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8 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

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11 CENTER FOR BIOLOGICAL DIVERSITY;) Civ. No.
LOS PADRES FORESTWATCH; SIERRA)
12 CLUB; DEFENDERS OF WILDLIFE;)
CALIFORNIA NATIVE PLANT SOCIETY;) **COMPLAINT FOR DECLARATORY**
13 CALIFORNIA WILDERNESS COALITION;) **AND INJUNCTIVE RELIEF**
THE WILDERNESS SOCIETY,)
14)
Plaintiffs,)
15)
vs.)
16)
UNITED STATES DEPARTMENT OF)
17 AGRICULTURE; EDWARD SCHAFER, in his)
official capacity as Secretary of the Department)
18 of Agriculture; UNITED STATES FOREST)
SERVICE; ABIGAIL KIMBELL, in her official)
19 capacity as Chief of the Forest Service; and)
RANDY MOORE, in his official capacity as)
20 Regional Forester for the Pacific Southwest)
Region of the Forest Service,)
21)
Defendants.)

22
23 **INTRODUCTION**

24 1. This case concerns the United States Forest Service's ("Forest Service") revision of
25 land and resource management plans (commonly referred to as "forest plans") that govern nearly
26 every activity that takes place in the four national forests in southern California. These forests
27 encompass 3.5 million acres of forest lands in one of the most biologically diverse regions in the
28 world and are a mecca of outdoor activities for millions of Californians. Expanding populations in

1 southern California’s major metropolises, including Los Angeles and San Diego, have put increasing
2 pressure on the region’s forest ecosystems through a growing demand for recreational activities,
3 some of which, such as off-road vehicles, have significant adverse effects on environmental
4 resources. This fire-prone region also is heavily affected by a long history of fire suppression
5 activities.

6 2. In its most recent attempt at forest planning for these national forests, rather than
7 develop a comprehensive plan to address the myriad activities affecting the health of southern
8 California’s forests, the Forest Service instead ignored meaningful protections for environmental
9 resources that are critical for ensuring thriving populations of wildlife and healthy forests, refused to
10 recommend preserving in perpetuity as wilderness the vast majority of the most pristine and natural
11 areas in the southern California forests, and, instead, re-zoned the vast majority of these sensitive
12 areas to allow some of the most damaging and resource intensive activities, such as road building
13 and motorized off-road vehicle recreation. In the course of doing so, the Forest Service failed to
14 take a hard look at many of the serious environmental consequences of allowing more
15 environmentally damaging activities while at the same time failing to develop meaningful,
16 enforceable forest plan requirements that would prevent, minimize, and mitigate impacts to the
17 forests’ diverse flora and fauna.

18 3. This Complaint alleges that the revised forest plans for the four southern California
19 national forests, associated records of decision, and final environmental impact statement (“FEIS”)
20 were promulgated in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 553, 701-
21 706, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370f. The Forest
22 Service’s promulgation of the forest plans violated these laws through the agency’s failure to prepare
23 an adequate environmental impact statement that thoroughly analyzes the effects of the proposed
24 action on environmental resources in the forest planning area, including sensitive species of
25 vegetation and wildlife, and its failure to consider a reasonable range of alternative management
26 approaches. As to the last factor, the Forest Service failed to analyze alternative ways of addressing
27 fundamental decisions made by forest plans, such as required management standards necessary to
28 limit adverse impacts to forest resources. The Forest Service’s one-size-fits-all approach to its forest

1 planning duties under the National Forest Management Act (“NFMA”), 16 U.S.C. § 1604, is not the
2 kind of informed decision-making that NEPA requires and is a procedural violation of that law.

3 4. To rectify the NEPA violations alleged herein, plaintiffs Center for Biological
4 Diversity, Los Padres ForestWatch, Sierra Club, Defenders of Wildlife, California Native Plant
5 Society, California Wilderness Coalition, and The Wilderness Society request that the Court hold
6 unlawful and set aside the FEIS, records of decisions, and forest plans, declare these documents in
7 violation of NEPA and the APA, enjoin the Forest Service from implementing the forest plans, and
8 order the Forest Service to prepare a legally adequate environmental impact statement and revised
9 forest plans for these forests.

10 5. Should they prevail, plaintiffs will seek to recover attorneys fees and costs pursuant to
11 the Equal Access to Justice Act, 28 U.S.C. § 2412.

12 **JURISDICTION AND VENUE**

13 6. Plaintiff brings this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§
14 701-706. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal
15 question) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.

16 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because plaintiff
17 Sierra Club is incorporated in this district and maintains its headquarters in the County of San
18 Francisco. This case also is related to two cases pending before the district court for the Northern
19 District of California: *California Resources Agency, et al. v. U.S. Department of Agriculture, et al.*,
20 No. 08-1185 (N.D.Cal. filed Feb. 28, 2008) and *Center for Biological Diversity, et al. v. U.S. Fish*
21 *and Wildlife Service, et al.*, No. 08-1278 (N.D.Cal. filed March 5, 2008).

22 8. Assignment to the San Francisco Division of this judicial district is proper because
23 plaintiff Sierra Club maintains its headquarters in San Francisco. Civil L.R. 3-2(c).

24 **PARTIES**

25 9. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit conservation
26 organization dedicated to protecting endangered and threatened species and their habitat throughout
27 North America, including California, through science, policy, public education, and the law. The
28 Center is based in Tucson, Arizona, with California offices in San Francisco, San Diego, Los

1 Angeles, and Joshua Tree, and has over 40,000 members nationwide. The Center pursues its
2 mission by preparing and publishing scientific articles, participating in state and federal
3 administrative proceedings, disseminating educational information through newsletters, alerts, the
4 world-wide web, and media releases, and petitioning and litigating to list numerous birds, fish,
5 amphibians, plants, and insects as threatened or endangered species.

6 10. Plaintiff Los Padres ForestWatch is a non-profit conservation organization dedicated
7 to protecting and restoring public lands along California's central coast through community
8 involvement, scientific collaboration, innovative field work, and legal advocacy. Los Padres
9 ForestWatch is a grass-roots watchdog group for the Los Padres National Forest with approximately
10 800 members throughout California.

11 11. Plaintiff Sierra Club is a nationwide non-profit conservation organization formed in
12 1892, with a mission to explore, enjoy, and protect the wild places of the Earth, to practice and
13 promote responsible uses of the Earth's ecosystems and resources, to educate and enlist humanity in
14 the protection and restoration of the quality of the natural and human environment, and to use all
15 lawful means to carry out those objectives. Sierra Club has over 700,000 members, approximately
16 80,000 of whom reside in California. For many years the Sierra Club and its members have
17 advocated for the protection of forest ecosystems throughout California. These advocacy efforts
18 have included forest mapping and identification of remaining ancient forest areas, lobbying for and
19 achieving funding for numerous forest conservation efforts, and urging protection for imperiled
20 species.

21 12. Plaintiff Defenders of Wildlife ("Defenders") is a national, non-profit membership
22 organization dedicated to the protection of all native wild animals and plants in their natural
23 communities. Based in Washington, D.C., and with three offices in California, Defenders has more
24 than 500,000 members nationwide, including over 70,000 in California. Defenders counts among its
25 priorities ensuring the conservation of wildlife and habitat on federal public lands, with particular
26 emphasis on national forests. In California, this has translated into years of advocacy for the
27 protection of the four Southern California national forests and the wildlife that call them home, with
28 special concern for preserving habitat for California condors and other highly endangered species.

1 13. Plaintiff California Native Plant Society (“CNPS”) is a non-profit organization whose
2 mission is to increase understanding and appreciation of California’s native plants and to conserve
3 them and their natural habitats, through education, science, advocacy, horticulture, and land
4 stewardship. CNPS is comprised of more than 10,000 laypersons and professional botanists
5 organized into 32 chapters throughout California.

6 14. Plaintiff California Wilderness Coalition (“CWC”) is a non-profit conservation
7 organization dedicating to achieving formal wilderness designation and protection by the state or
8 federal government for California’s wild areas. CWC pursues this objective through legislative
9 campaigns, grass-roots organizing, public education, such as publishing quarterly news journals,
10 guides, and white papers concerning wilderness issues, and, when necessary, legal action. Most
11 recently, CWC helped pass the Northern California Coastal Wild Heritage Wilderness Act, which
12 protects 275,000 acres of oak woodlands, salmon rivers, and old growth forest. In addition to other
13 projects, CWC is currently working on wilderness legislation to protect 200,000 acres of desert,
14 chaparral, and oak forest in Riverside County in southern California.

15 15. Plaintiff The Wilderness Society (“TWS”) is a non-profit conservation organization
16 that since 1935 has sought to protect wilderness and inspire Americans to care for wild places
17 through scientific expertise, analysis, advocacy, and, when appropriate, litigation efforts. To that
18 end, TWS is committed to staving off logging and road building on the nation’s more than 58
19 million acres of roadless lands and curbing the environmental damage caused by off-road vehicles.
20 TWS has more than 325,000 members and supporters, many of whom live and recreate in southern
21 California.

22 16. Plaintiffs have individual members who live in Southern California, regularly visit the
23 national forests throughout Southern California, and intend to continue to use and enjoy the four
24 southern California national forests in the near future. They use these national forest lands for a
25 variety of purposes, such as scientific study, wildlife observation, photography, hiking, backpacking,
26 fishing, and hunting and intend to continue to do so on an ongoing basis in the future. Plaintiffs’
27 members derive recreational, spiritual, professional, aesthetic, educational, and other benefits and
28 enjoyment from these activities.

1 17. Many of plaintiffs’ members regularly visit both wilderness and non-wilderness
2 roadless areas in the southern California national forests and enjoy these areas for their unique
3 biodiversity, naturalness, and incomparable solitude. Plaintiffs’ members also frequently visit areas
4 of the national forests in southern California that are known for supporting relatively high
5 concentrations of endangered, threatened, candidate, proposed, and sensitive species, and/or the
6 habitat of such species, including sensitive species of native vegetation. Plaintiffs and their members
7 have a procedural interest in influencing national forest management through participation in the
8 development of meaningful, substantive forest plans as prescribed by the NFMA and in the
9 development of comprehensive environmental analyses required by NEPA.

10 18. The above-described interests of plaintiffs and their members have been and are
11 suffering, and will continue to suffer, irreparable injury as a result of the Forest Service’s adoption of
12 the southern California forest plans and the agency’s failure to comply with NEPA. For example,
13 the forest plans re-zone the vast majority of roadless areas such that it will be easier for activities that
14 diminish plaintiffs’ members enjoyment of each forest to occur, including road-building and the
15 intrusion of off-road vehicles. The forest plans thus diminish the ability of plaintiffs’ members to
16 find diverse areas in which to recreate that possess the unique characteristics of solitude, naturalness,
17 and biodiversity that plaintiffs’ members enjoy most about excursions in the southern California
18 forests. The forest plans fail to adopt adequate standards for addressing impacts of the plans and
19 activities authorized by the plans on wildlife and native vegetation, thus diminishing the enjoyment
20 plaintiffs’ members derive from the national forests.

21 19. The Forest Service’s failure to comply with NEPA has injured plaintiffs and their
22 members by depriving them of information pertaining to the southern California forest plans to
23 which they are entitled under NEPA, including information pertaining to the forest plans’ impacts on
24 environmental resources in the planning area, reasonable alternatives to the proposed action, and
25 mitigation measures available to address adverse environmental impacts; by depriving plaintiffs and
26 their members of a meaningful opportunity to comment on the missing information; and by denying
27 them the procedural safeguards embodied in NEPA to ensure that government agencies carefully
28

1 consider the environmental consequences of a proposed action, environmentally superior alternatives
2 to that action, and appropriate mitigation measures prior to granting any project approval.

3 20. Plaintiffs were actively involved throughout the rulemaking process for the Forest
4 Service’s revision of the forest plans for the four southern California national forests. Plaintiffs
5 participated in scoping meetings, submitted scoping comments to the Forest Service, and also
6 submitted comments on the draft environmental impact statement for the revised forest plans.
7 Plaintiffs consistently raised concerns about the Forest Service’s preferred alternative and its impacts
8 on the environment, including wildlife and biodiversity, and on the public, including environmental
9 justice communities. During the rulemaking process, plaintiffs developed and submitted to the
10 Forest Service a comprehensive alternative to the Forest Service’s proposed forest plans, referred to
11 as the “Conservation Alternative.” Among other important provisions, the Conservation Alternative
12 proposed protecting substantially more acres of roadless areas as wilderness and included specific,
13 binding standards for managing adverse impacts on environmental resources throughout the forests.
14 For example, the Conservation Alternative included standards for managing adverse impacts on
15 forest resources caused by fuels reduction activities, standards mitigating impacts of the forest plans
16 on endangered, threatened, candidate, and sensitive species, and standards for outreach and
17 education. After the Forest Service issued the FEIS and records of decision, plaintiffs
18 administratively appealed the forest plans to the Chief of the Forest Service.

19 21. Plaintiffs’ injuries will be redressed by the relief sought herein because the forest
20 plans would be set aside and a new analysis of the proposed forest plans pursuant to NEPA may
21 result in improved plans that better protect environmental resources, increase the number and size of
22 areas protected from roads, off-road vehicles, and other environmentally damaging activities, adopt
23 mitigation for fuels reduction activities, and increase the amount and quality of lands recommended
24 for designation as wilderness under the Wilderness Act. All such relief would improve plaintiffs’
25 opportunities for enjoying the Southern California national forests, including its remaining roadless
26 areas, in the future.

27 22. Plaintiffs have no adequate remedy at law to address any of the foregoing injuries to
28 their interests.

1 which would avoid or minimize adverse impacts or enhance the quality of the human environment.”
2 40 C.F.R. § 1502.1; *see also* 42 U.S.C. § 4332(2)(C).

3 32. NEPA and its implementing regulations require that an EIS include a detailed
4 discussion of the environmental impacts of a project, including an analysis of impacts of the
5 proposed action and all of the reasonable alternatives; any adverse environmental effects that cannot
6 be avoided should the proposal be implemented; the relationship between short-term uses of man’s
7 environment and the maintenance and enhancement of long-term productivity; and any irreversible
8 or irretrievable commitments of resources that would be involved in the proposal should it be
9 implemented. *See* 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. § 1502.16.

10 33. NEPA further requires that a federal agency provide for the participation of other
11 relevant federal agencies and the public in development of an EIS. *See* 40 C.F.R. § 1503.1. An
12 agency must assess and consider public comments related to a draft EIS and respond to those
13 comments by either modifying the alternatives included in the proposal or the agency’s analysis or
14 explaining in the final EIS why the comments do not warrant further agency response. *Id.* § 1503.4.

15 **THE NATIONAL FOREST MANAGEMENT ACT**

16 34. Congress adopted the National Forest Management Act of 1976 to reform Forest
17 Service management of national forests and to improve protections for non-timber resources,
18 including wildlife, plants, water, and soils. The NFMA requires that the Forest Service develop,
19 maintain, and revise forest plans for each unit of the National Forest System. 16 U.S.C. § 1604(a).
20 The Act requires that the Forest Service manage the forests to ensure that site-specific projects are
21 consistent with the NFMA and the governing forest plan. *Id.* § 1604(i). The Forest Service must
22 also revise forest plans at least every fifteen years. *Id.* § 1604(f).

23 35. The NFMA requires that the Forest Service promulgate regulations implementing the
24 Act addressing a variety of forest resource issues. For example, the Act requires that regulations
25 implementing the NFMA specify guidelines that provide for diversity of plant and animal
26 communities in each national forest. *Id.* § 1604(g)(3)(B).

27 36. In 1982, the Forest Service promulgated regulations for implementing the NFMA
28 (“1982 Regulations”) that include detailed requirements for the content of forest plans. The 1982

1 Regulations require that forest plans include: (1) a summary of the management situation, (2)
2 multiple-use goals and objectives including a description of the desired future condition of the forest,
3 (3) multiple-use “prescriptions and associated standards and guidelines” for each management area,
4 and (4) monitoring and evaluation requirements for periodic evaluation of the effects of management
5 practices. Former 36 C.F.R. § 219.11 (1982).¹

6 37. The 1982 Regulations set forth additional requirements regarding a variety of
7 resources, including wilderness, wildlife, vegetation, recreation, minerals, water, and soil. See *id.*
8 §§ 219.18-.25. The 1982 Regulations also require that the Forest Service evaluate roadless areas for
9 recommendation to Congress for designation as wilderness areas during the forest planning process.
10 *Id.* § 219.17(a). With respect to plant and animal communities, the 1982 Regulations require that
11 forest planning provide for diversity of plant and animal communities and also manage fish and
12 wildlife habitat to maintain viable populations of existing species in the forests. *Id.* §§ 219.26,
13 219.19.

14 38. The NFMA requires that the regulations promulgated to aid in its proper
15 implementation must “specify procedures to insure that land management plans are prepared in
16 accordance with [NEPA].” 16 U.S.C. § 1604(g)(1). Accordingly, the 1982 Regulations address the
17 Forest Service’s duty to comply with NEPA during the preparation and revision of its forest plans.
18 1982 Regs. § 219.12(a). Pursuant to its regulations, the Forest Service must identify and evaluate
19 public issues, management concerns, and resource use and development opportunities identified
20 throughout the forest planning process; prepare criteria to guide the planning process that apply to
21 the design, formulation, and evaluation of alternatives; obtain and keep current inventory data for
22 planning and managing the forest resources; analyze the management situation through analyses of
23 benchmarks defining various issues, such as the minimum level of management needed to maintain
24 and protect the forest; formulate, estimate effects of, and evaluate management alternatives; and
25 adopt monitoring and evaluation requirements. *Id.* § 219.12.

26
27 ¹ The 1982 Regulations have been superseded by a revised version of NFMA regulations. 36 C.F.R.
28 Part 219 (April 21, 2008). However, the southern California forest plans were revised pursuant to
the 1982 regulations, so references to relevant provisions of that version of the NFMA planning
regulations are given throughout this complaint, cited as “1982 Regs. § 219.[].”

1 42. The national forests in southern California encompass mountain ranges with
2 extensive coastal and desert scrublands, montane meadows, and hardwood and conifer forests;
3 portions of the San Joaquin Valley; and the interior Mojave and Colorado deserts. Unlike other
4 national forests in California and the Pacific Northwest, the Forest Service has determined that there
5 are no areas suitable for timber sale production in the southern California national forests. These
6 forests instead contain a wealth of plant community types, many of which are sensitive, rare, and
7 unique. The most dominant vegetative communities in the southern California national forests
8 include hardwood forests and woodlands; conifer and conifer-hardwood forests; chaparral, coastal
9 sage scrub, and desert scrub; and meadows, grasslands, and herbaceous habitat types.

10 43. The southern California national forests are vital refugia for native plant and animal
11 species that are affected by intense urban development on surrounding private lands throughout
12 southern California. The southern California forests are part of the south coast ecological region.
13 This region provides habitat that is critical to the survival and well-being of species for nearly every
14 taxonomic group, including plants, invertebrates, birds, mammals, and reptiles.

15 44. The southern California national forests contain over one million acres of designated
16 wilderness that provide important habitat for plant and animal communities. Over half of the
17 forests' wilderness is concentrated in the Los Padres National Forest.

18 45. There are approximately 1.1 million acres of inventoried roadless area in the southern
19 California national forests that are eligible for designation as wilderness. Approximately 10,128
20 miles of roads exist in the southern California national forests. The existence of such an extensive
21 roads system means that protection of the remaining roadless areas is of paramount importance to
22 the region's plant and animal communities.

23 46. The southern California national forests are an important source of clean water for
24 consumption, agriculture, and industry for many communities in southern California.

25 47. The southern California national forests are immensely popular destinations for
26 millions of visitors who come each year to hike, camp, picnic, fish, observe wildlife, rock climb,
27 bicycle, horseback ride, and engage in numerous other outdoor activities.

1 48. The southern California national forests and the biodiversity contained therein are
2 under intense pressure from a variety of activities, including motorized recreation, due to their
3 proximity to some of the most heavily populated urban centers in the country. Approximately 20
4 million people live in the Los Angeles and San Diego metropolitan areas. The region is expected to
5 grow to 35 million people by 2020.

6 49. The Forest Service has determined that the four major threats to national forests and
7 grasslands are fire and the build up of fuels in the forests, invasive species, loss of open space, and
8 unmanaged recreation. All of these threats affect the southern California national forests.

9 **Prior Forest Planning for the Southern California National Forests**

10 50. The Forest Service promulgated forest plans for each of the four southern California
11 national forests between 1986 and 1989. These plans adopted weak and ambiguous standards and
12 guidelines that led to inconsistent management among the four national forests.

13 51. Between 1995 and 1999, the four southern California national forests initiated a large
14 scale analysis of ongoing activities and their effects on species and habitat. In 1999, the Forest
15 Service published the Southern California Mountains and Foothills Assessment (“SCMFA”), a
16 comprehensive habitat conservation assessment that analyzed trends of ecological systems and
17 species in the southern California national forests. An interdisciplinary team of Forest Service
18 biologists used the SCMFA to review the forest plans and their ability to meet the needs of
19 threatened, endangered, and sensitive species. The conclusions of the interdisciplinary team were
20 published in the Province Forest Plan Monitoring and Evaluation Report (“M&E Report”). The
21 M&E Report found that the southern California forest plans do not adequately protect threatened,
22 endangered, and sensitive species or provide direction necessary to sustain particular ecological
23 communities. The M&E Report recommended that the Forest Service revise the southern California
24 national forest plans.

25 52. In 1998, the Center filed suit against the Forest Service, alleging violations of the
26 Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, in connection with the Forest Service’s
27 failure to consult with federal agencies responsible for managing threatened and endangered species
28 concerning the impacts of the forest plans on such species.

1 53. In 2000, the parties settled the lawsuit. The settlement required that the Forest
2 Service consult with the United States Fish and Wildlife Service as to the impacts of the forest plans
3 on threatened and endangered species, adopted certain interim measures to protect such species, and
4 required that the Forest Service revise the forest plans for the four Southern California national
5 forests.

6 **Revised Forest Plans for the Southern California Forests**

7 54. The Forest Service adopted revised forest plans for the four southern California
8 national forests in September 2005.

9 55. The revised forest plans contain three parts, some of which are common to all of the
10 national forests and some of which are forest specific. Part One, which applies to all four forests, is
11 described by the revised forest plans as the “vision” for the national forests of Southern California.
12 Part One describes the Forest Service’s goals, the unique characteristics of the national forests, the
13 desired conditions of the forests, and the indicators that will be used to monitor and evaluate
14 progress towards accomplishing the desired conditions of the forests. The vision, goals, and desired
15 conditions include ecosystem health and biodiversity, community protection from wildfire, the
16 restoration of forest health, reversing the trend of an increasing loss of natural resources due to
17 invasive species, and quality drinking water.

18 56. Part Two consists of four separate documents, each specific to one of the four
19 national forests. Part Two concerns the forest-specific strategies and includes descriptions of
20 objectives, program emphasis, and potential resource management strategies. Part Two describes
21 the various land use zones for each national forest. The realm of possible land use zones includes
22 developed area interface (*i.e.*, areas adjacent to communities with higher levels of human use), back
23 country (motorized and non-motorized), critical biological, wilderness, and special designation
24 overlays, such as wild and scenic rivers and research natural areas.

25 57. Part Three contains the “design criteria” that apply to all four forests and consist of
26 the rules that forest managers must adhere to and use to achieve the desired conditions identified in
27 the forest plans. Part Three is divided into two components. The first component of Part Three
28 includes standards and guidelines. The “standards” are the fundamental requirements that define the

1 parameters for all activities that occur in national forests and can only be changed through
2 amendment of the forest plan. The second component of Part Three contains the laws, policies, and
3 other direction that may be necessary for land managers to consult during the course of
4 implementing the forest plans.

5 **PROCEDURAL HISTORY**

6 58. On September 24, 2001, the Forest Service published a notice of intent to prepare an
7 EIS and to revise the forest plans for the four southern California national forests. *See* 66 Fed. Reg.
8 48856 (Sept. 24, 2001). In the notice, the Forest Service recognized a compelling need to revise the
9 forest plans: to establish new or revised management direction for all activities and uses of the
10 forests based on the findings of the SCMFA and the M&E Report; to address conditions that have
11 changed since the Forest Service adopted the original plans; to comply with the NFMA requirement
12 to revise plans every fifteen years; to bring management direction up-to-date with increased
13 population, demand for recreation, and corresponding resource and use conflicts; to more adequately
14 protect plant and animal species and their habitat; to more clearly emphasize and direct the use of
15 prescribed fire to restore ecosystem functions; and to incorporate other new scientific information
16 into current management of the forests.

17 59. Plaintiffs submitted comments in response to the scoping notice and participated in
18 public meetings held by the Forest Service. Plaintiffs developed and, on April 1, 2002, submitted to
19 the Forest Service a comprehensive Conservation Alternative. The Conservation Alternative
20 addressed the major management issues affecting the southern California national forest, including
21 but not limited to the management of vegetation, watersheds, fire, recreation, wilderness, and
22 outreach and education. For each management issue, the Conservation Alternative described the
23 management issue, the area affected, the desired condition, and the management objectives and also
24 established binding standards and guidelines for all of the various activities affecting each resource.

25 60. The Forest Service circulated a draft EIS (“DEIS”) for public comment in May 2004.
26 Although the DEIS purported to consider an alternative based on the Conservation Alternative,
27 Alternative Six, the DEIS altered and deleted important aspects of the Conservation Alternative. For
28 example, Alternative Six in the DEIS did not include the alternative standards described in the

1 Conservation Alternative because the DEIS considered only one set of standards (described as
2 “design criteria”) that was exactly the same in each of the alternatives. The DEIS failed to provide
3 any coherent basis for not analyzing the standards proposed in the Conservation Alternative.

4 61. Plaintiffs and numerous other organizations, state and federal agencies, and
5 individuals submitted comments on the DEIS. Plaintiffs’ comments objected to the forest plans and
6 the Forest Service’s inadequate analysis of the environmental effects of the forest plans in the DEIS;
7 its decision to recommend a bare fraction of the eligible roadless areas for designation as wilderness;
8 its failure to adopt standards and guidelines for important resources, including sensitive species of
9 vegetation and wildlife; its failure to consider adequately the forest plans’ impacts on environmental
10 justice communities; and its failure to consider legitimate alternatives to the proposed action, in
11 addition to numerous other deficiencies with the FEIS and forest plans.

12 62. On September 20, 2005, the Forest Service Regional Forester for the Pacific
13 Southwest Region of the National Forest System issued the FEIS, forest plans, and four records of
14 decision for each national forest. On April 3, 2006, the Forest Service reissued the records of
15 decision because the agency had inadvertently omitted information from the FEIS.

16 63. On July 20, 2006, Plaintiffs administratively appealed the FEIS and records of
17 decision to the Chief of the Forest Service. Those appeals were denied in four separate decisions
18 issued on May 30, 2008.

19 **FIRST CLAIM FOR RELIEF**

20 (Failure to Consider a Reasonable Range of Alternatives in Violation of NEPA and APA)

21 64. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
22 the preceding paragraphs.

23 65. NEPA requires preparation of an EIS for any “major federal action significantly
24 affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

25 66. The alternatives analysis NEPA mandates is the “heart of the environmental impact
26 statement.” 40 C.F.R. § 1502.14. In the alternatives section of an EIS, federal agencies must:

- 27 a. Rigorously explore and objectively evaluate all reasonable alternatives, and, for
28 alternatives which were eliminated from detailed study, briefly discuss the
reasons for their having been eliminated.

- b. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- c. Include reasonable alternatives not within the jurisdiction of the lead agency.
- d. Include the alternative of no action.
- e. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- f. Include appropriate mitigation measures not already included in the proposed action or alternatives.

10 *Id.*

11 67. As repeatedly emphasized by the Ninth Circuit Court of Appeals, the “existence of a
12 viable but unexamined alternative renders an environmental impact statement inadequate.” *Oregon*
13 *Natural Desert Ass’n v. BLM*, 531 F.3d 1114, 1121 (9th Cir. 2008) (quoting *Westlands Water Dist.*
14 *v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004) (quoting *Morongo Band of Mission*
15 *Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998))).

16 68. The FEIS for the four revised southern California forest plans violates NEPA and its
17 implementing regulations with respect to its analysis of alternatives to the proposed action. The
18 FEIS does not “[r]igorously explore and objectively evaluate all reasonable alternatives” to the
19 proposed action, 40 C.F.R. § 1502.14, because the FEIS fails to assess alternative ways of
20 addressing many of the important issues that must be resolved by the forest plans. For example, one
21 of the fundamental decisions made by a forest plan for the long-term management of a national
22 forest is the identification of forest-wide standards and guidelines that establish parameters for all of
23 the various activities that may take place in the national forests. *See* 16 U.S.C. § 1604(g); 1982
24 Regs. § 219.11(c). Yet, the FEIS’ alternatives studies only one set of identical management
25 standards, many of which are completely inadequate for protecting and/or enhancing environmental
26 resources that exist in each of the four southern California national forests.

27 69. Plaintiffs jointly submitted to the Forest Service a Conservation Alternative that
28 described numerous alternative standards that should have been considered and analyzed in the draft

1 EIS. The Conservation Alternative, for example, described a comprehensive plan for managing
2 adverse impacts to sensitive species of vegetation caused by fuels reduction activities designed to
3 reduce the risk of wildfires. Yet, these standards were never presented to the public as a possible
4 alternative or studied in detail. Many of the other standards described in the Conservation
5 Alternative were either ignored or arbitrarily excluded from detailed study in the FEIS.

6 70. Another critical decision made in a forest plan is the establishment of monitoring and
7 evaluation requirements for implementation of the forest plans. *See* 16 U.S.C. § 1604(g)(3)(C);
8 1982 Regs. § 219.11(d). Monitoring is an important issue for endangered, threatened, proposed,
9 candidate, and sensitive plant and animal species effected by activities that are authorized and
10 managed by the forest plans. Yet each alternative in the FEIS included an identical plan for
11 monitoring and evaluation.

12 71. Likewise, forest plans must select management indicator species whose population
13 trends must be monitored as indicators of the overall health of species and habitat types and to
14 ensure diversity of plant and animal communities. *Id.* § 219.19(a); *see also* 16 U.S.C.
15 § 1604(g)(3)(B). Plaintiffs' Conservation Alternative proposed a list of management indicator
16 species that identified more appropriate species as indicators of habitat types and forest health. This
17 list of management indicator species would have been more protective of the environment because
18 monitoring the population trends of such species would have produced more accurate information
19 about the status of the represented forest ecosystems. Yet the Forest Service's FEIS does not present
20 this proposed list of management indicator species to the public, study it in detail, nor analyze the
21 environmental consequences of such an alternative approach to complying with the NFMA's
22 requirement to ensure diversity of plant and animal communities. Instead, each of the alternatives
23 studied in the FEIS analyzed only one, identical list of management indicator species.

24 72. The Forest Service arbitrarily eliminated other important issues from detailed study in
25 the alternatives section of the FEIS, such as proposed standards for improving involvement in
26 environmental decision-making by environmental justice communities and standards related to
27 reducing the impacts of global warming on forest resources. The Forest Service claimed that it need
28 not study these issues in detail because they are outside the scope of decisions made in forest plans

1 or the responsibility of other agencies. However, consideration of such issues falls well within the
2 broad purpose and need for revising the forest plans, which includes the objective to describe “up-to-
3 date strategic direction” for the southern California national forests to address various public
4 concerns including, for example, concerns about human access and concerns that the number of
5 species threatened with extinction has increased and needs to be reduced. In addition, federal
6 agencies are required to consider all reasonable alternatives even if they are not within the
7 jurisdiction of the lead agency. *See* 40 C.F.R. § 1502.14.

8 73. The Forest Service refused to consider reasonable, feasible alternative ways of
9 addressing important decisions that the Forest Service must make when it revises a forest plan under
10 the NFMA. The Forest Service also failed to provide any coherent rationale for eliminating
11 alternative standards and guidelines proposed by the public, including those described in the
12 Conservation Alternative, from detailed study in the FEIS.

13 74. The Forest Service’s failure to rigorously explore and objectively evaluate a
14 reasonable range of alternatives in the manner described above violates NEPA and its implementing
15 regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and also without
16 observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A), (E).

17 **SECOND CLAIM FOR RELIEF**

18 (Failure to Consider Adequately the Impacts of the Forest Plans’ Re-zoning of Roadless Areas and
19 Recommending Very Few Areas for Wilderness Protection in Violation of NEPA and APA)

20 75. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
21 the preceding paragraphs.

22 76. The Forest Service must evaluate roadless areas during the forest planning process to
23 determine whether to recommend that Congress designate them as wilderness areas. 1982 Regs.
24 § 219.17(a). The Wilderness Act, 16 U.S.C. §§ 1131-1136, defines wilderness as:

25 an area where the earth and its community of life are untrammelled by man, where
26 man himself is a visitor who does not remain . . . [and] an area of undeveloped
27 Federal land retaining its primeval character and influence, without permanent
28 improvements or human habitation, which is protected and managed so as to
preserve its natural conditions and which (1) generally appears to have been
affected primarily by the forces of nature, with the imprint of man's work
substantially unnoticeable; (2) has outstanding opportunities for solitude or a

1 primitive and unconfined type of recreation; (3) has at least five thousand acres of
2 land or is of sufficient size as to make practicable its preservation and use in an
3 unimpaired condition; and (4) may also contain ecological, geological, or other
features of scientific, educational, scenic, or historical value.”

4 *Id.* § 1131(c).

5 77. The Forest Service’s evaluation of roadless areas must consider a variety of issues
6 related to the value of potential wilderness areas, including the diversity of natural plant and animal
7 communities of the forest planning area “and the effects of such changes on the values for which
8 wilderness areas were created.” 1982 Regs. § 219.17(a)(2). The Forest Service Handbook further
9 explains that the Forest Service must describe “the potential effects of wilderness and nonwilderness
10 recommendations for each potential wilderness area,” including a discussion of “the impact on the
11 area if it were managed as nonwilderness.” Forest Service Handbook 1909.12, Ch. 74, p.25.

12 78. NEPA requires that EIS’s analyze the environmental effects of a proposed action and
13 alternatives to the proposed action. *See* 42 U.S.C. § 4332(C); *see also* 40 C.F.R. § 1502.16. The
14 effects that an EIS must evaluate include “direct effects” which are “caused by the action and occur
15 at the same time and place,” as well as “indirect effects which . . . are later in time or farther
16 removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8. An EIS must also
17 consider potential cumulative effects, which are the impacts “on the environment that result from the
18 incremental impact of the action when added to other past, present, and reasonably foreseeable
19 future actions regardless of what agency (Federal or Non-Federal) or person undertakes such other
20 actions.” *Id.* § 1508.7. An EIS must demonstrate that an agency took a “hard look” at all of the
21 environmental effects. *Idaho Sporting Congress, Inc. v. Rittenhouse*, 305 F.3d 957, 963 (9th Cir.
22 2002), quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989).

23 79. An EIS also must analyze mitigation measures to address any adverse environmental
24 impacts identified in the EIS. 40 C.F.R. § 1502.16; *see also id.* § 1502.14. The omission of a
25 “reasonably complete discussion of possible mitigation measures would undermine the action-
26 enforcing function of NEPA,” because without such a discussion, “neither the agency nor other
27 interested groups and individuals can properly evaluate the severity of the adverse effects.”
28 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989). The importance of

1 analyzing mitigation measures is reinforced by the NFMA, which itself requires that forest plans
2 contain “standards and guidelines” for each area including “proposed and probable management
3 practices.” 1982 Regs. § 219.11(c).

4 80. Federal agencies must “integrate the NEPA process with other planning at the earliest
5 possible time to insure that planning and decisions reflect environmental values, to avoid delays later
6 in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2.

7 81. The forest plans reclassify over 90 percent of roadless areas in the national forests to
8 land use zones that are managed for development, road-building, and other activities that could
9 prevent these areas from being designated as wilderness in the future. The Forest Service failed to
10 analyze adequately and take a hard look at the impact of its decision to manage these particular areas
11 for uses other than wilderness and not to recommend that the vast majority of eligible roadless areas
12 be designated as wilderness. The FEIS also fails to analyze adequately the broader impact of the
13 zoning decisions made in the forest plans on wilderness values throughout the national forests.

14 82. The FEIS fails to present an adequate explanation of the Forest Service’s rationale for
15 its decision to recommend for designation as wilderness only a fraction of the roadless areas that are
16 potentially eligible as wilderness, including many areas recommended by the public for wilderness
17 designation. This prevents informed decision-making by the Forest Service and the public and
18 violates NEPA’s public disclosure requirements.

19 83. The Forest Service also failed to analyze adequately and take a hard look at the
20 impact that recommending a bare fraction of eligible roadless areas for designation as wilderness
21 will have on minority and low-income communities, which face cultural, financial, and linguistic
22 obstacles to accessing remote wilderness areas. The Forest Service underestimates the impact of not
23 designating more wilderness on environmental justice communities and fails to analyze adequately
24 measures to increase access to wilderness areas, and the national forests generally, by environmental
25 justice communities.

26 84. The Forest Service’s failure to analyze adequately and take a hard look at the impacts
27 of recommending so few roadless areas for designation as wilderness and instead reclassifying most
28 of those areas to land use zones that anticipate road building and other development and mechanized

1 activities that could prevent them from being designated as wilderness violates NEPA and its
2 implementing regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and
3 also without observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A),
4 (E).

5 **THIRD CLAIM FOR RELIEF**

6 (Failure to Consider Adequately the Impacts of the Forest Plans on Vegetation and Biodiversity in
7 Violation of NEPA and APA)

8 85. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
9 the preceding paragraphs.

10 86. The FEIS for the revised forest plans fails to analyze adequately or take a hard look at
11 all of the forest plans' likely impacts on biodiversity, particularly sensitive species of vegetation and
12 wildlife. For example, the FEIS fails to analyze adequately or take a hard look at the potential
13 effects of the system of illegal or "unclassified" roads and trails that are a major management
14 concern in the southern California forests. The FEIS fails to analyze adequately measures to reduce
15 the existing system of illegal roads and motorized trails and their impacts on plant communities and
16 wildlife and fails to disclose information concerning the extent of illegal motorized trails in the
17 forests.

18 87. The FEIS similarly fails to analyze adequately the effects of the Forest Service's
19 decision to expand off-road vehicle use on important and/or sensitive vegetative communities in the
20 southern California forests, such as coastal sage scrub and chaparral. The forest plans' allocation of
21 national forest lands to various land use zones allows the expansion of off-road vehicle use. Yet, the
22 "Effects on Vegetation" section of the FEIS does not even mention the impacts of expanding off-
23 road vehicle use in the forests, and elsewhere the FEIS only lists in general terms potential adverse
24 effects of off-road recreation on plants.

25 88. Although Appendix D of the forest plans, entitled "Adaptive Mitigation for
26 Recreation Uses," generically outlines a mechanism for resolving conflicts between all recreational
27 uses and "sensitive" resources, the measures contained in Appendix D fail to address management
28 issues unique to various specific vegetative communities that exist throughout the national forests

1 and do not address adequately significant recreational management issues, such as the proliferation
2 of illegal off-road vehicle trails. The FEIS itself omits any discussion of Appendix D in its analysis
3 of impacts on vegetation and does not analyze adequately whether the measures will be effective at
4 mitigating adverse impacts to various plant communities, particularly sensitive species.

5 89. The FEIS similarly fails to analyze adequately or take a hard look at the effects of
6 planned fuels reduction activities announced in the forest plans on vegetation and biodiversity.
7 These activities will occur in virtually every vegetative community that exists in the forests,
8 including mixed conifer forests, chaparral, and coastal sage scrub, and will impact numerous species
9 of wildlife. Although fuels reduction activities are necessary to reduce fire risk in the southern
10 California national forests, adverse impacts of fuels reduction activities can and should be mitigated
11 through avoidance and/or restoration activities. The FEIS does not analyze adequately mitigation
12 measures to address adverse impacts of the planned fuels reduction activities, particularly on
13 sensitive plant and wildlife communities.

14 90. In addition, the FEIS fails to analyze adequately and disclose information concerning
15 the potential adverse impacts to the federally endangered California condor from increased oil and
16 gas development.

17 91. The Forest Service's failure to analyze adequately and take a hard look at the
18 environmental impacts of the forest plans in the manner described above violates NEPA and its
19 implementing regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and
20 also without observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A),
21 (E).

22 **REQUEST FOR RELIEF**

23 WHEREFORE, plaintiffs respectfully request that the Court:

24 A. Hold unlawful and set aside the FEIS, four records of decision approving the revised
25 southern California forest plans and FEIS, and the revised forest plans, pursuant to the
26 Administrative Procedure Act, 5 U.S.C. § 706;

27 B. Find and declare that the Forest Service violated the National Environmental Policy
28 Act and its implementing regulations and the Administrative Procedure Act in promulgating the

1 revised southern California forest plans and that the FEIS is legally inadequate;

2 C. Enjoin the Forest Service from implementing the revised southern California forest
3 plans and order the Forest Service to revise the FEIS and forest plans as expeditiously as possible;

4 D. Award plaintiffs their costs of litigation, including reasonable attorneys' fees, costs,
5 and expenses, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6 E. Grant plaintiffs such additional relief as the Court may deem just and proper.

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8 DATED: August 14, 2008

Respectfully submitted,

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