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STATE OF CALIFORNIA, ex rel. BILL LOCKYER,  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**PEOPLE OF THE STATE OF CALIFORNIA, ex  
rel. BILL LOCKYER, ATTORNEY GENERAL,**

Plaintiff,

**v.**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE; MIKE JOHANNIS, Secretary of  
the Department of Agriculture; UNITED STATES  
FOREST SERVICE; DALE BOSWORTH, Chief,  
United States Forest Service; JACK BLACKWELL,  
Regional Forester for the Pacific Southwest Region,  
United States Forest Service; KENT P.  
CONNAUGHTON, Deputy Regional Forester,  
Pacific Southwest Region; and ARTHUR L.  
GAFFREY, Forest Supervisor of the Sequoia  
National Forest,**

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5  
U.S.C. § 701 *et seq*; National  
Environmental Policy Act, 42  
U.S.C. §§ 4321 *et seq*.)

**INTRODUCTION**

1. The magnificent Giant Sequoia Groves in the southern Sierra Nevada and the rich and varied landscape that surrounds them stand unparalleled as among the most treasured natural

1 resources located in the State of California. In April 2000, by the executive proclamation of  
2 President Clinton, the federal government promised that this irreplaceable landscape consisting of “the  
3 world’s largest trees . . . interspersed within a great belt of coniferous forest [and] jeweled with  
4 mountain meadows” would be protected and preserved in perpetuity as the Giant Sequoia National  
5 Monument. 65 Fed.Reg 24095 (Proclamation 7295, Establishment of the Giant Sequoia National  
6 Monument by the President of the United States, April 15, 2000 [“Proclamation”]). In recognition  
7 of the damage done by past exploitation and careless management practices, the Proclamation called  
8 for a dramatic alteration of management principles by prohibiting commercial logging in the  
9 Monument. The Secretary of Agriculture was directed to prepare a management plan to ensure  
10 protection of the unique scientific and historical resources of the Monument. *Id.* at 24097-98.

11 2. The People of the State of California (“the People”) bring this action to challenge the  
12 “plan” generated by the Forest Service (“Service”) in response to the Proclamation. In December  
13 2003, after the change of administration, the Service adopted the “Record of Decision, Giant Sequoia  
14 National Monument Management Plan Final Environmental Impact Statement” (collectively, the  
15 “Sequoia Monument FEIS” or “FEIS”). Under the guise of preserving “flexibility” for land  
16 managers, the Service’s “plan” contains standards so nebulous and confusing that it fails to qualify  
17 as a discernable “management plan” at all. This deficiency frustrates the public’s ability to determine,  
18 in any meaningful way, the actions that will be taken within the Monument and their likely  
19 environmental effects, in violation of the requirements of the National Environmental Policy Act  
20 (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* as well as the Proclamation itself. In further violation of  
21 NEPA, the FEIS contains scant description of the foreseeable impacts of the “plan,” and relies upon  
22 a fire management plan that the Service withheld from public review.

23 3. The substantive standards that do exist in the FEIS create a less-protective management  
24 regime than that which existed prior to the creation of the Monument and adoption of the Monument  
25 “plan.” Contrary to the Proclamation’s broad call for protection of all the Monument’s resources,  
26 the Service has narrowly focused its management direction only on facilitating “treatment” (including  
27 logging) for long-term prevention of catastrophic wildfire. The Forest Service has virtually ignored  
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1 the foreseeable short-term risks to the all of the varied natural and historical resources intended to  
2 be preserved and protected by the Presidential Proclamation, in violation of both the language of the  
3 Proclamation and the requirements of NEPA.

4 4. The FEIS also violates the letter and spirit of the 1990 Sequoia Mediated Settlement  
5 Agreement (“MSA”), to which both the Attorney General and the Forest Service are parties. The  
6 MSA modified and superceded the 1988 Sequoia National Forest Land and Resource Management  
7 Plan (“1988 LRMP”) governing management of the Sequoia National Forest, including the area  
8 within the Monument. The FEIS illegally tiers to and relies upon portions of the 1988 LRMP without  
9 reference to the superceding 1990 MSA, and as a result, creates a less protective legal regime for the  
10 Monument’s forests and vulnerable species than pre-Proclamation conditions allowed.

11 5. The People bring this action under the Administrative Procedure Act (“APA”), 5 U.S.C.  
12 §§ 551 *et seq.*, and under the terms of the MSA, and request both declaratory and injunctive relief  
13 to invalidate and prevent implementation of the Sequoia Monument FEIS and to mandate compliance  
14 with applicable law.

### 15 **JURISDICTION AND VENUE**

16 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of  
17 the United States) and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

18 7. As described below, plaintiff has exhausted all administrative remedies available.

19 8. An actual controversy exists between the parties within the meaning of 28 U.S.C. §  
20 2201(a). This Court may grant declaratory relief, injunctive relief, and any additional relief pursuant  
21 to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

22 9. In approving the Sequoia Monument FEIS and upholding it on administrative appeal, the  
23 Forest Service has made a final administrative determination that is subject to review under the APA.  
24 5 U.S.C. § 702. The People of California have an interest in the use and enjoyment of the Giant  
25 Sequoia National Monument, and in preserving and protecting the Giant Sequoia forest and its related  
26 ecosystem. The People rely on the Forest Service’s compliance with NEPA’s procedural  
27 requirements in order to obtain timely information about management plans that may have significant  
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1 adverse environment effects, and to meaningfully participate in the decision-making process. The  
2 Service's failure to comply with NEPA and the Proclamation adversely affects the People by  
3 thwarting public participation and by failing to adequately protect the natural resources of the  
4 Monument. The People have suffered legal wrong because of the Forest Service's action and have  
5 been adversely affected or aggrieved by adoption of the Sequoia Monument FEIS within the meaning  
6 of the APA and NEPA.

7 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because the plaintiff  
8 has an office within this district and therefore resides in this district. Other cases that involve  
9 management plans for the Sequoia National Forest have been filed in this judicial district.

#### 10 PARTIES

11 11. Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, brings this action by and  
12 through Attorney General Bill Lockyer ("People"). Attorney General Bill Lockyer is the chief law  
13 enforcement officer of the State and has the authority to file civil actions in order to protect public  
14 rights and interests. Cal. Gov. Code §§ 12600–12612; Cal. Const., art V, § 13. This challenge is  
15 brought pursuant to the Attorney General's independent constitutional, common law, and statutory  
16 authority to represent the public interest. The Attorney General is a party to the MSA.

17 12. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE is the federal agency  
18 responsible for the activities of Defendant United States Forest Service.

19 13. Defendant UNITED STATES FOREST SERVICE is the federal agency responsible for  
20 the actions and documents that are challenged by the People in the action.

21 14. Defendant MIKE JOHANNIS, the Secretary of the United States Department of  
22 Agriculture, is responsible for the Department of Agriculture's activities and is sued in his official  
23 capacity.

24 15. Defendant DALE BOSWORTH, the Chief of the United States Forest Service, is  
25 responsible for the Forest Service's activities and is sued in his official capacity.

26 16. Defendant JACK BLACKWELL, , the Regional Forester for the Pacific Southwest  
27 Region of the United States Forest Service, is responsible for the Forest Service's activities and is  
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1 sued in his official capacity.

2 17. Defendant KENT P. CONNAUGHTON, Deputy Regional Forester for the Pacific  
3 Southwest Region of the United States Forest Service, is responsible for denying the People's  
4 administrative appeal and is sued in his official capacity.

5 18. Defendant ARTHUR GAFFREY, Forest Supervisor for the Sequoia National Forest,  
6 is responsible for the initial approval of the FEIS and is sued in his official capacity.

7 **PROCEDURAL AND FACTUAL BACKGROUND**

8 19. The Forest Service manages the national forests pursuant to the National Forest  
9 Management Act ("NFMA"), which requires the Forest Service to develop a land and resource plan  
10 for every forest it manages. 16 U.S.C. § 1604. The land and resource management plan for the  
11 Sequoia National Forest, including the area now constituting the Monument, was adopted in 1988.  
12 The Attorney General and other parties filed administrative appeals challenging the 1988 LRMP  
13 because, among other things, it did not comply with NEPA. The appeals were resolved through a  
14 mediated settlement process, culminating in the 1990 MSA. The 171-page MSA sets forth specific  
15 management directives and requirements for the Sequoia National Forest that are not contained  
16 within the LRMP, including defining and prohibiting logging and roads in the Giant Sequoia Groves,  
17 limiting timber harvesting elsewhere in the forest, and requiring NEPA compliance for further  
18 management actions relating to the forest. Some provisions of the MSA were incorporated in a 2001  
19 amendment to the land management plan for the Sequoia forest (the 2001 Framework, described in  
20 paragraph 24 below), however, many were not. See March 8, 2002 Letter from Sequoia National  
21 Forest Supervisor to Mediated Settlement Partners at Table 2.

22 20. At the time the MSA was negotiated, the parties anticipated it would take two years to  
23 incorporate the MSA into the 1988 LRMP. The Service, however, never undertook the required  
24 revision to the LRMP in accordance with 36 C.F.R. § 219.10(g), and it was not until 2001 that the  
25 Service adopted amendments to the LRMP. The 2001 amendments to the LRMP did not fully  
26 incorporate the provisions of the MSA, and the Forest Service never cured the NEPA defects in the  
27 1988 LRMP that led to the MSA.

1        21. On April 15, 2000, President Bill Clinton issued the Giant Sequoia Monument  
2 Proclamation, in recognition of the unparalleled resources of the Giant Sequoia Groves and their  
3 related ecosystems:

4            The rich and varied landscape of the Giant Sequoia National Monument holds a diverse array  
5 of scientific and historic resources. Magnificent groves of towering giant sequoias, the world's  
6 largest trees, are interspersed within a great belt of coniferous forest, jeweled with mountain  
7 meadows. Bold granitic domes, spires, and plunging gorges texture the landscape. The area's  
8 elevation climbs from about 2,500 to 9,700 feet over a distance of only a few miles, capturing  
9 an extraordinary number of habitats within a relatively small area. This spectrum of ecosystems  
10 is home to a diverse array of plants and animals, many of which are rare or endemic to the  
11 southern Sierra Nevada.

12        65 Fed. Reg. 24095. The Proclamation recognizes that the Monument area is in need of protection  
13 to ensure the preservation of its unique resources: "These forests need restoration to counteract the  
14 effects of a century of fire suppression and logging," activities that have lead to "an unprecedented  
15 failure in sequoia reproduction in otherwise undisturbed groves," "an increased hazard of wildfires  
16 of a severity that was rarely encountered in pre-Euroamerican times," and "the virtual removal of  
17 most forest in some areas of the monument." *Id.* at 24095, 24097. The Service released the Giant  
18 Sequoia National Monument Management Plan Draft Environmental Impact Statement" ("Sequoia  
19 Monument DEIS" or "DEIS") in December 2002.

20        22. On February 11, 2003, the California Attorney General's Office, along with numerous other  
21 individuals and entities, submitted detailed comments pointing out the significant defects in the  
22 Sequoia Monument DEIS, including but not limited to: (1) the authorization of commercial timber  
23 harvesting in all but one of the alternatives considered; (2) the failure to find that a "projected"  
24 harvest of 7.5 million board feet of commercially viable timber is "clearly necessary" within the  
25 meaning of the Proclamation; (3) the failure to use the MSA as the relevant baseline for management  
26 standards; (4) the failure to set forth a discernable management plan; (5) the failure to properly  
27 evaluate and compare alternatives; and, (6) the failure to properly evaluate the environmental impacts  
28 of the proposed levels of timber harvest and road development.

29        23. In December 2003, the Sequoia National Forest Supervisor issued the Sequoia Monument  
30 FEIS without correcting the deficiencies identified by the Attorney General. The Attorney General  
31 filed an administrative appeal challenging the Sequoia Monument FEIS in February 2004.

1       24. In January 2001, the Forest Service adopted the Sierra Nevada Framework Plan (“2001  
2 Framework”), which amended the land and resource management plans for all 11 national forests in  
3 the Sierra Nevada, including the Sequoia. Decisions made in the 2001 Framework were expressly  
4 made applicable to lands within the Sequoia Monument, subject to amendment by a monument  
5 management plan to further the purposes of the Monument. See 2001 Framework Record of  
6 Decision at 18. In 2004, after the change of administration, the 2001 Framework was drastically  
7 amended, removing significant resource-protective standards and guidelines and tripling the amount  
8 of permitted timber harvesting. The 2004 Framework also amends the land and resource management  
9 plan for the Sequoia National Forest, but specifically states that the 2004 Framework does not alter  
10 the management direction within the Monument. See 2004 Framework Record of Decision at 15.

11       25. As adopted by the Forest Service in December 2003, the Sequoia Monument FEIS contains  
12 a confusing patchwork of standards and guidelines “retained” from the 2001 Framework combined  
13 with new and superceding standards and guidelines added by the Sequoia Monument FEIS. FEIS  
14 at 102-08. Although it is not always possible to discern the applicable management guideline from  
15 the language of the Sequoia Monument FEIS, it is evident that some of the Sequoia Monument FEIS  
16 provisions are far less protective of critical Monument resources than the earlier adopted 2001  
17 Framework which they supercede. For example, the Sequoia Monument FEIS includes much more  
18 of the Monument’s acreage within the “wildland-urban intermix” (WUI) “threat” and “defense”  
19 zones, thereby allowing more intensive logging within a far larger area than contemplated under the  
20 2001 Framework. See Deputy Regional Forester’s Decision on Appeal No. 04-05-00-0115-A217  
21 at 5. Unlike the 2001 Framework, the Sequoia Monument FEIS also allows “mechanical treatment”  
22 in certain spotted owl protected activity centers (FEIS at 107) and allows tree canopy cover to be  
23 reduced by as much as 30 percent down to a minimum of as little as 40 percent (FEIS at 106-07),  
24 threatening the viability of both the spotted owl and the Pacific fisher. In addition, the Sequoia  
25 Monument FEIS allows the removal of trees up to 30" in diameter (FEIS at 104), while the 2001  
26 Framework generally prohibits removal of trees greater than 12" in diameter within “old forest  
27 emphasis” areas and 20" in diameter in “general forest” and “WUI threat zones.” 2001 Framework  
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1 ROD at A-41, A-47, A-49.

2 26. In July 2003, the Regional Forester adopted a “Fire Plan” for the Sequoia National Forest  
3 without conducting public review and analysis under NEPA. The Sequoia Monument FEIS  
4 incorporates the 2003 Fire Plan, which according to the Forest Service is “a policy document that  
5 implements the management direction contained in the [1988 LRMP] and the [2001 Framework].”  
6 Deputy Regional Forester’s Decision on Appeal No. 04-05-00-0078-A217 at 4. The 2003 Fire Plan  
7 was reissued in 2004, in substantially identical form, although the 2004 version cross-references the  
8 2004 Framework, rather than the 2001 Framework. By its terms, the 2004 Fire Plan (which is based  
9 on the 2004 Framework) applies to the Sequoia National Monument (see 2004 Fire Management Plan  
10 at 4); however, it is the 2001 Framework, not the 2004 Framework, that applies in all other situations  
11 to the Monument (unless superceded by a provision in the Sequoia Monument FEIS). On June 25,  
12 2004, the Attorney General on behalf of the People filed suit in this Court to invalidate the 2004 Fire  
13 Plan. *People of the State of California v. United States Forest Service, et. al.*, C 04-02588 CRB,  
14 U.S. District Court, Northern District of California.

15 27. On January 11, 2005, the Deputy Regional Forester for the Pacific Southwest Region  
16 denied the Attorney General’s and others’ appeals challenging the plan at issue in this litigation, the  
17 Sequoia Monument FEIS. In the decision, the Service’s appeal reviewing officer responded to the  
18 Attorney General’s claim that the FEIS lacked a discernable plan as follows:

19 I note that the [Sequoia Monument FEIS] direction is not presented concisely nor in one  
20 document or location. It is, however, clear that the decision includes a considerable overlay of  
21 direction from both the [1988 LRMP] . . . and the 2001 [Framework], where that direction is  
consistent with the intent of the Proclamation and appropriately suited to the strategy informing  
the [adopted preferred alternative in the FEIS].

22 Deputy Regional Forester’s Decision on Appeal No. 04-05-00-0078-A217 at 3.

### 23 **FIRST CAUSE OF ACTION**

24 **(Failure to adopt a discernable management plan that informs the public how the purposes  
25 of the Proclamation will be fulfilled violates the Proclamation and the APA)**

26 28. Plaintiff hereby realleges and incorporates each and every paragraph above.

27 29. The 2000 Proclamation was adopted under the authority of the Antiquities Act, 16  
28 U.S.C. § 431, which provides in relevant part that the President, “in his discretion” may declare



1 “historic landmarks ... and other objects of historic or scientific interest ... situated upon [federal]  
2 lands ... to be national monuments, and may reserve ... parcels of land ... confined to the smallest  
3 area compatible with the proper care and management of the objects to be protected ... .”

4 30. The Secretary is required to adopt a specific management plan that includes “rules and  
5 regulations” to govern the Monument consistent with the purposes of the Proclamation to protect  
6 and preserve the Monument’s resources and to facilitate public understanding and enjoyment  
7 where these uses are consistent with preservation.

8 31. In violation of the requirements of the Proclamation, the Service has failed to publish a  
9 discernable plan for managing the Monument resources. In place of a management plan with  
10 specific standards, guidelines and prescriptions applicable to identifiable areas within the  
11 Monument, the Service’s decision makes reference to an amorphous and incomprehensible  
12 “overlay of [management] direction” pieced together from the FEIS, the 1988 LRMP, the 2001  
13 Framework, and the 2003 Fire Plan. Each of these plans has, in turn, been superceded in whole  
14 or in part by other agreements or updated plans. All of the plans cross-reference each other,  
15 contain incompatible maps and terminology, and describe management prescriptions and  
16 guidelines under different, incompatible rubrics. The Service never explains how the standards  
17 and guidelines “retained” from the 2001 Framework apply, or how they compare to or differ  
18 from, the “additional” standards and guidelines adopted in the FEIS. Further, the management  
19 “strategies,” “goals” and “emphases” that supplement the standards and guidelines are so vague  
20 and give so little management direction as to be meaningless, and fail to constrain management  
21 action in any meaningful way.

22 32. The absence of a discernible plan violates the Proclamation’s explicit procedural  
23 directive that a management plan for the Monument be developed. The Service has made a final  
24 decision to comply with the Proclamation’s directive by piecing together, in an incomprehensible  
25 form, standards and guidelines from different plans. The entire FEIS was therefore invalid upon  
26 adoption.

27 33. The Forest Service's failure to comply with the Proclamation constitutes arbitrary and  
28

1 capricious agency action, is an abuse of discretion, and is contrary to law and to procedures  
2 required by law. 5 U.S.C. § 706(2)(A), (D).

3 **SECOND CAUSE OF ACTION**

4 **(Failure to adopt a discernable management plan that informs the public how the purposes  
5 of the Proclamation will be fulfilled violates NEPA and the APA)**

6 34. Plaintiff hereby realleges and incorporates each and every paragraph above.

7 35. NEPA's purpose is to ensure "public officials make decisions that are based on  
8 understanding of environmental consequences, and to take actions that protect, restore, and  
9 enhance the environment" and to "ensure that environmental information is available to public  
10 officials and citizens before decisions are made and before actions are taken." 40 C.F.R. §  
11 1500.1(b)-(c). Toward that end, an EIS must properly define the proposed action and describe  
12 the existing environment affected by the proposed action. 40 C.F.R. §§ 1502.4, 1502.15.

13 36. The Sequoia Monument FEIS has so little detail and analysis that it is impossible to  
14 discern how the diverse resources and extraordinary number of habitats within the Monument will  
15 be managed, or which of the overlapping set of guidelines from the patchwork of conflicting  
16 planning directives applies. The Service itself concedes that the management "direction" for the  
17 Monument is "not presented concisely nor in one document or location," but rather as a  
18 "considerable overlay of direction" from a number of different plans. The Service fails to describe  
19 or evaluate this "overlay" in any understandable fashion.

20 37. The lack of a discernable management plan that properly defines the proposed action  
21 and that clearly outlines the management directives that will apply within the various areas of the  
22 Monument precludes meaningful public review under NEPA.

23 38. The Forest Service's failure to properly define the proposed action, and to provide  
24 sufficient information to the public about its proposed action, as required by NEPA constitutes  
25 arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to  
26 procedures required by law. 5 U.S.C. § 706(2)(A), (D).

1 **THIRD CAUSE OF ACTION**

2 **(Failure to protect and preserve the Monument’s diverse array of scientific and natural**  
3 **resources and their surrounding ecosystems violates the Proclamation and the APA)**

4 39. Plaintiff hereby realleges and incorporates each and every paragraph above.

5 40. Under the terms of the Proclamation, the required management plan for the Monument  
6 must operate broadly to protect the scientific and historic resources of the Giant Sequoia Groves  
7 and their ecosystems. Every reference to the management plan in the Proclamation contains a  
8 consistent and coherent theme: The plan must effectuate the purposes of the Monument to  
9 forever protect and preserve the unique scientific, historical and natural resources within it. 65  
10 Fed. Reg. 24097-98.

11 41. The Proclamation expressly forbids use of federal lands within the Monument  
12 boundaries for the purposes of timber harvesting: “No portion of the monument shall be  
13 considered to be suited for timber production . . . . Removal of trees, except for personal use fuel  
14 wood, . . . may take place only if clearly needed for ecological restoration and maintenance or  
15 public safety.” 64 Fed. Reg. 24097.

16 42. Despite the Proclamation’s express prohibition against commercial harvesting, the  
17 Service projects an annual timber harvest in the Monument of at least 7.5 million board feet. This  
18 amounts to 42 percent of the average annual timber yield for the entire Sequoia National Forest  
19 during the past decade. Yet the Monument covers less than one-third of the forest area, and  
20 includes substantial stands of ancient giant sequoia trees. In making the decision to set this  
21 projected level of harvest Monument-wide, the Service allows timber production and fails to  
22 make any evaluation or determination that this level of harvest in the aggregate is required to  
23 restore or maintain the ecology of the Monument, or for public safety, as required.

24 43. Despite the Proclamation’s emphasis on short-term and long-term preservation and  
25 protection of the full array of Monument resources, the Service has unlawfully narrowed the  
26 scope of the Sequoia Monument FEIS into a program focused on attempting to prevent  
27 catastrophic wildfire by “treatment,” including tree cutting.

28 44. By failing to prohibit timber production in the Monument, the Sequoia Monument FEIS

1 makes a final commitment to a course of action that forecloses affirmative measures to protect,  
2 preserve, and enhance the Monument's diverse array of scientific and natural resources and their  
3 surrounding ecosystems.

4 45. By increasing the WUI area, and by allowing larger trees to be cut and reducing the  
5 required level of canopy cover, the Sequoia Monument FEIS commits the Forest Service to a  
6 course of action that forecloses affirmative measures to protect, preserve, and enhance the  
7 Monument's diverse array of scientific and natural resources and their surrounding ecosystems.

8 46. The Forest Service's failure to comply with the Proclamation constitutes arbitrary and  
9 capricious agency action, is an abuse of discretion, and is contrary to law and to procedures  
10 required by law. 5 U.S.C. § 706(2)(A), (D).

#### 11 **FOURTH CAUSE OF ACTION**

##### 12 **(Failure to conduct adequate analysis of the potential environmental impacts of the 13 Sequoia Monument FEIS violates NEPA and the APA)**

14 47. Plaintiff hereby realleges and incorporates each and every paragraph above.

15 48. NEPA is the "basic national charter for protection of the environment." 40 C.F.R.  
16 §1500.1. An agency contemplating a course of action subject to NEPA is required to take a  
17 "hard look" at the environmental consequences of its action. An EIS "should present the  
18 environmental impacts of the proposal and the alternatives in comparative form, thus sharply  
19 defining the issues and providing a clear choice among options by the decision-maker and the  
20 public." 40 C.F.R. § 1502.14. The Forest Service is required to "rigorously explore and  
21 objectively evaluate all reasonable alternatives." *Id.*

22 49. The environmental consequences section of an EIS "forms the scientific and analytic  
23 basis" for comparing the alternatives. 40 C.F.R. § 1502.16. The environmental consequences  
24 section must also discuss, among other things, "[p]ossible conflicts between the proposed action  
25 and the objectives of [other] . . . plans, policies, and controls for the area concerned," "[n]atural  
26 or depletable resource requirements and conservation potential of various alternatives and  
27 mitigation measures," and "[m]eans to mitigate adverse environmental impacts. . . ." 40 C.F.R. §  
28 1502.16(c), (f), (h).

1        50. The Sequoia Monument FEIS fails to describe the adopted Modified Alternative 6 or its  
2 environmental impacts in sufficient detail and with sufficient clarity to inform the public of what is  
3 proposed or to enable the public to evaluate the efficacy of the strategy or the scope of the  
4 impacts. All across the Monument, in different vegetation types, the Service proposes to engage  
5 in “restoration” and “protection” through “treatment.” Yet, the Service offers almost no  
6 information about its plans or the impact of those plans, other than repeating the premise that  
7 more treatment will mean a lower long-term risk of catastrophic wildfire.. Virtually any action  
8 that the Service takes conceivably could be consistent with this “strategy,” failing to limit  
9 management discretion in any meaningful way. This does not meet NEPA’s requirement that  
10 sufficient information be provided for rigorous evaluation of, and comparison among, all  
11 reasonable alternative strategies.

12        51. The Sequoia Monument FEIS fails to contain a rigorous and objective analysis of the  
13 alternatives to the adopted Modified Alternative 6. The FEIS contains only vague and incomplete  
14 analysis of impacts to sensitive wildlife species, rare plants, watersheds, and the Giant Sequoia  
15 ecosystem from the alternative management schemes considered. It fails to analyze the foreseeable  
16 short-term risks to the natural and historical resources of the Monument caused by the proposed  
17 action. Therefore the alternatives are not properly compared as required by NEPA with respect to  
18 the effects each will have on the environment.

19        52. The FEIS contemplates 900 miles of roads in the Monument but fails to discuss the  
20 criteria for maintaining or removing roads and does not evaluate the impact of roads on  
21 Monument resources, including watersheds, riparian zones, sedimentation, soils, and others. The  
22 discussion of roads fails to set forth any meaningful environmental analysis as required by NEPA.

23        53. The FEIS fails to disclose or analyze the impacts of replacing the land allocations and  
24 corresponding standards and guidelines that were set forth in the 2001 Framework. As a result,  
25 the FEIS fails to analyze the impacts of approving an action that deviates from the alternatives  
26 examined in the DEIS.

27        54. The FEIS fails to disclose and analyze the impacts of the inconsistency of the standards  
28 and guidelines in the FEIS with the provisions of the MSA not superceded by the 2001

1 Framework. In addition, the FEIS fails to disclose and analyze the impacts of the inconsistency of  
2 the standards and guidelines in the FEIS with the provisions of the Proclamation that require the  
3 protection and preservation of the Monument's ecosystems, including the Proclamation's  
4 prohibition on timber production.

5 55. The FEIS and the management directives for the Monument reflected therein that  
6 derive from the LRMP violate NEPA because the management directives that derive from the  
7 LRMP have never been properly disclosed and analyzed in a valid NEPA document.

8 56. The Forest Service's failure to take the "hard look" required to comply with NEPA  
9 constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law  
10 and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

#### 11 **FIFTH CAUSE OF ACTION**

##### 12 **(Failure to conduct adequate analysis of the cumulative environmental impacts of the 13 Sequoia Monument FEIS violates NEPA and the APA)**

14 57. Plaintiff hereby realleges and incorporates each and every paragraph above.

15 58. NEPA requires the Service to analyze and consider the cumulative impacts associated  
16 with the proposed action, together with past, present and reasonably foreseeable future actions. 40  
17 C.F.R. §§ 1508.25(a), 1508.7.

18 59. The Sequoia Monument FEIS fails to properly evaluate and consider cumulative  
19 impacts to species at risk, including the California condor, California spotted owl, northern  
20 goshawk, American marten, and Pacific fisher, in light of other approved and proposed  
21 reasonably foreseeable future actions, including but not limited to the 2004 revision to the Sierra  
22 Nevada Framework, the 2003 Fire Plan, and the Kings River Administrative Study proposals.

23 60. Failure to conduct a full cumulative impact analysis using all available information from  
24 existing proposals that may impact the habitats or ranges of species at risk within the Monument  
25 violates NEPA and constitutes arbitrary and capricious agency action, is an abuse of discretion,  
26 and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

#### 27 **SIXTH CAUSE OF ACTION**

28

1       **(Reliance on a fire management plan improperly exempted from NEPA in adopting the**  
2       **Sequoia Monument FEIS violates NEPA and the APA)**

3       61. Plaintiff hereby realleges and incorporates each and every paragraph above.

4       62. In *People of the State of California v. United States Forest Service, et al.*, No. C 04-  
5       02588 CRB, filed by the Attorney General in this Court on June 28, 2004, the People challenge  
6       the Service's approval of the Sequoia National Forest Fire Management Plan 2004-2005 ("2004  
7       Fire Plan") on the grounds that the Forest Service approved it without public notice, review or  
8       input, and without performing any of the environmental analysis required by NEPA or its  
9       implementing regulations. The 2003 Fire Plan, which is virtually identical to the 2004 Fire Plan,  
10      was also adopted without public notice, review, or input, and without environmental analysis.

11      63. The FEIS specifically relies on, and incorporates, the 2003 Fire Plan as the basis for  
12      actions to be taken under the Monument management "plan." See FEIS, Appendix A, p. A-34  
13      (the "Fire Management Plan (dated July, 2003) . . . documents the conditions under which a land  
14      manager can allow a wildfire to burn rather than suppress it"); and FEIS at 177 ("Direction now  
15      provides for using an appropriate management response when appropriate and within the  
16      parameters of a signed Fire Management Plan. . . . The specific rationale for fires that are  
17      managed for resource benefits identified in the Fire Management Plan."). Similarly, the 2003 Fire  
18      Plan itself states that it is integrated into the plans that provide the "overlay" of management  
19      direction for the Monument, including that it "tiers to the direction in the [Framework] that  
20      provides guidance" for managing resources through the use of fire. See 2003 Fire Management  
21      Plan at 7. The 2004 Fire Plan states that it "follows the goals and objectives" of the Sequoia  
22      Monument FEIS. 2004 Fire Management Plan at 4.

23      64. Because the Fire Plan includes specific management directives that govern the Service's  
24      action in the Monument, it is not valid until it is approved through a NEPA process that provides  
25      for evaluation of its environmental consequences. In addition, all decisional documents –  
26      including the Sequoia Monument FEIS – that reference and rely on the invalid Fire Plan are also  
27      invalid under NEPA.

28      65. The Forest Service's failure to comply with NEPA constitutes arbitrary and capricious

1 agency action, is an abuse of discretion, and is contrary to law and to procedures required by law.  
2 5 U.S.C. § 706(2)(A), (D).

### 3 SEVENTH CAUSE OF ACTION

#### 4 **(Incorporation of provisions of 1988 Land and Resource Management Plan that were 5 superceded by the Mediated Settlement Agreement violates the MSA)**

6 66. Plaintiff hereby realleges and incorporates each and every paragraph above.

7 67. The 1990 MSA, by its terms, is effective until the Service adopts a revision to the  
8 LRMP in accordance with the procedure specified in 36 C.F.R. § 219.10(g) (1982 version).  
9 MSA at 3. Because the LRMP was never revised to incorporate the MSA, the MSA continues to  
10 apply to management of the Sequoia National Forest including the Monument.

11 68. Although the LRMP was amended by the 2001 Framework, the LRMP was not  
12 amended, in the 2001 Framework or otherwise, to fully incorporate the MSA. As a result, it is  
13 the MSA, not the 1988 LRMP, that governs management of the Sequoia National Forest  
14 including the Monument.

15 69. The prohibitions on tree-cutting in the Giant Sequoia Groves contained in the MSA  
16 were not superceded by the plan amendment adopted in the 2001 Framework (see March 8, 2002  
17 Letter from Forest Supervisor to Mediated Settlement Partners at Table 2) and have not been  
18 incorporated into the FEIS. The FEIS fails to incorporate other provisions of the MSA that  
19 govern management of the Monument area, including the prohibition on road-building and  
20 mechanical/motorized entry within the administrative boundary of a Giant Sequoia Grove. MSA  
21 at 10 and 11. This is in direct violation of the provisions of the MSA, to which the Service is  
22 bound as a party.

23 70. The FEIS relies on management direction from the 1988 LRMP, where that direction is  
24 not superceded by the 2001 Framework. FEIS at 42. This is in direct violation of the provisions  
25 of the MSA, to which the Service is bound as a party.

26 71. The Forest Service's failure to comply with the MSA violates provisions I.G, I.H,  
27 II.X.1, II.X.2, and III.A.3 of the MSA.

### 28 RELIEF REQUESTED



1 The People request that this Court:

2 1. Issue a declaratory judgment that the Forest Service violated the Proclamation and the  
3 APA;

4 2. Issue a declaratory judgment that the Forest Service violated NEPA and the APA;

5 3. Issue a declaratory judgment that the Forest Service violated the MSA;

6 4. Issue a mandatory injunction compelling the Forest Service to set aside its decision to  
7 adopt the Sequoia Monument FEIS;

8 5. Award the People costs, expenses and reasonable attorney fees pursuant to the Equal  
9 Access of Justice Act, 28 U.S.C. § 2412 or other authority; and

10 6. Award such other relief as this Court deems just and proper.

11 Dated: March 3, 2005

12 Respectfully submitted,

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14 Attorney General

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