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Attorneys for Plaintiffs

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

CITIZENS FOR BETTER FORESTRY,  
ENVIRONMENTAL PROTECTION INFORMATION  
CENTER, CENTER FOR BIOLOGICAL DIVERSITY,  
WILD WEST INSTITUTE, GIFFORD PINCHOT TASK  
FORCE, IDAHO SPORTING CONGRESS, FRIENDS  
OF THE CLEARWATER, UTAH ENVIRONMENTAL  
CONGRESS, CASCADIA WILDLANDS PROJECT,  
KLAMATH SISKIYOU WILDLANDS CENTER,  
WILD SOUTH, THE LANDS COUNCIL, FOREST  
SERVICE EMPLOYEES FOR ENVIRONMENTAL  
ETHICS, and OREGON WILD

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE, and  
U.S. FOREST SERVICE,

Defendants.

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Case No. 08

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COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

Administrative Procedure Act  
Case

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21 ETHICS, and OREGON WILD )

22 Plaintiffs, )

23 v. )

24 U.S. DEPARTMENT OF AGRICULTURE, and )  
U.S. FOREST SERVICE, )

25 Defendants. )  
26  
27

Case No.

**COMPLAINT FOR  
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Introduction.

1. This is a civil action for declaratory and injunctive relief. Plaintiffs Citizens for Better Forestry *et al.* ("Citizens") challenge the decision of Defendants U.S. Department of Agriculture and U.S. Forest Service ("USDA") to adopt the April, 2008, National Forest Management Act planning rule ("2008 Rule"). Citizens also challenge the February, 2008, Final Environmental Impact Statement ("FEIS") and April, 2008, Record of Decision that USDA prepared to support its 2008 Rule. Plaintiffs allege that USDA violated the National Environmental Policy Act ("NEPA") when it adopted the 2008 Rule, as the FEIS entirely fails to analyze or disclose the potential direct, indirect, and cumulative impacts of the 2008 Rule. Citizens seek a declaratory judgment and an injunction that among other things sets aside the 2008 Rule, prohibits its implementation, and enjoins any projects that rely on it or tier to it.

2. Should Citizens prevail on the merits, they will seek an award of attorneys' fees, costs, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Jurisdiction.

3. This Court has jurisdiction under 28 U.S.C. § 1331, because this action involves agencies of the United States as defendants, and arises under the laws of the United States, including NEPA, 42 U.S.C. §§ 4321 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.* An actual, justiciable controversy exists between Citizens and Defendants. Citizens' request for relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 705 & 706. Defendants' actions are final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

Venue and Intradistrict Assignment.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). Plaintiff Environmental Protection Information Center has its primary office in Garberville, which is located in Humboldt County, California. Plaintiff Center for Biological Diversity has an office in San Francisco, California. Additional Plaintiffs have members and staff that work or reside within the district. Defendants also have offices within the district. More than 1.5 million acres of National Forest lands are also located within the district, and are affected by the challenged decision, including

1 but not limited to the Six Rivers National Forest. L.R. 3-2. Assignment is proper in this district  
2 and division for the same reasons. L.R. 3-2, 3-5.

3 Parties.

4 5. Plaintiff CITIZENS FOR BETTER FORESTRY is a 501(c)(3) nonprofit public interest  
5 organization organized under the laws of California and dedicated to the protection of public  
6 forest lands in northern California. Representing hundreds of individuals throughout the region,  
7 Citizens for Better Forestry promotes sound science-based management and watershed  
8 restoration, and researches, educates, and advocates for the protection and recovery of biological  
9 diversity and ecological integrity in the region. Citizens for Better Forestry works to generate  
10 local citizen activism and a greater awareness of forest management practices and impacts to old-  
11 growth forests, critical salmonid watersheds, roadless areas, and other important habitats in the  
12 Klamath-Siskiyou ecoregion.

13 6. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER ("EPIC") is a  
14 non-profit corporation organized under the laws of California, dedicated to the protection and  
15 restoration of forests, watersheds, and biodiversity in northern California. Formed in 1977, EPIC  
16 has approximately 2,000 members and supporters, and maintains offices in Garberville and  
17 Eureka in Humboldt County, California. EPIC's National Forest Program monitors projects on  
18 four national forests in California: the Klamath, Shasta-Trinity, Six Rivers, and Mendocino.  
19 EPIC's members, staff, and board use and enjoy each of these forests, and are particularly  
20 interested in those parts of the national forests where relatively intact, mature and old growth  
21 forests remain.

22 7. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a conservation organization with  
23 over 40,000 members nationwide. The Center has offices in California, including San Francisco,  
24 Shelter Cove, Los Angeles, San Diego, and Joshua Tree. The Center regularly submits  
25 comments and is involved in projects that are proposed on national forests, including the national  
26 forests in California. The Center uses the National Forest Management Act and its implementing  
27 regulations in its efforts to conserve and protect national forests in the West.

1 8. Plaintiff WILD WEST INSTITUTE is a non-profit corporation based in Missoula,  
2 Montana. Wild West's mission is to protect and restore forests, wildlands, watersheds and  
3 wildlife in the Northern Rockies. Wild West empowers citizens to effectively participate in the  
4 public land management decision processes on nearly 20 national forests. Its staff and board also  
5 work to help craft positive solutions that promote sustainability in communities in the Northern  
6 Rockies through restoring naturally functioning ecosystems.

7 9. Plaintiff GIFFORD PINCHOT TASK FORCE is a nonprofit conservation organization  
8 headquartered in Portland, Oregon. The mission of the Gifford Pinchot Task Force is to protect  
9 and restore the ecosystems and communities of Southeast Washington, with a particular focus on  
10 the Gifford Pinchot National Forest. The Gifford Pinchot Task Force serves as an informational  
11 and educational resource on forest ecosystems of southwest Washington for interested citizens  
12 and organizations through a variety of avenues, including grassroots organizing and legal  
13 advocacy. The Gifford Pinchot Task Force has over 3,000 members who use the Gifford Pinchot  
14 National Forest for many purposes including recreational pursuits, wildlife study, and Native  
15 American traditional ceremonies.

16 10. Plaintiff IDAHO SPORTING CONGRESS is a non-profit conservation organization  
17 based in Boise, Idaho whose members reside mostly in Idaho but also in many other states and  
18 countries. The Idaho Sporting Congress actively participates in the agency proceedings and  
19 decisions concerning the management of national forests within Idaho. The Idaho Sporting  
20 Congress and its members have participated in Forest Service management decisions and  
21 programs since 1983. The Idaho Sporting Congress has commented on, appealed, and litigated  
22 many Forest Service timber sales and grazing plans, participated in many field trips with Forest  
23 Service personnel and joined in agency consensus groups intended to guide Forest Service  
24 management.

25 11. Plaintiff FRIENDS OF THE CLEARWATER is a 501(c)(3) grassroots conservation  
26 organization dedicated to preserving the wildlands and ecological integrity of the Clearwater  
27 River basin, which includes the Clearwater, Nez Perce, and St. Joe National Forests in Idaho.

1 Friends of the Clearwater is based in Moscow, Idaho and has been active in many aspects of local  
2 forest planning. Friends of the Clearwater participates in public involvement processes through  
3 comments, public meetings, and open houses and also sponsors free public events, field trips and  
4 seminars. Friends of the Clearwater's members and supporters are also active in these processes.

5 12. Plaintiff UTAH ENVIRONMENTAL CONGRESS is a 501(c)(3) environmental  
6 organization dedicated to the protection and preservation of Utah's national forests and native  
7 wildlife species. The Utah Environmental Congress has individual, organization, and business  
8 members representing about 30,000 citizens. Seventy percent of the State of Utah is held in trust  
9 as public land for all American citizens. The Utah Environmental Congress is committed to  
10 holding public land management agencies accountable to federal environmental laws.

11 13. Plaintiff CASCADIA WILDLANDS PROJECT is a 501(c)(3) conservation organization  
12 based in Eugene, Oregon, with members in Washington, Oregon, and California. The Cascadia  
13 Wildlands Project advocates for biodiversity on public lands, with a particular emphasis on the  
14 national forests in the Cascadia region. The Cascadia Wildlands Project has a long-standing  
15 interest in the sound management of public lands in the region, and is involved with a number of  
16 projects and campaigns to protect salmon and other threatened and endangered fish species.

17 14. Plaintiff KLAMATH SISKIYOU WILDLANDS CENTER is a 501(c)(3) conservation  
18 organization with over 600 members. The Klamath Siskiyou Wildlands Center is dedicated to  
19 protecting the unique biological diversity, clean water, old growth forests, and aesthetic values of  
20 the Klamath-Siskiyou bioregion of southwestern Oregon and northern California. Klamath  
21 Siskiyou Wildlands has an interest in ensuring that NEPA, the National Forest Management Act,  
22 and other environmental laws are enforced on national forests.

23 15. Plaintiff WILD SOUTH is a non-profit organization whose mission is to inspire and  
24 empower people to protect and restore the native ecosystems of the Southeast. Wild South has  
25 over 1,500 members and uses a blend of public education, outreach, research, advocacy, science,  
26 and when necessary legal action to accomplish its mission. Wild South is committed to holding  
27 state and federal public land management agencies accountable to environmental laws intended

1 to preserve and protect natural resources. Wild South interests include the integrity of the  
2 millions of acres of National Forest land located in Alabama, Louisiana, Mississippi, Florida,  
3 Tennessee, South Carolina, North Carolina, Georgia, and Virginia. These biologically rich areas  
4 serve as islands of habitat and refuge amid the increasing development pressures in the  
5 landscape. Wild South staff and members have spent countless hours documenting,  
6 photographing, and reporting on the National Forests in its region.

7 16. Plaintiff THE LANDS COUNCIL is a regional nonprofit environmental organization  
8 with its principal office in Spokane, Washington. The Lands Council has members in  
9 Washington, Oregon, Idaho, Montana, and other states. The Lands Council is dedicated to  
10 promoting long-term community and biological sustainability of the greater Columbia River  
11 Basin through education and participation in public agency decision-making processes. The  
12 Lands Council oversees forest-watch groups in Washington, Oregon and Idaho.

13 17. Plaintiff FOREST SERVICE EMPLOYEES FOR ENVIRONMENTAL ETHICS  
14 ("FSEEE") is a nonprofit organization headquartered in Eugene, Oregon. FSEEE's mission is to  
15 forge a socially responsible value system for the Forest Service based on a land ethic that ensures  
16 ecologically and economically sustainable resource management. Thousands of concerned  
17 citizens, present, former, and retired Forest Service employees and other resource managers  
18 comprise FSEEE.

19 18. Plaintiff OREGON WILD is a nonprofit corporation organized under the laws of the State  
20 of Oregon. ONRC is headquartered in Portland, Oregon. ONRC's mission is to protect and  
21 restore Oregon's wild lands, wildlife, and water as an enduring legacy. ONRC has approximately  
22 6000 individual and organizational members, many of whom use and enjoy the national forests  
23 and BLM lands of Oregon, Washington, and California for recreational, educational, aesthetic,  
24 and other purposes.

25 19. Citizens' members use and enjoy national forests for hiking, fishing, hunting, camping,  
26 photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational  
27 activities. Citizens' members derive recreational, inspirational, religious, scientific, educational,

1 and aesthetic benefit from their activities within the national forest system. Citizens' members  
2 intend to continue to use and enjoy the national forests frequently and on an ongoing basis in the  
3 future, including this spring and summer.

4 20. Citizens have a procedural interest in the Forest Service fully complying with NEPA's  
5 environmental analysis and public disclosure requirements in the development, promulgation,  
6 and implementation of the 2008 Rule.

7 21. The aesthetic, recreational, scientific, educational, religious, and procedural interests of  
8 Citizens' members have been adversely affected and irreparably injured by the process by which  
9 USDA promulgated the 2008 Rule, and will be adversely affected and irreparably injured by its  
10 implementation. These are actual, concrete injuries caused by USDA's failure to comply with  
11 mandatory duties under NEPA. The injuries would be redressed by the relief sought.

12 20. Citizens and their members have been extensively involved in the public comment and  
13 administrative process for both the 2008 Rule and the environmental impact statement prepared  
14 by the Forest Service in support of the 2008 Rule.

15 21. Defendant U.S. DEPARTMENT OF AGRICULTURE is the executive agency that  
16 oversees the U.S. Forest Service. The Secretary of Agriculture is responsible for promulgating  
17 regulations pursuant to the National Forest Management Act.

18 22. Defendant U.S. FOREST SERVICE is an agency of the Department of Agriculture. It  
19 and its officers are responsible for the lawful management of the national forest system.

20 . Facts.

21 23. The National Forest System includes 192 million acres of land in 42 states, the Virgin  
22 Islands, and Puerto Rico. The system is comprised of 155 national forests, 20 national  
23 grasslands, and various other lands under the jurisdiction of the Department of Agriculture.

24 24. The national forests and grasslands provide many and diverse benefits to the American  
25 people, including clean air and water, productive soils, biological diversity, goods and services,  
26 and recreation. Even though much of the National Forest System has been significantly  
27



1 degraded, the national forests generally remain less disturbed than the private lands surrounding  
2 them, and provide increasingly important habitat for many plant and animal species.

3 25. Congress enacted the National Forest Management Act ("NFMA") in 1976. During  
4 Senate hearings on NFMA, Senator Hubert Humphrey observed that the Forest Service's record  
5 had brought into question the extent to which the agency could be trusted to guard and manage  
6 public resources. Senator Humphrey declared: "The days have ended when the forest may be  
7 viewed only as trees and trees viewed only as timber. The soil and the water, the grasses and the  
8 shrubs, the fish and the wildlife, and the beauty that is the forest must become integral parts of  
9 resource managers' thinking and actions."

10 26. NFMA sets forth a three-tiered approach to forest management. At the highest tier,  
11 NFMA requires the Secretary of Agriculture to promulgate national regulations that govern the  
12 development of regional and site-specific plans. 16 U.S.C. § 1604(g). The national regulations  
13 require that the lower level plans comply with NEPA, and require the Secretary of Agriculture to  
14 set standards and guidelines regarding forest resources such as plant and animal species  
15 conservation, timber management, and water management. The nationwide, regulatory standards  
16 and guidelines must be followed when the Forest Service prepares regional or site-specific plans.  
17 This highest-tier of national regulations is at issue in this case.

18 27. The second tier of regulatory oversight on national forest system lands is the "land and  
19 resource management plan" ("Forest Plan") that is prepared for each individual national forest or  
20 grassland. 16 U.S.C. § 1604(a). The Forest Plans operate like zoning ordinances, defining the  
21 uses allowed in various areas of each forest, and setting goals and limits on various uses, such as  
22 logging and road construction. The content and promulgation of the Forest Plans must comply  
23 with the national regulations.

24 28. The third tier is the so-called "site-specific" plans, which are prepared to effect specific,  
25 on-the-ground actions. Site-specific plans must be consistent with both sets of higher-level rules,  
26 that is, both the applicable Forest Plan as well as the nationwide NFMA regulations. 16 U.S.C. §  
27 1604(i).

1 29. NFMA requires the Secretary of Agriculture to promulgate regulations that set out the  
2 process for the development and revision of Forest Plans, and include the guidelines and  
3 standards that are prescribed in the statute. The regulations promulgated under NFMA must  
4 include, among other things, procedures to insure that Forest Plans are prepared in accordance  
5 with NEPA; guidelines which require the identification of the suitability of lands for resource  
6 management; guidelines which provide for diversity of plant and animal communities based on  
7 the suitability and capability of the specific land area; guidelines to insure that timber is  
8 harvested from national forest lands only where soil, slope and watershed conditions are not  
9 irreversibly damaged, and protection is provided for streams and other bodies of water from  
10 detrimental changes in water temperatures and sediment; and guidelines which insure that  
11 clearcutting will be used as a cutting method on National Forest System lands only where there  
12 are established according to geographic areas, forest types, or other suitable classifications the  
13 maximum size limits for areas to be cut in one harvest operation.

14 30. NFMA requires the Secretary of Agriculture to appoint a "Committee of Scientists" who  
15 are not officers or employees of the Forest Service to provide scientific and technical advice and  
16 counsel in promulgating NFMA regulations. NFMA provides that the Secretary may appoint  
17 such a committee when revising the regulations.

18 31. USDA first promulgated regulations implementing NFMA in 1979. 44 Fed. Reg. 53928  
19 (Sept. 17, 1979). The 1979 Rule was accompanied by an "environmental impact statement"  
20 ("EIS"), which analyzed the environmental impact of the regulations.

21 32. After convening a Committee of Scientists to obtain its advice, the Department of  
22 Agriculture revised the NFMA regulations in 1982. 47 Fed. Reg. 43026 (Sept. 30, 1982). When  
23 initially published as a draft rule, the 1982 Rule was accompanied by an "environmental  
24 assessment" ("EA"). 47 Fed. Reg. 7678, App. A at 7694 (Feb. 22, 1982).

25 33. The 1982 Rule sets out a comprehensive approach to forest management, implementing  
26 the statutory directive. The 1982 Rule applied to and governed the promulgation and  
27 management of Forest Plans, and also applied to and governed individual, site-specific projects

1 proposed on national forests. The 1982 Rule requires the Forest Service to manage fish and  
2 wildlife habitat to maintain viable populations of existing native and desired non-native species  
3 in the planning area. Under the 1982 Rule, a viable population is regarded as one which has the  
4 estimated numbers and distribution of reproductive individuals to insure its continued existence  
5 is well distributed in the planning area. The 1982 Rule provides that, in order to insure that  
6 viable populations will be maintained, habitat must be provided to support, at least, a minimum  
7 number of reproductive individuals and that habitat must be well distributed so that those  
8 individuals can interact with others in the planning area.

9 34. In order to estimate the effects of activities on fish and wildlife populations, the 1982  
10 Rule requires the Forest Service to identify "management indicator species," which are used as a  
11 bellweather for the other species that have the same special habitat needs or population  
12 characteristics. The Forest Service is required to monitor the population trends of the  
13 management indicator species, and planning alternatives are to be evaluated in terms of both the  
14 amount and quality of habitat and of animal population trends of the management indicator  
15 species. The Forest Service has frequently failed to comply with its monitoring and viability  
16 requirements for management indicator species.

17 35. The 1982 Rule sets forth specific, mandatory requirements governing the development  
18 and implementation of forest plans, as well as site-specific projects. According to these  
19 requirements, all management prescriptions must, among other things, conserve soil and water  
20 resources and not allow significant or permanent impairment of the productivity of the land;  
21 protect streams, streambanks, shorelines, lakes, and wetlands; provide for adequate fish and  
22 wildlife habitat to maintain viable populations of existing native vertebrate species; and include  
23 measures for preventing the destruction or adverse modification of critical habitat for threatened  
24 and endangered species.

25 36. The 1982 Rule requires that special attention be given to land and vegetation for  
26 approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water.  
27 Within this riparian area, no management activities causing detrimental changes in water

1 temperature or chemical composition, blockages of water courses, or deposits of sediment are  
2 permitted which seriously and adversely affect water conditions or fish habitat.

3 37. The 1982 Rule requires that the conservation of soil and water resources be guided by  
4 instructions in official technical handbooks, which must show specific ways to avoid or mitigate  
5 damage, and maintain or enhance productivity on specific sites. The 1982 Rule requires, with  
6 limited exceptions, that clearcuts not exceed 60 acres for the Douglas-fir forest type of  
7 California, Oregon and Washington; 80 acres for the southern yellow pine types; 100 acres for  
8 the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.  
9 The 1982 Rule requires the preservation and enhancement of the diversity of plant and animal  
10 communities so that such diversity is at least as great as that which would be expected in a  
11 natural forest.

12 38. The 1982 Rule requires that lands suitable for grazing be identified and their condition  
13 and trend determined. The present and potential supply of forage for livestock, wild and free-  
14 roaming horses and burros, and the capability of these lands to produce suitable food and cover  
15 for selected wildlife species must be estimated. Lands in less than satisfactory condition must be  
16 identified and appropriate action planned for their restoration.

17 39. The 1982 Rule requires that forest plans identify physical and biological characteristics  
18 that make land suitable for recreational opportunities. Off-road vehicle use is required to be  
19 planned and implemented to protect the land and other resources. Forest planning must classify  
20 areas and trails of National Forest System lands as to whether or not off-road vehicle use may be  
21 permitted.

22 40. The 1982 Rule requires a regional guide to be developed for each region of the Forest  
23 Service. Regional guides must provide standards and guidelines for addressing major issues and  
24 management concerns which need to be considered at the regional level to facilitate forest  
25 planning. The 1982 Rule requires that an environmental impact statement be prepared for the  
26 proposed standards and guidelines in the regional guide, according to NEPA procedures. The  
27

1 Chief of the Forest Service is required, under the 1982 Rule, to either approve or disapprove each  
2 regional guide, and issue his decision in a record of decision, pursuant to NEPA.

3 41. The 1982 Rule establishes a process for amending and revising existing forest plans.

4 Pursuant to the 1982 Rule, if a forest supervisor determines that a proposed amendment is  
5 significant, the supervisor is required to follow the same procedures as that required for  
6 development and approval of an initial forest plan. If the amendment is determined not to be  
7 significant, the supervisor is still required to satisfy NEPA procedures.

8 42. The 1982 Rule requires each forest supervisor to review the conditions of the forest at  
9 least every 5 years to determine whether conditions or demands of the public have changed  
10 significantly. Under the 1982 Rule, a forest plan must be revised on a 10-year cycle or at least  
11 every 15 years.

12 43. In 1991, the Forest Service published notice that it was going to revise the 1982 Rule. On  
13 April 13, 1995, the Forest Service published a proposed rule, which was never finalized.

14 44. In June, 1996, the Forest Service prepared a one-page "biological assessment" for its  
15 "effort to revise and streamline land and resource management planning procedures for the  
16 National Forest System." According to the 1996 biological assessment, at that time, over 280  
17 threatened or endangered species were known to occur on National Forest System lands.

18 45. In December, 1997, the Secretary of Agriculture convened a 13-member "Committee of  
19 Scientists" to review the Forest Service planning process and to offer recommendations for  
20 revising the regulations. In March, 1999, the Committee of Scientists released a final report  
21 concerning the Forest Service planning process.

22 46. On October 5, 1999, the Forest Service published a proposed rule to revise the 1982 Rule.  
23 Unlike previous draft rules, the 1999 proposed rule did not include any analysis of its potential  
24 environmental impact and did not specifically solicit comments on this matter. On November 9,  
25 2000, the Forest Service published the National Forest System Land and Resource Management  
26 Planning Final Rule ("2000 Rule") in the Federal Register. 65 Fed. Reg. 67513 (Nov. 9, 2000).

1 47. The 2000 Rule substantially modified the 1982 Rule. The 2000 Rule eliminated many of  
2 the "minimum management requirements" from the 1982 Rule. The 2000 Rule weakened the  
3 species "viability" requirement by providing that plan decisions affecting species diversity must  
4 provide only for ecological conditions that provide a high likelihood that those conditions are  
5 capable of supporting over time the viability of species. The 2000 Rule eliminated the  
6 requirement of developing regional guides to maintain consistency in forest management.

7 48. Many of the plaintiffs in this case filed suit to challenge the 2000 Rule. USDA noted that  
8 serious concerns had arisen regarding some of the provisions of the 2000 Rule, including the  
9 Rule's impact on ecological sustainability and species viability. *See* 66 Fed. Reg. 27552 (May  
10 17, 2001). USDA issued an "interim rule" to extend for one year the date by which forest plan  
11 amendments and revisions were required to comply with the 2000 Rule. *Id.* During the interim  
12 period, national forests were allowed to choose between the 1982 Rule or the 2000 Rule when  
13 preparing amendments or revisions to forest plans. *Id.* at 27,553. Certain national forests,  
14 including but not limited to those in the Southern and Eastern Regions of the Forest Service,  
15 have recently revised forest plans under the 1982 Rule.

16 49. In *Citizens for Better Forestry v. U.S. Department of Agriculture*, 341 F.3d 961, 970-71  
17 (9<sup>th</sup> Cir. 2003), the Ninth Circuit ruled that USDA violated NEPA in its development and  
18 promulgation of the 2000 Rule. The Ninth Circuit also held that because the 2000 Rule  
19 controlled the development of forest plans and site-specific projects, the Rule posed an actual,  
20 physical effect on the environment in national forests and grasslands.

21 50. After the Ninth Circuit's decision, USDA extended the transition period for site-specific  
22 projects in an "interim" rule, 68 Fed. Reg. 53,294 (September 10, 2003), which extended the date  
23 for when site-specific projects must comply with the 2000 Rule until the date of the adoption of  
24 new planning regulations.

25 51. USDA issued an "interpretative" rule on September 29, 2004. 69 Fed. Reg. 58,055 (Sept.  
26 29, 2004). This interpretative rule stated that because of the transition provision in the 2000  
27 Rule, the 1982 Rule was no longer in effect, at least for site-specific projects. *See* 69 Fed. Reg.

1 at 58,057, App. B to Sec. 219.35 (“Until a new final rule is promulgated, the transition  
2 provisions of [the 2000 Final Rule] remain in effect. The 1982 rule is not in effect.”). Since  
3 USDA had also extended the date by which site-specific projects must comply with the 2000 Rule,  
4 its position was that there were no regulations to govern any activities on the 192 million acre  
5 National Forest System. The only provision that applied to any site-specific project on any  
6 national forest, according to USDA, was that the Forest Service was required to “consider” (but  
7 not necessarily use or apply) the “best available science.”

8 52. On January 5, 2005, USDA formally withdrew and removed the 2000 Rule. 70 Fed. Reg.  
9 1022 (Jan. 5, 2005).

10 53. On January 5, 2005, USDA also published a new rule to govern the process and content  
11 of forest plans and site-specific projects throughout the National Forest System. 70 Fed. Reg.  
12 1023 (Jan. 5, 2005) (“2005 Rule”). Most of the plaintiffs in this case, along with another set of  
13 conservationists and the State of California, filed suit to challenge the 2005 Rule.

14 54. On December 15, 2006, USDA published in the Federal Register a category of actions  
15 that are “categorically excluded” from analysis under NEPA. 71 Fed. Reg. 75481 (Dec. 15,  
16 2006). The actions include the revision of forest plans.

17 55. On March 30, 2007, this Court held that USDA violated NEPA, the Endangered Species  
18 Act, and the Administrative Procedure Act in promulgating the 2005 Rule, and enjoined USDA  
19 from implementing or utilizing the 2005 Rule. *Citizens for Better Forestry v. U.S. Dept. of*  
20 *Agriculture*, 481 F.Supp.2d 1059 (N.D. Cal. 2007). Because the 2005 Rule may significantly  
21 affect the quality of the human environment under NEPA, and because it may affect listed  
22 species and their habitat under the ESA, this Court ordered USDA to conduct further analysis  
23 and evaluation of the impact of the 2005 Rule in accordance with those statutes.

24 56. On August 23, 2007, USDA issued a new “proposed rule” that was essentially identical to  
25 the 2005 Rule. 72 Fed. Reg. 48,514-15 (August 23, 2007).

1 57. In August, 2007, USDA prepared a Draft EIS on its new proposed rule. The Draft EIS,  
2 however, entirely failed to analyze or disclose the potential direct, indirect, and cumulative  
3 impacts of the proposed rule on the environment.

4 58. USDA accepted public comments on the proposed rule and Draft EIS, and Citizens  
5 provided detailed comments on both the proposed rule and Draft EIS. USDA received  
6 approximately 79,500 comments on the proposed rule and Draft EIS.

7 59. In February, 2008, USDA completed the Final EIS on the proposed rule. The Final EIS  
8 also entirely fails to analyze or disclose the potential direct, indirect, and cumulative impacts of  
9 the proposed rule on the environment.

10 60. On April 9, 2008, USDA signed a Record of Decision, selecting Alternative "M" from its  
11 February, 2008, Final EIS. Alternative M differs slightly from the 2005 Rule, in that it "allows"  
12 individual national forests to include actual standards within forest plans, and also includes some  
13 of NFMA's timber management requirements that the 2005 Rule had instead placed within the  
14 Forest Service's internal handbook.

15 61. The 2008 Rule significantly weakens provisions of the 1982 Rule, as well as provisions  
16 of the 2000 Rule.

17 62. USDA prepared a "biological assessment" to assess the potential impacts of the 2008  
18 Rule on species that have been federally designated as threatened and endangered under the  
19 Endangered Species Act. USDA concluded that the 2008 Rule would have "no effect" on any  
20 threatened or endangered species.

#### 21 Statutory Background: NEPA

22 63. NEPA is our basic national charter for protection of the environment. 40 C.F.R. §  
23 1500.1(a)). "NEPA was passed by Congress to protect the environment by requiring that federal  
24 agencies carefully weigh environmental considerations and consider potential alternatives to the  
25 proposed action before the government launches any major federal action." *Lands Council v.*  
26 *Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005).



1 64. The purpose of NEPA is to ensure "that the agency, in reaching its decision, will have  
2 available, and will carefully consider, detailed information concerning significant environmental  
3 impacts; it also guarantees that the relevant information will be made available to the larger  
4 [public] audience that may also play a role in both the decisionmaking process and  
5 implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,  
6 349 (1989).

7 65. NEPA requires federal agencies to prepare an EIS for any "major Federal action" that  
8 may "significantly affect" the quality of the human environment. 42 U.S.C. § 4332(C). In  
9 addition to a detailed statement of the environmental impact of the proposed action, the EIS must  
10 address any adverse effects that cannot be avoided should the proposal be implemented,  
11 alternatives to the proposed action, and any irreversible and irretrievable commitments of  
12 resources which would be involved in the proposed action should it be implemented. *Id.*

13 66. An EIS must include an explanation of the purpose and need for the proposed action,  
14 alternatives, the "affected environment," and the "environmental consequences." *See* 40 C.F.R.  
15 §§ 1502.10, 1502.14, 1502.15, 1502.16. The environmental consequences section must include  
16 discussions of direct effects, indirect effects, the environmental effects of alternatives, energy  
17 requirements and conservation potential of various alternatives and mitigation measures, and  
18 means to mitigate adverse environmental impacts. 40 C.F.R. § 1502.16.

19 67. An EIS must also consider the potential cumulative impacts of the proposed action when  
20 viewed with other past, present and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7,  
21 1508.25.

22 68. Agencies must insure the professional integrity, including scientific integrity, of the  
23 discussion and analysis in an EIS. 40 C.F.R. § 1502.24. The information in an EIS must be of  
24 high quality, as accurate scientific analysis, expert agency comments, and public scrutiny are  
25 essential to implementing NEPA. 40 C.F.R. §§ 1500.1(b), 1502.24.  
26  
27

69. A Record of Decision must state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. 40 C.F.R. § 1505.2(c).

Claim for Relief: USDA Violated NEPA.

70. Citizens incorporate by reference all preceding paragraphs.

71. The Final EIS violates NEPA by failing to adequately describe the “affected environment.” 40 C.F.R. § 1502.15.

72. The Final EIS violates NEPA by failing to adequately consider, analyze, or disclose the direct, indirect, and cumulative effects of the 2008 Rule on the environment, including but not limited to: effects on terrestrial and aquatic species, including the continued viability of species that rely and depend on national forest system lands; effects related to soils; effects related to wildfire; effects related to late seral or old growth forests; effects related to watersheds, water quality, and supplies of drinking water; effects related to roadless characteristics; and effects related to climate change (global warming), including carbon sequestration. 40 C.F.R. § 1502.16.

73. The EIS fails to include a sufficient disclosure of the effects of the various alternatives, including specifically the effects of continued implementation of the 1982 Rule. 40 C.F.R. §§ 1502.14, 1502.16(d).

74. The EIS fails to consider, analyze, or disclose the potential irretrievable and irreversible commitments of resources, including but not limited to the loss of mature and old growth forests and extirpation of species. 42 U.S.C. § 4332(2)(C)(v).

75. USDA failed to insure the professional integrity, including scientific integrity, of the discussion and analysis in the Final EIS. 40 C.F.R. § 1502.24.

76. The Record of Decision fails to adequately address whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. 40 C.F.R. § 1505.2(c).

1 77. By relying on an inadequate Final EIS and Record of Decision, USDA violated NEPA in  
2 developing and promulgating the 2008 Rule.

3 78. The failure of USDA to comply with NEPA in preparing the Final EIS, Record of  
4 Decision and Final Rule constitutes arbitrary and capricious agency action, and was an abuse of  
5 discretion and not in accordance with law, pursuant to the Administrative Procedure Act. 5  
6 U.S.C. § 706(2). The Final EIS, Record of Decision and Final Rule should therefore be held  
7 unlawful and set aside. *Id.*

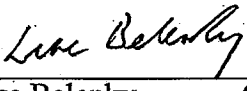
8 Relief Requested.

9 Citizens respectfully request that this Court:

- 10 A. Declare that the 2008 Rule, Final EIS and Record of Decision violate NEPA;  
11 B. Set aside the 2008 Rule, Final EIS, and Record of Decision;  
12 C. Enjoin USDA from any implementation of the 2008 Rule, including any site specific  
13 project that relies on or tiers to it;  
14 D. Reinstate the 1982 Rule to govern the Forest Service's revision and amendment of Forest  
15 Plans, and the implementation of individual, site-specific projects and decisions, on the National  
16 Forest System;  
17 E. Award Plaintiffs to recover their attorneys' fees, costs, and other expenses, under  
18 applicable law; and  
19 F. Grant Plaintiffs such further relief as may seem to this Court to be just, proper, and  
20 equitable.

21 Date: April 10, 2008.

Respectfully submitted,

22  
23   
24 Lisa Belenky  
Peter M.K. Frost  
Marc D. Fink

25 Attorneys for Plaintiffs  
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