitive wildlife
21 species, in the national forests; to benefit from healthy national forest watersheds, which they use
22 and rely upon for drinking water, swimming, fishing, boating, aesthetic appreciation, and other
23 activities; to observe and study trees and other national forest plant life, and to gather fruits, nuts,
24 and other wild plant materials as permitted in the national forests; and to enjoy the natural scenery of
25 the national forests. The elimination of resource protection standards effected by the 2008 Rule
26 threatens plaintiffs’ and their members’ interests in all of these uses of and benefits from
27 ecologically healthy national forests. Further, plaintiffs and their members have a procedural
28

1 interest in influencing national forest management through participation in the development of
2 meaningful, substantive forest plans as prescribed by the NFMA.

3 18. The above-described recreational, scientific, aesthetic, conservation, consumptive,
4 participatory, and commercial interests of plaintiffs and their respective members have been, are
5 being, and, unless the relief prayed for in this complaint is granted, will continue to be adversely
6 affected and irreparably injured by defendants' violations of NEPA, as described below. In
7 particular, defendants' challenged actions injure plaintiffs and their members by eliminating
8 substantive, enforceable environmental requirements of the NFMA Regulations that govern both the
9 formulation of forest plans and site-specific projects and actions within the National Forest System.
10 Plaintiffs' and their members' procedural interest in participating in the development, amendment,
11 and revision of forest plans is injured by the 2008 Rule's rendering public input effectively
12 meaningless by converting previously binding forest plans into largely discretionary documents
13 irrelevant to forest management activities on the ground, effectively allowing any forest plan
14 developed with public involvement to be readily amended to accommodate inconsistent timber sales
15 and other projects. Moreover, plaintiffs' and their members' procedural interests are injured by the
16 2008 Rule's strong encouragement to the Forest Service officials responsible for revising forest
17 plans to perform such revisions without the preparation of an environmental review document
18 pursuant to NEPA, on the assertion that forest plans are paper exercises with no impacts on forest
19 resources. This would deny plaintiffs and their members detailed information on the potential
20 environmental effects of a proposed revised forest plan, the careful examination and comparison of
21 alternatives to that plan, the formulation of measures to mitigate the revised plan's adverse impacts,
22 and an opportunity to comment on all of these matters.

23 19. Defendants' failure to comply with NEPA in the promulgation of the 2008 Rule, by
24 preparing a grossly inadequate environmental impact statement containing no analysis of the
25 potential environmental impacts of the 2008 Rule or of the alternatives to that rule, injures plaintiffs
26 and their members by denying them the information that NEPA requires about those potential
27 impacts — direct, indirect, and cumulative with other actions — of the new rule, about
28 environmentally superior alternatives to that rule, and about mitigation measures available to address

1 Forests, *i.e.*, forest plans, and further set out “the guidelines and standards prescribed by this
2 subsection.” 16 U.S.C. § 1604(g).

3 31. The NFMA specifically requires the promulgation of NFMA Regulations specifying
4 guidelines for forest plans that address a variety of specific resource management issues. 16 U.S.C.
5 § 1604(g)(3). Among the explicit mandates of this subsection of the NFMA are regulations
6 specifying guidelines that provide for the diversity of plant and animal communities in each national
7 forest (§ 1604(g)(3)(B)); that restrict timber harvesting to avoid irreversible damage to soils, slopes,
8 and watersheds and detrimental changes to waterways, wetlands, and riparian areas (§
9 1604(g)(3)(E)); that restrict the use of clearcutting and other even-aged timber harvest methods (*i.e.*,
10 harvest methods that result in a replacement stand of trees of identical age) and limit the size and
11 regulate the shape of areas harvested by even-aged methods (§ 1604(g)(3)(F)); and that require the
12 identification of the suitability of national forest lands for resource management (§ 1604(g)(2)(A)).

13 **THE 1982 NFMA RULE**

14 32. The Forest Service promulgated regulations pursuant to the NFMA’s statutory
15 mandate on September 30, 1982. *See* National Forest System Land and Resource Management
16 Planning, 47 Fed. Reg. 43,026 (Sept. 30, 1982) (formerly codified at 36 C.F.R. pt. 219; cited here as
17 “1982 Rule § ___”). The 1982 Rule covers five major areas of the national forest planning process.
18 First, it describes the content and role of “regional guides,” which establish regional standards and
19 guidelines for the nine regional divisions of the National Forest System. *See* 1982 Rule §§
20 219.4(b)(2), 219.9. Second, it establishes a process for developing plans for individual
21 administrative units of the National Forest System, *i.e.*, the various national forests and national
22 grasslands. *See id.* § 219.12. Third, it establishes guidelines for determining where and how much
23 logging can occur in the National Forest System. *See id.* §§ 219.14, 219.16. Fourth, it states
24 specific planning requirements for a variety of resources, including wilderness, wildlife, grazing,
25 recreation, minerals, water, and soil. *See id.* §§ 219.18-25. Fifth, it establishes “minimum specific
26 management requirements” for logging and other activities. *See id.* § 219.27.

27 33. The 1982 Rule was promulgated based on the recommendations of an appointed
28 Committee of Scientists, specifically mandated by the NFMA. 16 U.S.C. § 1604(h). The

1 Committee of Scientists, made up of members from outside the Forest Service who were experts in
2 various sciences relevant to national forest resources, convened a series of public meetings across
3 the country. On the basis of their collective expertise and the public input received, the Committee
4 of Scientists made recommendations to the Forest Service regarding the appropriate content of the
5 NFMA Regulations.

6 34. The 1982 Rule established numerous important environmental safeguards for the
7 national forests. For example, it proscribed management practices within 100-foot buffer zones
8 around riparian areas that would “seriously and adversely affect water conditions or fish habitat”
9 (1982 Rule § 219.27(e)); required that wildlife habitat needs be taken into account in decisions
10 regarding livestock grazing (*id.* § 219.20); required management prescriptions to preserve and
11 enhance the diversity of plant and animal communities so that diversity is at least as great as that of a
12 natural forest (*id.* § 219.27(g)); and provided detailed standards and procedures for identifying
13 national forest lands not suitable or appropriate for timber production and for identifying timber
14 management intensities on lands that may be suitable for logging (*id.* § 219.14).

15 35. With respect to wildlife, the 1982 Rule established a critical protection mandate to
16 implement the NFMA diversity requirement for the National Forest System. The drafters of the
17 1982 Rule recognized that, in order to sustain plant and animal communities in the national forests,
18 the Forest Service must maintain the individual species that make up those communities. The 1982
19 Rule therefore provides that “[f]ish and wildlife habitat shall be managed to maintain viable
20 populations of existing native and desired non-native vertebrate species in the planning area.” *Id.* §
21 219.19; *see also id.* § 219.27(a)(6) (requiring Forest Service to “[p]rovide for adequate fish and
22 wildlife habitat to maintain viable populations of existing native vertebrate species”). It defines a
23 “viable population” as “one which has the estimated numbers and distribution of reproductive
24 individuals to insure its continued existence is well distributed in the planning area” and specifies
25 that “habitat must be provided to support, at least, a minimum number of reproductive individuals
26 and that habitat must be well distributed so that those individuals can interact with others in the
27 planning area.” *Id.* § 219.19. Further, the 1982 Rule specifically requires that forest plans set
28 objectives for ESA-listed species “that shall provide for, where possible, their removal from

1 listing...through appropriate conservation measures, including the designation of special areas to
2 meet the protection and management needs of such species.” *Id.* § 219.19(a)(7).

3 36. To implement the “viability” requirement, the 1982 Rule adopted a “canary in the
4 coal mine” approach. It provided that certain wildlife species must be selected by the Forest Service
5 and monitored as proxies for the health of broader wildlife populations and of the specific
6 ecosystems these species inhabit. Monitoring these proxy species enables the Forest Service to
7 determine whether its management activities are having adverse impacts on wildlife and ecosystems
8 without the necessity of monitoring all species occupying the forest. Specifically, the 1982 Rule
9 provides that “certain vertebrate and/or invertebrate species present in the area shall be identified and
10 selected as management indicator species” based upon a finding that “their population changes are
11 believed to indicate the effects of management activities.” *Id.* § 219.19(a)(1). The rule further
12 provides that “[p]opulation trends of the management indicator species will be monitored and
13 relationships to habitat changes determined.” *Id.* § 219.19(a)(6). It also requires that forest plans
14 must provide that habitat for management indicator species is “maintained and improved to the
15 degree consistent with multiple-use objectives.” *Id.* § 219.27(a)(6). The wildlife viability and
16 management indicator species rules are second only to the Endangered Species Act in their
17 importance as a federal protection for species conservation and are an important complement to the
18 ESA in that they help identify and correct species declines before the emergency measures of the
19 ESA are needed.

20 37. By its express terms, the 1982 Rule’s specific management requirements apply not
21 only to the development, revision, and amendment of forest plans, but also to the implementation of
22 forest plans through specific projects and actions. *Id.* § 219.27.

23 38. However, since adopting the 1982 Rule, and forest plans pursuant to it, the Forest
24 Service frequently failed to comply with its provisions, particularly with respect to the regulatory
25 requirement that the agency obtain data necessary to determine population trends of management
26 indicator species and their relationships to habitat changes caused by national forest management
27 activities. As a result, numerous federal courts have invalidated decisions by the Forest Service to
28 undertake site-specific logging and other environmentally harmful projects in the National Forests in

1 the absence of such data and well-founded determinations. *See, e.g., The Land Council v. Powell,*
2 379 F.3d 738 (9th Cir. 2004), *amended* 2005 U.S. App. LEXIS 1153 (9th Cir. 2005); *Utah*
3 *Environmental Congress v. Bosworth*, 372 F.3d 1219 (10th Cir. 2004); *Idaho Sporting Congress v.*
4 *Rittenhouse*, 305 F.3d 957 (9th Cir. 2002); *Sierra Club v. Martin*, 168 F.3d 1, 7 (11th Cir. 1999);
5 *Forest Guardians v. U.S. Forest Service*, 180 F. Supp. 2d 1273 (D.N.M. 2001); *Utah Environmental*
6 *Congress v. Zieroth*, 190 F. Supp. 2d 1265 (D. Utah 2002).

7 39. Thus, the 1982 Rule’s wildlife requirements have acted as a significant check upon
8 the Forest Service when the agency has attempted to implement environmentally harmful projects
9 without taking the basic steps required by the rule to ensure that its actions are not pushing resident
10 wildlife populations past the point of viability.

11 **THE 2000 NFMA RULE**

12 40. Since promulgation of the 1982 NFMA Regulations, the Forest Service has initiated
13 several attempts to revise them. All such attempts were abandoned due to controversy until, in late
14 1997, then-Secretary of Agriculture Dan Glickman convened a new independent Committee of
15 Scientists, as expressly authorized by the NFMA, to provide guidance to the Forest Service on how
16 to revise and update the NFMA Regulations. 16 U.S.C. § 1604(h)(1). Like the earlier Committee of
17 Scientists, this group convened a series of meetings across the country in 1998 to invite public
18 participation in their deliberations. In March 1999, the Committee provided the Forest Service a
19 193-page set of recommendations regarding potential revisions to the NFMA regulations. Taking
20 the Committee of Scientists’ recommendations into account, the Forest Service published a proposed
21 rule revising the NFMA regulations on October 5, 1999 (64 Fed. Reg. 54,074) and adopted a final
22 rule on November 9, 2000. *See National Forest System Land and Resource Management Planning,*
23 65 Fed. Reg. 67,514 (formerly codified at 36 C.F.R. pts. 217 and 219).

24 41. The 2000 Rule established detailed provisions for managing wildlife and other
25 resources in the national forests, including revisions to the wildlife “viability” provision of the 1982
26 NFMA Regulations that retained the species viability approach. The rule requires that forest plan
27 decisions affecting species diversity must provide for ecological conditions that provide a high
28 likelihood of supporting viable populations of “native and desired non-native species well distributed

1 throughout their ranges within the plan area.” 2000 Rule, former 36 C.F.R. § 219.20(b)(2)(i).

2 Where circumstances prevent meeting this standard of “high likelihood” that the viability of a given
3 species will be adequately protected, the 2000 Rule still requires actions protective of that species’
4 viability. *Id.* § 219.20(b)(2)(ii)-(iv).

5 42. The 2000 Rule included wildlife monitoring requirements akin to the management
6 indicator species requirements of the 1982 Rule. It called for identification and monitoring of “focal
7 species,” any given species to be so designated because “its status and trend provide insights to the
8 integrity of the larger ecological system to which it belongs.” *Id.* § 219.36. Under the 2000 Rule,
9 monitoring “must be used to evaluate focal species” by monitoring the “status and trends of
10 ecological conditions known or suspected to support” these species. *Id.* § 219.11(a)(1)(ii)(A). It
11 also provided for population monitoring of focal species. *Id.* § 219.11(a)(1)(ii)(B), (C).

12 43. The 2000 Rule required that forest plans “must provide for implementing actions in
13 conservation agreements...that provide a basis for not needing to list species” and “should reflect the
14 unique opportunities that National Forest System lands provide to contribute to recovery of listed
15 species.” *Id.* § 219.20(b)(3)(i).

16 44. The 2000 Rule required that the “first priority for stewardship of the national forests
17 and grasslands is to maintain and restore ecological sustainability.” 2000 Rule § 219.19. To ensure
18 that this priority is met, the 2000 Rule required “the development and analysis of information
19 regarding [ecosystem diversity and species diversity, identified as ‘components of ecological
20 sustainability’] at a variety of temporal and spatial scales.” *Id.* § 219.20(a). The scales for which
21 information is to developed and analyzed include geographic areas such as bioregions and
22 watersheds, scales of biological organization such as communities and species, and scales of time
23 from months to centuries. *Id.* The 2000 Rule requires the Forest Service, in carrying out its duties to
24 promote ecological sustainability in the forest planning process, to develop detailed information
25 regarding the national forest’s major vegetation types, water resources, soils, air resources, and
26 species. *Id.* § 219.20(a)(1). It sets out a detailed list of factors to be evaluated in determining how to
27 protect and restore ecosystem and species diversity, including the effects of human activities, the
28 effects of air quality, the effects of uses of water, the quantity and quality of water needed to support

1 ecosystem diversity and ecological sustainability, and the current viability of existing species . *Id.* §
2 219.20(a)(2). The 2000 Rule also details how all of this information is to be used in making forest
3 plan decisions that affect ecosystem diversity, species diversity, and ESA-listed species. *Id.* §
4 219.20(b).

5 45. The 2000 Rule provides that: “The regulations in this subpart [*i.e.*, the 2000 Rule
6 itself]...guide the selection and implementation of site-specific actions.” *Id.* § 219.1(a).

7 **THE 2005 NFMA RULE**

8 46. As matters turned out, the 2000 Rule never replaced the 1982 Rule as the basis for
9 developing or revising forest plans. A new administration assumed control of the Forest Service
10 shortly after publication of the 2000 Rule. That administration decided to craft its own set of NFMA
11 Regulations to replace the 2000 Rule. On May 17, 2001, the Secretary of Agriculture postponed the
12 effective date upon which the 2000 Rule would apply to the amendment or revision of land
13 management plans, observing that this postponement would allow the Forest Service to review the
14 regulations and determine whether adjustments were necessary in light of allegedly difficult-to-
15 implement provisions. *See* 66 Fed. Reg. 27,552 (to be codified at 36 C.F.R. 219.35(b)). On May 20,
16 2002, the Forest Service published an “interim final rule” in the Federal Register that provided that,
17 until revised NFMA Regulations were promulgated, Forest Service officials could continue to
18 conduct forest plan amendments or revisions under the 1982 Rule if they so chose, rather than under
19 the 2000 Rule. 67 Fed. Reg. 35,431-34. Not a single national forest chose to revise or amend its
20 forest plan under the 2000 Rule. *See* 70 Fed. Reg. at 1022.

21 47. On December 6, 2002, the Forest Service published a new set of proposed NFMA
22 regulations, a significant revision of the 2000 Rule (“2002 Proposed Rule”). *See* National Forest
23 System Land and Resource Management Planning, 67 Fed. Reg. 72,770 (Dec. 6, 2002) (to be
24 codified at 36 C.F.R. pt. 219). At no time prior to proposing the significant revisions encompassed
25 by the 2002 Proposed Rule did the administration appoint a new Committee of Scientists or formally
26 consult with the previous committee, nor did it do so during the remainder of the protracted
27 rulemaking process that followed. The potential environmental impacts of the 2002 Proposed Rule
28

1 were not analyzed pursuant to NEPA, based on an assertion that the promulgation of these
2 regulations could be categorically excluded from NEPA review. 67 Fed. Reg. at 72,793.

3 48. On December 22, 2004, more than two years after publication of the proposed rule,
4 the Forest Service announced the completion of its final set of new NFMA Regulations. The 2005
5 Rule, along with related materials, was published in the Federal Register January 5, 2005. *See*
6 National Forest System Land and Resource Management Planning; Removal of 2000 Planning Rule;
7 National Environmental Policy Act Documentation Needed for Developing, Revising, or Amending
8 Land Management Plans; Categorical Exclusion; Final Rules and Notice, 70 Fed. Reg. 1021 (Jan. 5,
9 2005). The material published in the Federal Register included a final rule rescinding the 2000 Rule
10 by removing it from 36 C.F.R. part 219, subpart A, with a stated effective date of January 5, 2005
11 (*Id.* at 1022-23); the final 2005 NFMA Rule, also with a stated effective date of January 5, 2005, and
12 a lengthy preamble to the new regulations (*id.* at 1023-61); and a proposed categorical exclusion
13 from the requirements of NEPA for the future development, revision, or amendment of forest plans
14 (*id.* at 1062-66; proposed for inclusion in Forest Service Handbook 1909.15, Chap. 30). The Federal
15 Register notice further revealed that the Forest Service did not consult with federal wildlife
16 protection agencies regarding the potential effects of the new rule on federally-listed endangered and
17 threatened species, as required by the ESA, based on an assertion that the rule “simply establishes a
18 process for planning,” purportedly without any potential effects on listed species. *Id.* at 1035.

19 49. The 2005 Rule differed substantially from the 2002 Proposed Rule upon which public
20 comment had been sought in a variety of ways that the public could not have foreseen from the
21 content of the proposed rule. While the 2002 Proposed Rule was characterized in its preamble
22 materials as an “adjustment” to the 2000 NFMA Rule that retained aspects of those regulations, the
23 preamble to the 2005 Rule characterized the final regulations as a “paradigm shift” in national forest
24 land management planning from previous NFMA Regulations. 70 Fed. Reg. at 1024. The
25 “paradigm shift” effected by the 2005 Rule was the elimination from the NFMA Regulations of
26 enforceable substantive standards governing the content of land management plans for the national
27 forests, including the elimination of a series of standards that the NFMA itself requires be included
28 in these regulations. The NFMA requires that “the Secretary shall . . . promulgate regulations . . .

1 that set out . . . the guidelines and standards prescribed by this subsection.” 16 U.S.C. § 1604(g). In
2 deleting the NFMA-mandated and other standards from the regulations, the 2005 Rule eliminated the
3 very word “standard” from the regulations. The forest plans that the NFMA requires be drafted,
4 revised, and amended in accordance with the NFMA Regulations were repeatedly characterized in
5 the 2005 Rule’s preamble as “strategic” and “aspirational,” rather than “prescriptive,” despite the
6 fact that the NFMA explicitly prescribes a series of resource protection standards that must be
7 included in the NFMA Regulations and reflected in the forest plans formulated pursuant to those
8 regulations.

9 50. The standards that the NFMA requires be provided in the planning regulations, but
10 that were deleted from the 2005 Rule, encompassed the most fundamental environmental protection
11 requirements that Congress sought to impose in enacting the NFMA. These deleted standards
12 included a variety of explicit limitations on logging, standards for protecting wildlife diversity, the
13 requirement that specific actions on a national forest be consistent with the forest plan, and the
14 requirement that plan amendments be made with public participation. The 2005 Rule also
15 eliminated a number of other requirements for environmental protection that were contained in the
16 1982 and/or 2000 Rules, including standards requiring the protection of the viability of individual
17 species, requiring the identification and monitoring of specific species as a measure of ecosystem
18 health, proscribing management activities within 100 feet of water bodies posing damage to water
19 conditions and fish habitat (1982 Rule), and requiring that ecological sustainability be the first
20 priority in forest management (2000 Rule).

21 51. The 2005 Rule also introduced a novel requirement that every national forest adopt an
22 “environmental management system” (“EMS”), a vaguely defined system of tracking management
23 actions borrowed from the business sector. *See* 70 Fed. Reg. at 1056 (Jan. 5, 2005), § 219.5. This
24 requirement does not exist in the 1982 Rule, the 2000 Rule, the 2002 Proposed Rule, or the NFMA
25 itself. The 2005 Rule made an EMS for each national forest a central part of forest management,
26 requiring all future forest plans, plan revisions, and plan amendments to be completed in accordance
27 with the EMS. The EMS requirement is intended to supplant the rigorous analysis of the
28 environmental impacts of forest plans required by NEPA. The NFMA explicitly requires that forest

1 planning comply with NEPA (16 U.S.C. § 1604(g)(1)), and NEPA requires an environmental impact
2 statement on all major federal actions significantly affecting the human environment, 42 U.S.C. §
3 4332(c), including the adoption of plans and guidance documents. 40 C.F.R. § 1508.18(b). The
4 1982 and 2000 Rules recognized the significant impact forest plans have on the environment and
5 required an EIS on each forest plan adoption or revision. *See* 1982 Rule § 219.10(b); 2000 Rule §
6 219.9(d). In contrast, the 2005 Rule was accompanied by a proposal to allow forest plans to be
7 “categorically excluded” from NEPA analysis on the assertion that these plans have no
8 environmental effects. 36 C.F.R. § 219.4, Notice of proposed National Environmental Policy Act
9 implementing procedures; request for comment, 70 Fed. Reg. 1062-1066 (Jan. 5, 2005) (to be
10 included in Forest Service Handbook 1909.15 Chapters 30.3, 31.2, 32.2). This proposal has since
11 been adopted, in contravention of NEPA’s EIS requirement. Thus, the 2005 Rule left the public
12 with the standardless EMS process in lieu of the rigorous, well-defined NEPA analysis of
13 environmental effects, alternatives, and mitigation measures, and equally well-defined opportunities
14 for public review and comment, that forest plan EISs provided under the 1982 and 2000 Rules.

15 52. Plaintiffs in the instant action challenged the 2005 Rule as having been promulgated
16 in violation of the APA and NEPA. *Defenders of Wildlife, et al. v. Johanns, et al.*, no. 04-4512 PJH,
17 First Supplemental Complaint (N.D. Cal., filed Feb. 17, 2005). A second case challenging the 2005
18 Rule also alleged that it had been promulgated in violation of the ESA. *Citizens for Better Forestry,*
19 *et al. v. U.S. Dept. of Agriculture, et al.*, no. 05-1144, Complaint (N.D. Cal., filed Mar. 21, 2005).
20 These cases were consolidated for briefing and argument on motions for summary judgment, and, on
21 March 30, 2007, the District Court ruled that the 2005 Rule had been promulgated in violation of the
22 requirements of the APA, NEPA, and ESA, set aside the regulations, and issued an injunction
23 against their implementation until such time as the statutory violations were cured. *Citizens for*
24 *Better Forestry v. USDA*, 481 F.Supp.2d 1089, 1100 (N.D. Cal. 2007).

25 53. Following their unsuccessful motion to alter or amend the District Court’s summary
26 judgment ruling, federal defendants filed a notice of appeal on August 30, 2007. However, this
27 appeal and a companion appeal by timber industry defendant-intervenors were voluntarily dismissed
28 through an unopposed motion granted January 14, 2008.

1 **THE 2008 NFMA RULE**

2 54. Before abandoning their appeal, defendants republished the 2005 Rule as a proposed
3 rule (“2007 Proposed Rule”) on August 23, 2007. 72 Fed. Reg. 48,514 (Aug. 23, 2007). The public
4 comment period ran until October 22, 2007. *Id.* at 48,515. As with the promulgation of the 2005
5 Rule, the Forest Service did not convene a new Committee of Scientists nor consult with the former
6 committee regarding the proposed rule. A document entitled Draft Environmental Impact Statement
7 National Forest System Land Management Planning (“DEIS”), purportedly analyzing the
8 environmental effects of the 2007 Proposed Rule and four alternatives, was published
9 simultaneously with the 2007 Proposed Rule, and public comments on the DEIS were likewise
10 received until October 22, 2007. *Id.* at i.

11 55. The DEIS included four alternatives to the 2007 Proposed Rule for analysis, while
12 eliminating four other potential alternatives suggested by members of the public in response to the
13 notice of intent to prepare an EIS. DEIS at 13-23. The four alternatives included were: Alternative
14 B, the “no action” alternative, which is the 2000 Rule as it existed before promulgation of the 2005
15 Rule; Alternative C, the 1982 Rule; Alternative D, the 2005 Rule modified to delete the
16 requirements regarding environmental management systems; and Alternative E, the 2005 Rule
17 modified to delete the EMS requirements, to allow forest plans to contain standards, to add direction
18 regarding identification of lands unsuitable for timber harvest, and to add various timber
19 management requirements from the NFMA. *Id.* at 13-21.

20 56. While NEPA requires an EIS to take a “hard look” at the environmental impacts of
21 the proposed action and of the various alternatives considered and provide a fair comparison of the
22 impacts of the alternatives to those of the proposal, the DEIS simply denied that any of the five
23 alternatives considered (including the 2007 Proposed Rule) would have *any* environmental impacts:
24 “The proposed planning rule and the alternatives are all the same in that they would have no direct,
25 indirect, or cumulative impact on the human environment.” *Id.* at 23. Not surprisingly, given that
26 unfounded denial, the DEIS’s comparison of the alternatives to the 2007 Proposed Rule contains no
27 analysis whatsoever of the different levels of impacts the alternatives would have on the resources of
28 the national forests, despite that fact that the alternatives range from the 1982 Rule, with its detailed

1 substantive requirements to protect wildlife and other natural resources, to the standardless 2007
2 Proposed Rule. *Id.* at 23-27. Similarly, all of the other discussions in the short DEIS are premised
3 on the notion that none of the five alternative sets of regulations to govern the management of every
4 acre of the 193-million-acre National Forest System has any direct, indirect, or cumulative impacts
5 on that vast area of public lands. The DEIS utterly failed to provide the “hard look” at the
6 environmental consequences of the 2007 Proposed Rule that NEPA demands.

7 57. On February 7, 2008, the Forest Service released the Final Environmental Impact
8 Statement National Forest Service Land Management Planning (“FEIS”). That document revealed
9 that the final NFMA Regulations to be adopted, called Alternative M in the FEIS, were the 2007
10 Proposed Rule (*i.e.*, the 2005 Rule invalidated by this Court) modified by the inclusion of broad
11 direction regarding identification of lands unsuitable for timber harvest and of various timber
12 management requirements largely taken verbatim from the NFMA and by a few other minor
13 changes. FEIS at 26-28. Except for those modest modifications, Alternative M is substantially
14 identical to the 2005 Rule. *Id.* Despite numerous public and agency comments regarding the
15 DEIS’s failure to reveal and examine the environmental impacts of the proposed new regulations and
16 the alternatives, the FEIS simply repeated the DEIS’s statement that none of the alternatives would
17 have any environmental impacts. *Id.* at 32. Like the DEIS, the FEIS offers no analysis of the
18 different environmental impacts likely to result from Alternative M, which is largely devoid of
19 substantive standards, let alone detailed requirements for protection of biological diversity and other
20 natural resources, as compared to the alternatives of the 1982 Rule and the 2000 Rule, which
21 provided such resource protection standards and requirements.

22 58. Moreover, while the substantive resource protections in both the 1982 and 2000 Rules
23 directly governed site-specific projects and activities, as well as the content of forest plans (*see* 1982
24 Rule § 219.27; 2000 Rule § 219.1), Alternative M expressly states that, “[e]xcept as specifically
25 provided, none of the requirements of this subpart apply to projects or activities” (FEIS at D-2 (36
26 C.F.R. § 219.2(c))) and terminates the application of the provisions of the 1982 Rule to the
27 management of national forests currently operating under forest plans created pursuant to the 1982
28 Rule (*id.* at D-15 (36 C.F.R. 219.14(b)(4))). That is, both previous versions of the NFMA

1 Regulations provided standards that directly governed actions on the national forests, while
2 Alternative M negates any such application and nullifies the application of the 1982 Rule to existing
3 forest plans created under its requirements. Despite this, the FEIS disingenuously concludes that
4 none of the alternatives “dictate[s] how administrative units of the [National Forest System] are to be
5 managed,” as support for its overall assertion that none of the alternatives has any environmental
6 impacts. FEIS at 51.

7 59. The 2008 Rule also perpetuates the EMS requirement, in a slightly modified form, as
8 a substitute for the analysis that was formerly provided by EISs on forest plans. 36 C.F.R. § 219.5.

9 60. The 2008 Rule allows significant changes to be made in forest plans without treating
10 these as plan amendments for which the NFMA requires public notification and participation. 16
11 U.S.C. § 1604 (f)(4). In particular, the 2008 Rule expressly allows the monitoring program and the
12 timber management projections (as well as other resource use projections) in a forest plan to be
13 changed as “administrative corrections,” which may be made at any time by Forest Service officials
14 and are not subject to the public participation requirements for plan amendments. 36 C.F.R. §
15 219.7(b)(3), (4). Both the monitoring program and timber management projections (i.e., the amount
16 of timber the Forest Service projects can be produced sustainably from the national forest) are
17 central components of a forest plan, components that the public has great interest in because of their
18 importance in guiding management of the national forest.

19 61. On April 9, 2008, the Forest Service issued a Record of Decision that adopted
20 Alternative M as its final set of revised NFMA regulations. These final regulations, the 2008 Rule,
21 and the Record of Decision were published in the Federal Register on April 21, 2008. 73 Fed. Reg.
22 21468-512.

23 62. In sum, the 2008 Rule, like the 2005 Rule it so closely resembles, strips the NFMA
24 Regulations of virtually all detailed substantive standards to protect and guide the management of
25 the National Forest System. This elimination of enforceable standards from the NFMA Regulations
26 without analysis of the environmental impacts of the new regulations that accomplish that
27 elimination, compared to the impacts of the alternatives of the 1982 and 2000 Rules, is a clear
28 violation of NEPA and its implementing regulations. Merely issuing a document entitled

1 “Environmental Impact Statement” that contains none of the required analysis of the environmental
2 impacts of the proposed rule or any of the alternatives cannot pass muster under NEPA.

3 **FIRST CLAIM FOR RELIEF**

4 **Violation of NEPA and APA:**
5 **Failure to Prepare Adequate EIS on 2005 NFMA Rule**

6 63. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained in
7 the preceding paragraphs.

8 64. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. §
9 1500.1. Among other things, NEPA requires all agencies of the federal government to prepare a
10 “detailed statement” that discusses the environmental effects of, and reasonable alternatives to, all
11 “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. §
12 4332(2)(C). This statement is commonly known as an environmental impact statement or EIS. A
13 “major federal action” upon which an EIS may be required includes “new or revised agency rules
14 [and] regulations.” 40 C.F.R. § 1508.18(a). The environmental “effects” that must be considered in
15 an EIS include “indirect effects, which are caused by the action and are later in time or farther
16 removed in distance, but are still reasonably foreseeable,” as well as direct effects. *Id.* § 1508.8. An
17 EIS must also consider the cumulative impacts of the proposed action, that is, the environmental
18 impacts that result “from the incremental impact of the action when added to other past, present, and
19 reasonably foreseeable future actions.” *Id.* § 1508.7; *see also* § 1508.27(b)(7).

20 65. The contents required for an adequate EIS are detailed in 40 C.F.R. part 1502.
21 Among these requirements, an EIS must consider alternatives to the proposed action and “present
22 the environmental impacts of the proposal and the alternatives in comparative form, thus sharply
23 defining the issues and providing a clear basis for choice” among the alternatives. *Id.* § 1502.14.
24 The consideration and evaluation of alternatives “is the heart of the [EIS].” *Id.* The alternatives
25 analysis must “[d]evote substantial treatment to each alternative considered in detail including the
26 proposed action so that reviewers may evaluate their comparative merits.” *Id.* § 1502.14(b).

27 66. An EIS must detail the environment consequences of the alternatives under
28 consideration. *Id.* § 1502.16. The examination of environmental consequences “forms the scientific

1 and analytical basis” for the required comparison of alternatives. *Id.* The discussion of
2 environmental consequences must include “the environmental impacts of the alternatives including
3 the proposed action, any adverse environmental impacts that cannot be avoided should the proposal
4 be implemented, the relationship between the short-term uses of man’s environment and the
5 maintenance and enhancement of long-term productivity, and any irreversible or irretrievable
6 commitments of resources which would be involved in the proposal should it be implemented.” *Id.*
7 The discussion should also include means to mitigate adverse environmental impacts of the project.
8 *Id.* § 1502.16(h).

9 67. “Agencies shall ensure the professional integrity, including scientific integrity, of the
10 discussions and analyses” in an EIS. *Id.* § 1502.24.

11 68. The record of decision on a project for which an EIS is required must specify “the
12 alternative or alternatives which were considered to be environmentally preferable” and state
13 “whether all practicable means to avoid or minimize environmental harm from the alternative
14 selected have been adopted” and, if not, why not. *Id.* § 1505.2(b), (c).

15 69. Defendants’ approval of the 2008 NFMA Rule, which strips the NFMA Regulations
16 of resource management standards required by the NFMA and contained in prior versions of these
17 regulations, standards that provided concrete protections for natural forests, wildlife and fish,
18 watersheds, and other environmental resources, is undoubtedly a major federal action significantly
19 affecting the human environment within the meaning of 42 U.S.C. § 4332(2)(C) for at least the
20 following reasons:

21 a. The National Forest System has a multitude of unique geographic
22 characteristics, including recreation areas, designated wilderness, wild and scenic rivers, and
23 ecologically critical areas within the meaning of 40 C.F.R. § 1508.27(b)(3)

24 b. The effects of the 2008 Rule on the quality of the human environment are
25 likely to be “highly controversial” within the meaning of 40 C.F.R. § 1508.27(b)(4);

26 c. The possible effects on the human environment involve “unique [and]
27 unknown risks” within the meaning of 40 C.F.R. § 1508.27(b)(5);
28

1 d. The action “may establish a precedent for future actions with significant
2 effects” within the meaning of 40 C.F.R. § 1508.27(b)(6);

3 e. The action “may adversely affect an endangered or threatened species or its
4 [critical] habitat” within the meaning of 40 C.F.R. § 1508.27(b)(9); and

5 f. The action threatens a violation of federal law imposed for the protection of
6 the environment, namely 16 U.S.C. § 1604(g)(3) of the NFMA, within the meaning of 40 C.F.R. §
7 1508.27(b)(10).

8 Consequently, defendants were obligated to prepare an EIS on the 2005 NFMA Rule before
9 approving it.

10 70. The FEIS that the defendants prepared for the 2008 Rule violates NEPA in a variety
11 of respects, including but not limited to those described in the following paragraphs.

12 71. The FEIS violates NEPA in failing to acknowledge, let alone compare, the impacts of
13 the various alternatives, markedly different regulatory schemes for the management of the National
14 Forest System. 40 C.F.R. § 1502.14. These regulatory alternatives range from the 1982 Rule, with
15 its detailed substantive requirements for the protection of wildlife and other natural resources and its
16 direct application of these requirements to on-the-ground actions, to the 2008 Rule, which lacks any
17 detailed resource protection standards and is expressly inapplicable to site-specific projects and
18 activities. The FEIS’s unfounded assertion that there is no difference in the environmental impacts
19 that would result from implementation of each of the various alternatives is unsupported by any
20 credible evidence and, indeed, contradicted by the alternatives on their face. This failure to compare
21 the environmental impacts of the alternatives is arbitrary, capricious, an abuse of discretion, not in
22 accordance with law, and without observance of procedure required by law within the meaning of
23 the APA, 5 U.S.C. § 706(2).

24 72. The FEIS violates NEPA by failing to analyze the direct, indirect, and cumulative
25 impacts of the 2008 Rule and the alternatives, to identify adverse impacts that cannot be avoided if
26 the proposal is implemented, to examine the implications of the proposal’s impacts on short-term
27 uses of the environment and the maintenance and enhancement of long-term productivity, and to
28 identify any irreversible or irretrievable commitments of resources, such as loss of species diversity

1 and old growth forests, which the proposal could cause if implemented. 40 C.F.R. § 1502.16. The
2 unexamined impacts of the 2008 Rule and its alternatives include, but are not limited to, impacts on
3 wildlife, plants, ecosystem diversity and health, water quality and quantity, soils, wildfires, and
4 global climate change. The FEIS's wholesale failure to acknowledge, let alone identify and analyze,
5 environmental impacts of the alternatives is arbitrary, capricious, an abuse of discretion, not in
6 accordance with law, and without observance of procedure required by law within the meaning of
7 the APA, 5 U.S.C. § 706(2).

8 73. Having failed to analyze environmental impacts, the FEIS has also failed to identify
9 means to mitigate adverse environmental impacts of the 2008 Rule. 40 C.F.R. § 1502.16(h). This
10 failure to identify mitigation measures is arbitrary, capricious, an abuse of discretion, not in
11 accordance with law, and without observance of procedure required by law within the meaning of
12 the APA, 5 U.S.C. § 706(2).

13 74. The Forest Service has violated NEPA in failing to perform its duty to ensure the
14 professional integrity, including scientific integrity, of the discussions and analyses in the EIS by
15 basing its conclusion that none of the alternatives has any environmental impacts on transparently
16 false statements such as that none of the alternatives "dictate[s] how administrative units of the
17 [National Forest System] are to be managed" (FEIS at 51), when the 1982 and 2000 Rules both
18 expressly apply substantive requirements directly to on-the-ground management of the national
19 forests. *Id.* § 1502.24. The Forest Service's failure to perform its duty to ensure the professional
20 integrity of the discussions and analyses in the EIS is arbitrary, capricious, an abuse of discretion,
21 not in accordance with law, and without observance of procedure required by law within the
22 meaning of the APA, 5 U.S.C. § 706(2).

23 75. The Forest Service has violated NEPA by issuing a Record of Decision that fails to
24 specify "the alternative or alternatives which were considered to be environmentally preferable" and
25 that further fails to state "whether all practicable means to avoid or minimize environmental harm
26 from the alternative selected have been adopted" and, if not, why not. 40 C.F.R. § 1505.2(b), (c).
27 This failure, which results from the Forest Service's refusal to acknowledge that the alternatives
28 have environmental impacts, is arbitrary, capricious, an abuse of discretion, not in accordance with

1 law, and without observance of procedure required by law within the meaning of the APA, 5 U.S.C.
2 § 706(2).

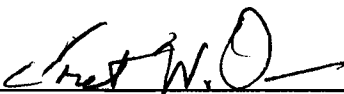
3 **REQUEST FOR RELIEF**

4 Therefore, plaintiffs request that this Court:

- 5 1. Hold unlawful and set aside the defendants' April 21, 2008 rulemaking pursuant to 5
6 U.S.C. § 706;
- 7 2. Enter a declaratory judgment that the defendants violated the National Environmental
8 Policy Act and its implementing regulations and the Administrative Procedure Act in promulgating
9 the 2008 Rule and that the EIS on the 2008 Rule is legally inadequate;
- 10 3. Enjoin the defendants from applying or otherwise relying upon the April 21, 2008
11 rulemaking;
- 12 4. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees,
13 associated with this litigation; and
- 14 5. Grant plaintiffs such further and additional relief as the Court may deem just and
15 proper.

16 DATED: May 6, 2008

Respectfully submitted,

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18 
19 _____
20 TRENT W. ORR
21 GREGORY C. LOARIE
22 TIMOTHY J. PRESO
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