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People of the State of California, *ex rel.* California  
9 Attorney General Edmund G. Brown Jr.

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12

13 CALIFORNIA RESOURCES AGENCY,  
CALIFORNIA DEPARTMENT OF FORESTRY  
14 AND FIRE PROTECTION, PEOPLE OF THE  
STATE OF CALIFORNIA, *ex rel.*  
15 CALIFORNIA ATTORNEY GENERAL  
EDMUND G. BROWN JR.,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF  
19 AGRICULTURE; ED SCHAFER, Secretary of  
Agriculture; UNITED STATES FOREST  
20 SERVICE; and GAIL KIMBALL, Chief of the  
United States Forest Service, and RANDY  
21 MOORE, Regional Forester, Pacific Southwest  
Region, United States Forest Service,  
22

23 Defendants.  
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26  
27  
28

CIV. NO.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(Administrative Procedure Act, 5 U.S.C.  
§701 *et seq.*; National Forest  
Management Act, 16 U.S.C. § 1604, *et*  
*seq.*; and National Environmental Policy  
Act, 42 U.S.C. §4321 *et seq.*)

1 **INTRODUCTION**

2 1. The California Resources Agency and the California Department of Forestry and  
3 Fire Protection (collectively, “Resources Agency”) and the People of the State of California, ex  
4 rel. California Attorney General Edmund G. Brown Jr. (“the Attorney General”), hereby  
5 challenge the illegal actions of the United States Forest Service (“Forest Service”) in approving  
6 the forest management plans (“Plans”) for the four national forests in Southern California.  
7 Because the Plans will guide the management and uses of all areas in each forest for at least the  
8 next ten years, the improper approval of the Plans should be enjoined and set aside to prevent  
9 significant damage to unique and valuable environmental values that may otherwise be harmed  
10 or lost.

11 **The Southern California National Forests**

12 2. The four southern California national forests (Angeles, Los Padres, Cleveland, and  
13 San Bernardino) include over 3.5 million acres of federally-managed public land, from Big Sur  
14 in the north to the Mexican border. The four forests include a tremendous range of geologic,  
15 topographic, and climatic diversity, ranging from alpine areas at ten thousand feet above sea  
16 level to the seashore. Within their boundaries are mountain forests, chaparral, foothill oak  
17 woodlands, savannas, deserts, and specialized habitat niches, including ecological communities  
18 found nowhere else. The forests have a correspondingly high level of vegetative diversity and  
19 wide range of habitat for wildlife, ranging from Monterey Coastal habitat containing the  
20 southernmost redwoods to wild and remote high desert areas.

21 3. The Southern California forests are also four of the most urban-impacted forest  
22 units in the National Forest system, making their need for protection all the greater. Over twenty  
23 million people live within an hour's drive of at least one of the four national forests. The rugged,  
24 wild landscapes of all four forests are valued for the visual contrast they provide in this rapidly-  
25 urbanizing region. Angeles National Forest is comprised of 662,983 acres immediately adjacent  
26 to the Los Angeles Metropolitan area. Cleveland National Forest contains 420,877 acres in fast-  
27 developing Orange and San Diego Counties. San Bernardino National Forest abuts the Los  
28 Angeles metropolitan area and its 665,753 acres are also adjacent to the growing cities of the

1 “Inland Empire.” Los Padres is one of the largest national forests, at 1,781,364 acres, and  
2 stretches from Point Sur, Monterey County, south to the border of Los Angeles and Ventura  
3 Counties, where it reaches more than 50 miles inland to the border of the Angeles National  
4 Forest. As the population continues to increase, so too does the desire to conserve these  
5 remaining vestiges of regional open space and scenic heritage in a natural or near-natural  
6 appearing condition.

7 4. Similarly, the four forests offer a particularly valuable haven for native plants and  
8 animals, and provide unique and irreplaceable habitat for threatened, endangered, and sensitive  
9 species in Southern California. Combined with a mix of local, state, federal, and private lands,  
10 they form a regional system of open space and habitat preserves within one of the most highly  
11 urbanized landscapes in the United States and provide the only refuge for many species  
12 imperilled by loss of habitat outside the four forests. The Los Padres National Forest, for  
13 instance, is the principal home of the California Condor and the site of a major effort to bring  
14 this endangered species back from the edge of extinction. The Forest Service has acknowledged  
15 the habitat provided by the four forests as one of the world's “biodiversity hotspots”--- areas  
16 where exceptional concentrations of endemic species are undergoing marked loss of habitat. The  
17 four forests currently provide habitat for at least 31 federally-listed threatened and endangered  
18 animals and 29 such plants, as well as 34 animal species and 134 plant species recognized as  
19 sensitive. This represents a notable increase from the 17 listed threatened and endangered  
20 species in the four national forests in 1986. Thus, the need for protection of this habitat is all the  
21 more important.

### 22 Summary of Allegations

23 5. The Forest Service’s approval of the Plans violated the National Forest Management  
24 Act (“NFMA”) and the National Environmental Policy Act (“NEPA”).

25 6. The NFMA mandates that the Forest Service develop a land and resource  
26 management plan for every forest and that development of those plans be "coordinated with the  
27 land and resource management planning of State . . . governments . . ." 16 U.S.C. § 1604(a).  
28 Specifically, the Forest Service was required to "coordinate regional and forest planning with the

1 equivalent and related planning efforts of . . . State . . . governments." 36 C.F.R. § 219.7(b).  
2 California has keen and well-established interests in wildlife, watersheds, water quality,  
3 wilderness, and other natural resources, both within national forests and on neighboring private  
4 and state lands. Neither these issues, nor the State's interest in planning for their protection, stop  
5 at the national forest boundary. Thus, under both the NFMA and its regulations, the Forest  
6 Service was required to take state planning into account when formulating the Plans.

7         7. Defendants utterly violated these unambiguous NFMA mandates. In particular, the  
8 Forest Service failed to even acknowledge state policy on roadless areas in national forests in  
9 California, let alone attempt to coordinate with those protections. Despite explicit state efforts to  
10 preserve these relatively pristine areas through a specified moratorium on road construction, the  
11 Plans unexpectedly adopted land use zones that allow road construction in hundreds of  
12 thousands of acres of roadless areas in all four forests in Southern California. This disregard of  
13 state policy was a particularly egregious violation of the NFMA and its regulations, as the  
14 Resources Agency had repeatedly insisted that the Forest Service address this specific issue  
15 during the forest planning process and the Forest Service had provided written assurances that it  
16 would abide by those policies on a statewide basis.

17         8. Moreover, the written public analysis of the Plans also violated NFMA requirements  
18 that the Forest Service specifically document attempts to reconcile federal planning with state  
19 efforts, including specific written consideration of state "objectives . . . as expressed in [state]  
20 plans and policies," and "assessment of the interrelated impacts of these plans and policies" with  
21 the federal forest planning. 36 C.F.R. § 219.7(c)(1)-(2). In particular, "where conflicts with  
22 Forest Service Planning are identified," the analysis must display "consideration of alternatives  
23 for their resolution." *Id.*, § 219.7(c)(4). Here, however, the Plans and their analyses are  
24 completely silent on California's policy on roadless areas and the Plans' contrary treatment of  
25 those undeveloped areas. Thus, the Forest Service doubly violated NFMA— it denied both  
26 California's right to have its state policies incorporated in the forest planning process and to have  
27 that important consideration documented for review by state and federal officials and the public.

28         9. The Forest Service's approval of the Plans also violated NEPA. The Ninth Circuit

1 has addressed the minimum standards for an Environmental Impact Statement (“EIS”) covering  
2 planning decisions that guide potential uses of roadless areas in national forests. *California v.*  
3 *Block*, 690 F.2d 753 (9th Cir. 1982). There, an EIS was determined inadequate by the Ninth  
4 Circuit because it did not contain certain information on roadless areas: their habitat areas,  
5 wildlife types and quantity, the presence of rare and endangered species, or any unique  
6 characteristics of those areas. *Id.*, at 763. Instead, the environmental analysis only identified the  
7 location and acreage of roadless areas, basic landform and ecosystem types, the number of  
8 wilderness-associated species in the area, and a numerical rating of wilderness attributes. *Id.*

9 10. Despite these specific mandates in *California v. Block*, the present EIS for the Plans  
10 only discloses a single piece of information on the Forest Service’s ultimate decision—the gross  
11 acreage of roadless areas in all four forests allocated to zones in which road construction could  
12 be approved. The Forest Service did not attempt even to provide the kind of basic information  
13 on these areas that was held inadequate in *California v. Block* (basic landform, etc), let alone the  
14 analysis of environmental impacts actually required by that decision (habitat areas, wildlife  
15 types, etc.) The EIS thus violated NEPA by completely failing to inform the decision-maker and  
16 public about the environmental impacts of the Plan on roadless areas.

17 11. NEPA requires a discussion of impacts from an action and the means to mitigate  
18 adverse environmental impacts of an action. 40 C.F.R. §1501.1(d); 40 C.F.R. § 1502.16(h).  
19 The Attorney General alleges that the Forest Service acted contrary to this basic principle in that  
20 it did not adequately analyze the environmental impacts caused by making more areas and trails  
21 available for off-highway vehicles, and failed to justify its rationale for choosing so little forest  
22 land for wilderness protection. Further, the Final EIS for the revised Plans violates NEPA in that  
23 it fails to adequately discuss the impacts of the Forest Service’s decisions that will allow more  
24 off-highway vehicle access over the life of the Plans. Finally, the Attorney General will show  
25 that the Final EIS did not adequately review impacts and mitigation for harm to the endangered  
26 California Condor that could result from more oil and gas exploration in Los Padres National  
27 Forest.

28 12. The Attorney General also alleges the Forest Service has violated NEPA by

1 illegally deferring its discussion and consideration of impacts from the project and mitigation  
2 that would address those impacts. Such analysis should be done at the earliest possible time to  
3 insure that planning and decisions reflect environmental values, to avoid delays later in the  
4 process, and to head off potential conflicts. 40 C.F.R. § 1501.2. Here, the Forest Service defers  
5 further discussion of the mitigation of environmental harm to California Condors to future site-  
6 specific surveys and consultations with the U.S. Fish and Wildlife Service. Given the  
7 foreseeable threat to the condors' viability, the deferral of analysis to future consultation is  
8 inadequate under NEPA. The Forest Service also deferred its discussion of the impacts of its  
9 decision to open more land to off-highway vehicle uses or to improve existing trails until  
10 particular routes are recommended in the future and until "design and compliance strategies" can  
11 be developed at some later date. This deferral of analysis deprives the public and decision  
12 makers of essential knowledge necessary for informed decision making and avoids the central  
13 purpose of an EIS as a informational document.

14 13. NEPA requires agencies, to the fullest extent possible, to study, develop, and  
15 describe appropriate alternatives and recommend courses of action in any proposal which  
16 involves unresolved conflicts concerning alternative uses of available resources. 42 U.S.C. §  
17 4332(2)(E). NEPA requires that this analysis identify and assess reasonable alternatives to  
18 proposed actions in order to avoid or minimize adverse impacts on the environment. 40 C.F.R. §  
19 1500.2(e). The Attorney General alleges that the Forest Service violated NEPA by selecting  
20 Alternative 4a without providing a reasonable range of alternatives. In the Draft EIS, it included  
21 two alternatives that contained provisions it knew could not be adopted, thereby setting up  
22 "strawmen" it could easily knock down. The Forest Service's failure to construct and evaluate  
23 meaningful alternatives to compete with the preferred alternative, including alternatives that  
24 would allow for more wilderness, violate its obligations under NEPA.

### 25 JURISDICTION

26 14. This court has jurisdiction pursuant to 28 U.S.C. §1331 (action arising under the  
27 laws of the United States) and 5 U.S.C. §§701-706 (Administrative Procedure Act or "APA").

28 15. An actual controversy exists between the parties within the meaning of 28 U.S.C. //

1 ///

2 §2201(a). This court may grant declaratory relief, injunctive relief, and any additional relief  
3 available under 28 U.S.C. §§2201, 2202, and 5 U.S.C. §§705, 706.

4 16. Following approval of the Plans, the Resources Agency timely filed administrative  
5 appeals to the Chief of the Forest Service on or about July 11, 2006 and the Attorney General did  
6 so on or about July 18, 2006. The Chief of the Forest Service denied each administrative appeal  
7 on or about July 24, 2007.

8 17. On or about September 21, 2007, the United States Department of Agriculture gave  
9 notice that it had elected not to exercise discretionary review of all plaintiff's administrative  
10 appeals of the Plans and stated "[t]his decision is the Department of Agriculture's final  
11 determination on your appeal under 36 CFR 217." There has been final agency action within the  
12 meaning of the Administrative Procedure Act and therefore the approval of the Plans and their  
13 review under NEPA are judicially reviewable under the APA. 5 U.S.C. §§702, 704.

14 **VENUE**

15 18. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(e) because  
16 Plaintiff Attorney General has offices in this judicial district, and therefore resides in this judicial  
17 district, and real property is not the subject of this action.

18 **INTRADISTRICT ASSIGNMENT**

19 19. For purposes of Intradistrict Assignment, the case arises equally in the San  
20 Francisco and Alameda counties because the Attorney General has offices in both counties.

21 **PARTIES**

22 20. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA ("People") bring this action  
23 by and through the Attorney General. The Attorney General of California is the chief law  
24 enforcement officer of the State and has the authority to file civil actions in order to protect  
25 public rights and interests, including environmental protection. Cal. Const., art V, §13; Cal.  
26 Gov. Code §§12600-12612. This challenge is brought pursuant to the Attorney General's  
27 independent, constitutional, common law, and statutory authority to represent the public interest.  
28 The People have an interest in the use and enjoyment of the four Southern California national

1 forests, as well as an interest in preserving and protecting the natural and biological resources of  
2 the forests. The People have suffered a legal wrong because of the Forest Service's action and  
3 have been adversely affected or aggrieved by such action within the meaning of the APA, NEPA  
4 and the NFMA.

5 21. Plaintiff CALIFORNIA RESOURCES AGENCY is one of the seven cabinet-level  
6 agencies of California state government. Cal. Gov. Code, §12800. It is headed by a Secretary  
7 appointed by the Governor (*id.* § 12801) and includes the California Department of Forestry and  
8 Fire Protection. *Id.* § 12805.

9 22. Plaintiff CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE  
10 PROTECTION is a department in the Resources Agency. Cal. Pub. Resources Code, § 701.  
11 The Department is responsible for, *inter alia*, coordinated programs of fire protection, fire  
12 prevention, maintenance, and enhancement of the state's forest, range, and brushland resources.  
13 *Id.* § 713.

14 23. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE is the federal  
15 agency responsible for the activities of the United States Forest Service.

16 24. Defendant UNITED STATES FOREST SERVICE is the federal agency responsible  
17 for the lawful management of National Forest System lands.

18 25. Defendant ED SCHAFER is Secretary of the United States Department of  
19 Agriculture, is responsible for that Department's activities, and is sued in his official capacity.

20 26. Defendant GAIL KIMBALL, the Chief of the United States Forest Service, is  
21 responsible for that agency's activities, and is sued in her official capacity.

22 27. Defendant RANDY MOORE, Regional Forester of Pacific Southwest Region  
23 (Region 5) of the United States Forest Service, is responsible for Forest Service activities in that  
24 region and is sued in his official capacity.

## 25 **FACTUAL ALLEGATIONS**

### 26 **The Forest Planning And NEPA Review Process**

27 28. The Forest Service approval of the Plans is documented in a Revised Land  
28 Management Plan for each forest and analyzed in one combined Final Environmental Impact



1 Statement (“Final EIS”) for all four forest plans. The Plans cover all national forest lands in  
2 ///  
3 Southern California and are meant to guide management and uses of the Cleveland, Angeles, San  
4 Bernardino and Los Padres National Forests over the next 10 to 15 years.

5         29. The Forest Service began the planning process for each Southern California national  
6 forest by publishing notice on September 23, 2001, in the Federal Register that it was preparing a  
7 draft Environmental Impact Statement (“Draft EIS”) for the Plans for each of the four forests.  
8 Thereafter, the Forest Service held public meetings, released a Draft EIS on May 14, 2004, and  
9 provided an opportunity for comment on the Draft EIS until August 14, 2004. Individuals,  
10 environmental organizations, and local and state agencies provided written comments to the  
11 Forest Service regarding the Draft EIS’ analysis of the proposed Plans for all four forests. The  
12 Attorney General’s comments on the Draft EIS, *inter alia*, criticized the failure to adequately  
13 discuss the impacts from oil and gas exploration on the California Condor and the mitigation for  
14 those impacts, the failure to adequately address impacts from allowing areas (zones) of the forest  
15 to be available for an increased number of off-road vehicle trails, the failure to discuss the  
16 impacts of not adequately protecting roadless areas in the Forest through wilderness  
17 designations, and the failure to consider a reasonable range of alternatives. The Attorney  
18 General asked the Forest Service to adopt Plans that would substantially increase the acreage in  
19 the forests to be nominated for wilderness designation; over a million acres had been identified  
20 in the comments or at public meetings as likely candidates for this status.

21         30. As alleged more fully below, the Resources Agency also wrote to the Forest Service  
22 and Department of Agriculture officials while the Plans were being formulated. The Resources  
23 Agency’s comments addressed both state policy on roadless areas during the forest planning  
24 process and the Southern California forest plans specifically.

25         31. The Forest Service initially issued a Final EIS and approved the Plans on  
26 September 20, 2005, but then withdrew the Plan approvals because information had been omitted  
27 from the public record.

28         32. Ultimately, the Regional Forester reissued and approved the Plans on April 3, 2006

1 in four separate Records of Decision. The Notice of Decision on the Plans was published on  
2 ///  
3 April 21, 2006 and notice of the availability of the Final Environmental Impact Statement was  
4 published at 71 Fed.Reg. 20660 (April 21, 2006).

5 **The Resources Agency Informs the Forest Service of California’s Statewide**  
6 **Policy Regarding Development in Roadless Areas and the Importance of**  
7 **Addressing Those Protections During the Forest Planning Process**

8 33. The Plans were formulated during a period in which the Resources Agency and  
9 Forest Service had many written exchanges regarding California’s policy on roadless areas. As  
10 alleged more specifically in the first claim for relief, the Forest Service had an explicit duty  
11 under forest planning statutes and regulations to coordinate with these state policies and  
12 specifically document that coordination when it analyzed the Plans, yet it ultimately and illegally  
13 ignored these mandates. These legal violations were particularly egregious due to the clarity and  
14 intensity of the State of California’s attempts to participate in the relevant forest planning efforts.

15 34. In November, 2004, the Resources Agency wrote the United States Secretary of  
16 Agriculture, noting that “the 4.4 million acres of [national forest] roadless areas in our state are  
17 treasured by Californians for the many benefits they provide us in terms of recreational  
18 opportunities, open space, wildlife habitats, and water quality benefits.” Exhibit A hereto. As  
19 the Resources Agency pointed out, “environmental threats such as damaging wildfires, invasive  
20 species, and poorly maintained roads do not stop at property boundaries.” *Id.* Thus,  
21 management of these areas “demands a thorough and open planning process.” *Id.* The  
22 Resources Agency specified that these important efforts should occur when the Forest Service  
23 formulated forest plans for the various national forests in California. *Id.*

24 35. During that time period, the Forest Service was attempting to formulate a longer-  
25 term national policy on roadless areas and, in the interim, had promulgated a management policy  
26 that, with limited exceptions, preserved the roadless characteristics of these areas. Interim  
27 Directive 1920-2004-1 [Forest Service Manual 1925.03]. On January 24, 2005, the Resources  
28 Agency wrote to Regional Forester Jack Blackwell because the expiration date for that interim  
policy was approaching. Exhibit B hereto. Secretary of Resources Mike Chrisman reiterated the

1 importance of the environmental values contained in California’s roadless areas, urged that  
2 “truly roadless areas [should] remain roadless” and requested that Forest Service promulgate a  
3 rule that provided at least the same level of protection for roadless areas as the interim directive,  
4 with some specific modifications. *Id.*

5 36. On January 27, 2005, the Regional Forester responded with written assurances to  
6 the Secretary of Resources that the Forest Service would respect the protections of the Interim  
7 Directive and the modifications the Resources Agency had requested. Exhibit C hereto.  
8 Specifically, the Regional Forester stated that: (a) the Forest Service had not approved, and had  
9 no plans to approve, any road construction in roadless areas in California pending completion of  
10 a final roadless rule for the entire state; (b) maps of roadless areas would be updated and shared  
11 with the State; and (c) the Forest Service would work with the State to decommission certain  
12 types of existing roads in these areas. Later, the Forest Service further extended the Interim  
13 Directive protecting roadless areas. Interim Directive 1920-2006-1 [Forest Service Manual  
14 1925.03].

15 37. Shortly after this exchange of letters, the Forest Service promulgated a new roadless  
16 rule (36 C.F.R. Part 294, Subpart B) that specifically recognized the importance of individual  
17 state input and policy in developing management policies for roadless areas in national forests.

18 **The Resources Agency Reiterates State Policies Protecting Roadless Areas and**  
19 **the Importance of Addressing Them During The Forest Planning Process**

20 38. Secretary Chrisman again wrote to the Department of Agriculture and the Regional  
21 Forester on July 6, 2005, to reiterate and clarify state policy on roadless areas and the importance  
22 of addressing those protections during forest planning processes. Exhibit D hereto. He did so  
23 because the Resources Agency was concerned that some Forest Service personnel had  
24 interpreted the state’s specific protections for roadless areas as only applying until, *inter alia*, a  
25 new plan was adopted for a national forest. *Id.*

26 39. The Resources Agency explained that the state policies protecting roadless areas  
27 (and the Forest Service’s January 2005 commitment to abide by them) would remain in place  
28 until a final federal rule was adopted that provided the same level of protection. *Id.* Secretary

1 Chrisman reiterated that, until then, these protections would not lapse upon adoption of a forest  
2 plan. *Id.*

3 40. Accordingly, the Resources Agency noted that forest plan revisions were underway  
4 in several national forests in California and requested that the Department of Agriculture and  
5 Regional Forester ensure that the State of California received adequate notice and a meaningful  
6 opportunity to participate in the planning process. *Id.* Secretary Chrisman stressed the state's  
7 particular interest in forest plan revisions that may address opportunities for road construction in  
8 roadless areas. *Id.*

9 **The Resources Agency Requests The Forest Service To Coordinate**  
10 **With State Planning for Roadless Areas in the Four Southern California Forests**

11 41. The Resources Agency also wrote the Forest Supervisor for each Southern  
12 California national forest on July 6, 2005, to specifically address the treatment of roadless areas  
13 during the development of the forest plan for each forest. Exhibit E hereto. The Forest Service  
14 had represented that the updated Plans did not provide for construction of any roads in identified  
15 roadless areas in the Southern California forests. *Id.* Because other planning efforts might  
16 impact these areas, the Resources Agency requested the Forest Service to consult with the state  
17 before making any determination to permit road construction in roadless areas, regardless of  
18 whether the Forest Service was undertaking a public comment process under the National  
19 Environmental Policy Act for those planning efforts or projects. *Id.*

20 **The Resources Agency Protests Earlier Versions of the Plans**  
21 **That Unexpectedly Anticipated Road Construction In Roadless Areas**

22 42. Despite these written exchanges between the State of California and the Forest  
23 Service, a version of the Plans issued in September 2005 unexpectedly and abruptly contained  
24 provisions that anticipated approval of road construction in hundreds of thousands of acres of  
25 roadless areas in all four Southern California forests.

26 43. Accordingly, on March 15, 2006, Secretary Chrisman wrote to the Regional  
27 Forester and requested that these plans be amended and reissued to address the state policies  
28 protecting roadless areas that the Resources Agency had repeatedly communicated to the Forest

1 Service. Exhibit F hereto. Secretary Chrisman's letter highlighted the inconsistency between  
2 those state policies (as well as the Forest Service's January 2005 commitment to them) and the  
3 provisions of the initially-released Plans that permitted approval of road construction in large  
4 amounts of specifically-mapped "inventoried roadless areas." Secretary Chrisman's letter also  
5 commented that the Forest Service was undertaking efforts to designate routes in certain roadless  
6 areas and that the Forest Service anticipated projects that could require roads in them. *Id.*  
7 Secretary Chrisman noted this information was not available to the public, thereby making it  
8 difficult for the public and decision-makers to evaluate all aspects of the Plans and their  
9 environmental impacts. *Id.*

### 10 **The Final Plans Ignore State Policies and Comments**

11 44. Though the Forest Service eventually reissued the Plans, it did so without  
12 addressing the Resources Agency's objections or acknowledging them in the forest planning  
13 process.

14 45. Notwithstanding the Resources Agency's many objections and requests to  
15 coordinate planning with the Forest Service, the ultimately-approved Plans for the four Southern  
16 California forests designate hundreds of thousands of acres within "inventoried roadless areas"  
17 ("IRAs") as being suitable for road construction and reconstruction. According to the Final EIS  
18 for all four plans, 253,584 acres of IRAs are assigned to a "Back Country" land-use zoning  
19 designation, 245,209 acres of IRAs to a "Back Country Motorized Use Restricted" designation,  
20 and 38,511 acres of IRAs to a "Developed Area Interface" designation. Each of these land use  
21 designations allows, to some degree, approval of road construction.

22 46. These zoning designations in IRAs in each Plan are inconsistent with both the  
23 Regional Forester's earlier written commitments to the Resources Agency and the State's policy  
24 on management of roadless areas. The Plans graphically illustrate their inconsistency with state  
25 policy through the adoption of a classification "1c" to identify the specific portions of IRAs  
26 within the four national forest where "road construction or reconstruction" is allowed. The  
27 Regional Forester further confirmed in a letter to Secretary Chrisman that the present Plans did  
28 not reflect state policy on roadless areas by suggesting that "[n]otwithstanding these zoning

1 designations,” the Forest Service could take less-binding measures to address the state’s  
2 concerns. Exhibit G hereto. At that point, however, the Forest Service’s proffered alternatives  
3 were neither a practical nor legally-binding substitute for Plans that actually addressed the state’s  
4 concerns, as required by NFMA and its regulations.

5 **FIRST CLAIM FOR RELIEF**

6 (The Forest Service’s Failure to Explicitly Review and Coordinate Its Forest Planning  
7 with State Policy on Roadless Areas Violated the National Forest Management Act)

8 47. Plaintiffs incorporate the allegations of the preceding paragraphs.

9 48. The National Forest Management Act (“NFMA”) controls the Forest Service’s  
10 management and planning for the national forests. NFMA requires the Forest Service to  
11 develop a land and resource management plan for every forest it manages and that the Forest  
12 Service’s development of forest management plans be "coordinated with the land and resource  
13 management planning of State . . . governments . . ." 16 U.S.C. § 1604(a). The Plans here were  
14 developed pursuant to the NFMA and implementing regulations of Title 36 of the Code of  
15 Federal Regulations, Part 219 that existed at the time. The Forest Service initiated the planning  
16 process for these four Plans under those existing regulations and elected to have them govern the  
17 completion of the planning process. (Those regulations have subsequently been replaced with  
18 other forest planning rules.)

19 49. The applicable regulations specifically addressed the Forest Service’s legal duty  
20 to "coordinate regional and forest planning with the equivalent and related planning efforts of . . .  
21 State . . . governments” when preparing the Plans. 36 C.F.R. § 219.7(b). As alleged above, the  
22 Forest Service has violated these duties under the NFMA and Part 219 by utterly disregarding  
23 state policy on roadless areas, as well as its own assurances to the Resources Agency that it  
24 would abide by those management policies throughout the state.

25 50. Moreover, pursuant to Section 219.7(c), the Forest Service must document several  
26 specific actions during its analysis of a forest plan to show that it has complied with this mandate  
27 to coordinate with state policy. Here, the Forest Service has addressed none of the required  
28 items. First, the Forest Service’s analysis of forest management plans must display the

1 responsible officer's review of the planning and land use policies of state government, including  
2 their “objectives . . . as expressed in their plans and policies. . . “ 36 C.F.R. § 219.7(c)(1). The  
3 Plans and their public analysis contain no mention of the Resources Agency’s roadless policies,  
4 the state’s objectives, or the Forest Service’s written assurances to respect them.

5 51. Second, the analysis of a forest plan must demonstrate "an assessment of the  
6 interrelated impacts of these plans and policies," *Id.* § 219.7(c)(2). Again, the Plans and their  
7 analyses are silent on the interrelation (here, outright conflict) between state and federal policy.

8 52. Finally, "where conflicts with Forest Service Planning are identified," the analysis  
9 must also display “consideration of alternatives for their resolution.” *Id.* § 219.7(c)(4). Here,  
10 the Forest Service’s approval of the Plans did not even mention, let alone attempt to reconcile,  
11 their conflict with state policy. As alleged more specifically above, the Forest Service’s  
12 approval of the Plans simply ignored: (a) the Resources Agency’s January, 2005, written policy  
13 that generally precluded road construction in roadless areas, (b) the Forest Service’s written  
14 response assuring that defendant would honor those policies, extend the Interim Directive  
15 protecting these areas, and not currently approve any projects involving roads, (c) the Resources  
16 Agency’s subsequent objection that the Plans violated these policies and commitments; and (d)  
17 the admitted inconsistency of the Plans with those policies and commitments.

18 53. The Forest Service thereby violated the National Forest Management Act and  
19 denied the State of California’s statutory right to have its policy on management of roadless  
20 areas in national forests both considered and harmonized with federal forest planning. The  
21 Forest Service also violated its mandate to fully document that exercise for review by the  
22 decision-maker and public. Accordingly, the Forest Service’s approval of the Plans should be  
23 set aside until such time as the Forest Service complies with the NFMA.

24 **SECOND CLAIM FOR RELIEF**

25 (The Final EIS’s Failure to Provide Even General Information on  
26 Affected Roadless Areas Violated NEPA)

27 54. Plaintiffs incorporate the allegations of the preceding paragraphs.

28 55. The approval of the Plans violated NEPA, 42 U.S.C. §4321, *et seq.* NEPA ensures

1 that “public officials make decisions that are based on understanding of environmental  
2 consequences” and “that environmental information is available to public officials and citizens  
3 before decisions are made and before actions are taken.” 40 C.F.R. §1500.1(b), (c). NEPA  
4 requires federal agencies to prepare an environmental impact statement (“EIS”) for “major  
5 Federal actions” that may “significantly affect the quality of the human environment.” 42 U.S.C.  
6 §4332(c). The Forest Service recognized that the Plans here are such actions, and prepared an  
7 EIS. An EIS must disclose, inter alia, the environmental impacts of the proposed action,  
8 alternatives, and means to mitigate adverse environmental impacts. 42 U.S.C § 4332(2); 40  
9 C.F.R. §§ 1508.11, 1502.16(h). The analysis must ensure that adequate environmental  
10 information is available to public officials and citizens before decisions are made and before  
11 actions are taken. The information must contain quality and accurate scientific analysis. 40  
12 C.F.R. § 1500.1(b). Public involvement and scrutiny are essential to implementing NEPA. *Id.*

13 56. In the context of management plans, the purpose of an EIS is “to evaluate the  
14 possibilities in light of current *and contemplated plans* and to produce an informed estimate of  
15 the environmental consequences . . .” *Kern v. BLM* , 284 F.3d 1062, 1072 (9<sup>th</sup> Cir.  
16 2002)[emphasis in original]. If it is reasonably possible to analyze the impacts of a management  
17 plan in an EIS, the agency must perform that analysis. *Id.* Here, the Forest Service was required  
18 to analyze the environmental impacts of adopting Plans that will guide management of the  
19 Southern California national forests in the foreseeable future, including the effects of assigning  
20 hundreds of thousands of acres of currently roadless areas into land use zones that permit road  
21 construction.

22 57. The Ninth Circuit has specifically addressed the required NEPA analysis required  
23 for a plan that establishes land use designations for roadless areas. In *California v. Block*, 690  
24 F.2d at 757-58, *supra*, the Forest Service inventoried and classified roadless areas for proposed  
25 designation or study as protected wilderness. Since these decisions would guide potential uses  
26 for years until new forest plans were adopted, NEPA required this “decisive allocative decision  
27 must . . . be carefully scrutinized now and not when specific development proposals are made.”  
28 *Id.*, at p.763. The Ninth Circuit held the EIS in *California v. Block* was inadequate because it did



1 not contain information on certain habitat areas, wildlife types and quantity, the presence of rare  
2 and endangered species, or any unique characteristics of an area. Instead, it only identified the  
3 location and acreage of roadless areas, basic landform and ecosystem types, the number of  
4 wilderness-associated species in the area, and a numerical rating of its wilderness attributes. *Id.*,  
5 at p. 763.

6 58. The Final EIS for the four Southern California forest plans does not even contain  
7 the information held inadequate in *California v. Block*, let alone the additional analysis required  
8 by that decision. Despite the vast and unique range of different climates, terrain, habitats,  
9 vegetation and wildlife that characterize the Southern California national forests, the Final EIS  
10 for the Plans only discloses a single piece of information - the gross acreage of roadless areas in  
11 all four forests in which road construction could be approved. NEPA required this land  
12 management decision to be informed by a much more detailed analysis of the affected areas.  
13 The Final EIS here did not even attempt to provide the Forest Service and public with the  
14 information required under *California v. Block*, thereby depriving them of even a basic  
15 disclosure of the general impacts of potentially permitting road construction in various types of  
16 roadless areas. The Forest Service violated NEPA and its inadequately-informed approval of the  
17 Plans should be set aside.

### 18 **THIRD CLAIM FOR RELIEF**

19 (The Forest Service Violated NEPA By Not Adequately Analyzing Impacts from Increased  
20 Access for Off-Highway Vehicles and Less Wilderness Protection)

21 59. The Attorney General realleges and incorporates the allegations of the preceding  
22 paragraphs and avers the following claim for relief.

23 60. NEPA requires a discussion of impacts from an action and the means to mitigate  
24 adverse environmental impacts of an action. 40 C.F.R. §1501.1(d); 40 C.F.R. § 1502.16(h).  
25 Such analysis should be done at the earliest possible time to insure that planning and decisions  
26 reflect environmental values, to avoid delays later in the process, and to head off potential  
27 conflicts. 40 C.F.R. § 1501.2.

28 61. The Final EIS for the revised Plans violates NEPA in that it fails to adequately

1 discuss the impacts of the Forest Service’s decisions that will allow more off-highway vehicle  
2 access over the life of the Plans. The Forest Service has divided the forests into eight land use  
3 zones. Based on anticipated uses, motorized access will be permitted in five of these land use  
4 zones.

5 62. The Forest Service eventually plans to open the forests to more off-highway vehicle  
6 use over the term of these Plans, and to make changes to the land use zoning in order to  
7 accommodate demands for more off-highway vehicle trails. The Forest Service has  
8 acknowledged that the land use zones permitted by these Plans will not necessarily remain in  
9 place and that as demand for zones that allow such detrimental uses increase, those lands  
10 (including inventoried roadless areas) that are currently zoned to prevent road construction or  
11 motorized use, may be opened to such uses.

12 63. The Final EIS describes the many negative effects of vehicle use in the forests,  
13 stating that it “adversely affects species at risk by trampling plants and their habitat, killing or  
14 injuring small animals, harassing animals, initiating erosion features, accelerating erosion rates,  
15 increasing soil compaction, crushing burrows, damaging soil, introducing invasive nonnative  
16 plants and interrupting plant reproduction through the destruction of flowers and pollinator  
17 habitat.” Yet the Forest Service suggests that discussion of the impacts of its decision to open  
18 more land to off-highway vehicle uses or improve existing trails will be deferred until particular  
19 routes are recommended in the future and until “design and compliance strategies” can be  
20 developed at some later date. The Forest Service has acknowledged that it is anticipating  
21 building new routes, and thus its analysis of the environmental impacts of those decisions should  
22 be addressed in this Final EIS, not at some time in the future. Despite the admitted adverse  
23 impacts and inadequate enforcement of current restrictions, the preferred alternative would allow  
24 new off-road trails and the improvement of other types of unclassified roads. The mitigation for  
25 these impacts is not discussed in the Final EIS, but instead improperly deferred to later planning  
26 processes. The summary conclusions of the Final EIS on increasing motorized trails violates  
27 NEPA's requirement of full public disclosure.

28 64. The Forest Service also violated NEPA in that the selected alternative (4a) includes

1 a recommended wilderness designation for only a small proportion of the areas that were  
2 discussed and recommended by the public. Other than expressing its emphasis on the forests for  
3 recreational use, the Final EIS does not adequately present the rationale for its limited  
4 nomination. NEPA requires the Final EIS to contain a reasonably thorough discussion of the  
5 significant aspects of the probable consequences of an action. The inadequate information about  
6 the reasons for not choosing more wilderness acreage leaves the decision makers without the  
7 basic tools they need to decide the fate of the forests and violates NEPA. By simply stating that  
8 certain areas will be recommended for wilderness designation and others will not be, the Forest  
9 Service has not provided sufficiently detailed information for decision makers to have a clear  
10 basis for choosing among alternatives. It is necessary to “present the environmental impacts of  
11 the proposal and the alternatives in comparative form, thus sharply defining the issues,” so that a  
12 reasoned decision can be made. 40 C.F.R. § 1502.14. Having merely provided acreage  
13 allocations for wilderness and non-wilderness designations, the Forest Service has failed  
14 adequately to discuss the rationale for choosing an alternative with less wilderness, thereby  
15 violating NEPA. 42 U.S.C. § 4332(2)(C)(iii).

16 65. The Final EIS also fails to adequately analyze the impacts of its decision to  
17 recommend so little wilderness. Wilderness designation recommendations are some of the few  
18 concrete actions that the Forest Service actually takes during its land management planning.  
19 Yet, in the “Environmental Consequences” section of Chapter 3 of the Final EIS, there is no  
20 separate discussion of the environmental consequences of the rationale for the Forest Service’s  
21 recommendation of a bare fraction of the inventoried roadless areas that are potentially eligible  
22 for wilderness designation.

23 66. In the Final EIS, the Forest Service did undertake evaluations of inventoried  
24 roadless areas for purposes of its wilderness recommendations, but these evaluations do not  
25 evaluate the impact of opening up many of these areas to potential future uses that would detract  
26 from their potential wilderness character. The “analysis” of “Proposed Wilderness by  
27 Alternative” in Appendix D, is simply a series of charts that list the numbers of acres  
28 recommended under the various alternatives, and the various land use zones that those areas are

1 assigned under the various alternatives. All of the land use zones under the Selected  
2 Alternative, except for “Back Country Non-Motorized,” “Existing Wilderness,” and  
3 “Recommended Wilderness,” will remain open to the potential that roads and other detrimental  
4 facilities or construction could be implemented under these Plans. There is no analysis of the  
5 impact that the Forest Service’s decision in selecting Alternative 4a, which leaves 547,443 out of  
6 1,045, 281 acres of inventoried roadless areas in the four forests open to the possibility of future  
7 development, will have on the forests.

8 67. The Forest Service’s failure to adequately discuss the adverse environmental  
9 impacts from increased motorized use and road construction, as well as from its action to  
10 recommend so little forest land for wilderness designation and its failure to provide sufficient  
11 information to the public about its rationale for nominating so little forest land for wilderness  
12 protection violates NEPA and constitutes arbitrary and capricious agency action, is an abuse of  
13 discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

#### 14 **FOURTH CLAIM FOR RELIEF**

15 (The Forest Service Violated NEPA By Inadequately Analyzing  
16 and Deferring the Discussion of Impacts and Mitigation Measures for  
Impacts to the California Condor from Increased Oil and Gas Drilling.)

17 68. The Attorney General realleges and incorporates the allegations of the preceding  
18 paragraphs and avers the following claim for relief.

19 69. NEPA requires a discussion of impacts from an action and the means to mitigate  
20 adverse environmental impacts of an action and limits the degree to which an Final EIS can defer  
21 analysis of impacts until a later Final EIS. 40 C.F.R. §1501.1(d); 40 C.F.R. § 1502.16(h).

22 70. As to Los Padres National Forest, the Final EIS and the revised Plan incorporate  
23 and adopt findings and analysis of the previously approved Oil and Gas Drilling Plan, to which  
24 the Attorney General filed a separate administrative appeal on September 13, 2005. That Plan  
25 designated 4,277 acres of land as available for surface occupancy drilling activities and 47,798  
26 acres of land as available for slant-drilling. Such a commitment of specific lands to the  
27 possibility of oil and gas development potentially forecloses wilderness and wildlife habitat uses,  
28 which is not adequately analyzed in the Final EIS.

1           71. The California Condor is one of the most endangered vertebrate species in the  
2 world and has been the subject of one of the most extensive and ongoing species recovery  
3 efforts. In 1987, the condor ceased to exist in the wild. The U.S. Fish and Wildlife Service  
4 tenaciously ran a captive breeding program to save this species from extinction and condors have  
5 been re-introduced at several locations within Los Padres.

6           72. The Final EIS lacks an adequate discussion of the impacts of slant drilling on the  
7 condor's viability. The Plans would allow slant-drilling into forest lands if the drilling rig is  
8 situated on non-forest lands more than 2,600 feet away. Yet California Condors do not confine  
9 themselves to artificial boundaries construed in leasing stipulations. The conclusion that condor  
10 viability will be unaffected by drilling on private land within a one-half mile of critical habitat  
11 areas is based on an incomplete and flawed analysis.

12           73. The New Preferred Alternative in the Los Padres Plan will allow surface  
13 disturbances near critical habitat areas for the condor, with approximately 400 acres of critical  
14 condor habitat being designated as land available for oil and gas leasing. Even though the  
15 environmental harm to the California Condor and its habitat caused by infrastructure for oil and  
16 gas exploration and drilling, such as roads, pipelines, wellheads, pads and tanks is reasonably  
17 foreseeable, the Final EIS contains an inadequate discussion of mitigation measures and  
18 inappropriately defers a discussion of mitigating measures.

19           74. The Forest Service defers further discussion of the mitigation of environmental  
20 harm to condors to future site-specific surveys and consultations with the U.S. Fish and Wildlife  
21 Service. Given the foreseeable threat to the condor's viability, the deferral of analysis to future  
22 consultation is inadequate under NEPA. The Final EIS' discussion of mitigation of  
23 environmental impacts to the California Condor, is limited to future Bureau of Land  
24 Management Standard Lease Terms, special lease stipulations, and the use of Threatened and  
25 Endangered Species Information Notices. These notices are inadequate mitigation as they rely  
26 on private industry's compliance with certain terms. It is unreasonable to expect a construction  
27 site to be immaculately clean, as is suggested in the Final EIS. This lack of discussion of  
28 meaningful mitigation for impacts from future oil exploration violates NEPA.



1 that an EIS consider a full range of reasonable alternatives. While an agency is not required to  
2 analyze alternatives that do not meet its proposed goal, an agency cannot narrowly define its  
3 purpose in order to exclude reasonable alternatives. This failure to provide a reasonable range of  
4 alternatives violates NEPA.

5 79. Forest Service's failure to provide a reasonable range of alternatives for the  
6 proposed action as required by NEPA, constitutes arbitrary and capricious agency action, is an  
7 abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. §  
8 706(2)(A), (D).

9 **RELIEF REQUESTED**

10 WHEREFORE, plaintiffs Resources Agency and the Attorney General request that this  
11 Court:

12 1. Issue a declaratory judgment that defendants arbitrarily and capriciously approved  
13 the Plans for the Angeles, Cleveland, San Bernardino, and Los Padres National Forests in  
14 violation of the NFMA and NEPA, without a reasoned and supported analysis for this action.

15 2. Issue a declaratory judgment that defendants violated NFMA by: (a) failing to  
16 coordinate with state policy regarding management of roadless areas and document that review  
17 in the EIS, including the ultimate decision not to follow that state policy, and (b) that defendants  
18 violated NEPA by not adequately analyzing the impacts of assigning land use classifications to  
19 current roadless areas that permit approval of road construction, by failing to adequately assess  
20 the adverse environmental impacts of the Plans, by failing to consider an adequate range of  
21 alternatives to the Plans, and by failing to adequately consider measures mitigating the adverse  
22 environmental impacts of the revised Plans, especially as to the California Condor.

23 3. Issue a mandatory injunction enjoining defendants to set aside the Records of  
24 Decision to implement the Plans and the supporting Final Environmental Impact Statement and  
25 that any reapproval of the Plans or their environmental analysis comply with the NFMA and  
26 NEPA;

27 4. Award the Resources Agency and People costs, expenses, and reasonable attorney  
28 fees in accordance with law.

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

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Dated: February \_\_, 2008

Respectfully submitted,  
  
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