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California Department of Forestry and Fire Protection, and
9 People of the State of California, *ex rel.* California
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 Defendants.
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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.*)

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1 stretches from Point Sur, Monterey County, south to the border of Los Angeles and Ventura
2 Counties, where it reaches more than 50 miles inland to the border of the Angeles National
3 Forest. As the population continues to increase, so too does the desire to conserve these
4 remaining vestiges of regional open space and scenic heritage in a natural or near-natural
5 appearing condition.

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

21 Summary of Allegations

22 5. The Forest Service's approval of the Plans violated the National Forest Management
23 Act ("NFMA") and the National Environmental Policy Act ("NEPA").

24 6. The NFMA mandates that the Forest Service develop a land and resource
25 management plan for every forest and that development of those plans be "coordinated with the
26 land and resource management planning of State . . . governments . . ." 16 U.S.C. § 1604(a).
27 Specifically, the Forest Service was required to "coordinate regional and forest planning with the
28 equivalent and related planning efforts of . . . State . . . governments." 36 C.F.R. § 219.7(b).

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

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

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

27 9. The Forest Service's approval of the Plans also violated NEPA. The Ninth Circuit
28 has addressed the minimum standards for an Environmental Impact Statement ("EIS") covering

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

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

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

27 12. The Attorney General also alleges the Forest Service has violated NEPA by illegally
28 deferring its discussion and consideration of impacts from the project and mitigation that would

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

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

24 **JURISDICTION**

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

27 15. An actual controversy exists between the parties within the meaning of 28 U.S.C. //
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1 §2201(a). This court may grant declaratory relief, injunctive relief, and any additional relief
2 available under 28 U.S.C. §§2201, 2202, and 5 U.S.C. §§705, 706.

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

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

13 VENUE

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

17 INTRADISTRICT ASSIGNMENT

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

20 PARTIES

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

1 the forests. The People have suffered a legal wrong because of the Forest Service's action and
2 have been adversely affected or aggrieved by such action within the meaning of the APA, NEPA
3 and the NFMA.

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

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

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

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

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

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

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

23 **FACTUAL ALLEGATIONS**

24 **The Forest Planning And NEPA Review Process**

25 28. The Forest Service approval of the Plans is documented in a Revised Land
26 Management Plan for each forest and analyzed in one combined Final Environmental Impact
27 Statement ("Final EIS") for all four forest plans. The Plans cover all national forest lands in

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1 Southern California and are meant to guide management and uses of the Cleveland, Angeles, San
2 Bernardino and Los Padres National Forests over the next 10 to 15 years.

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

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

23 31. The Forest Service initially issued a Final EIS and approved the Plans on September
24 20, 2005, but then withdrew the Plan approvals because information had been omitted from the
25 public record.

26 32. Ultimately, the Regional Forester reissued and approved the Plans on April 3, 2006
27 in four separate Records of Decision. The Notice of Decision on the Plans was published on

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1 April 21, 2006 and notice of the availability of the Final Environmental Impact Statement was
2 published at 71 Fed.Reg. 20660 (April 21, 2006).

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

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

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

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

1 provided at least the same level of protection for roadless areas as the interim directive, with
2 some specific modifications. *Id.*

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

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

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

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

24 39. The Resources Agency explained that the state policies protecting roadless areas
25 (and the Forest Service's January 2005 commitment to abide by them) would remain in place
26 until a final federal rule was adopted that provided the same level of protection. *Id.* Secretary
27 Chrisman reiterated that, until then, these protections would not lapse upon adoption of a forest
28 plan. *Id.*

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

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

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

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

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

24 43. Accordingly, on March 15, 2006, Secretary Chrisman wrote to the Regional
25 Forester and requested that these plans be amended and reissued to address the state policies
26 protecting roadless areas that the Resources Agency had repeatedly communicated to the Forest
27 Service. Exhibit F hereto. Secretary Chrisman's letter highlighted the inconsistency between
28 those state policies (as well as the Forest Service's January 2005 commitment to them) and the

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

8 **The Final Plans Ignore State Policies and Comments**

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

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

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

1 were neither a practical nor legally-binding substitute for Plans that actually addressed the state's
2 concerns, as required by NFMA and its regulations.

3 **FIRST CLAIM FOR RELIEF**

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

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

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

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

23 50. Moreover, pursuant to Section 219.7(c), the Forest Service must document several
24 specific actions during its analysis of a forest plan to show that it has complied with this mandate
25 to coordinate with state policy. Here, the Forest Service has addressed none of the required
26 items. First, the Forest Service's analysis of forest management plans must display the
27 responsible officer's review of the planning and land use policies of state government, including
28 their "objectives . . . as expressed in their plans and policies. . . " 36 C.F.R. § 219.7(c)(1). The

1 Plans and their public analysis contain no mention of the Resources Agency's roadless policies,
2 the state's objectives, or the Forest Service's written assurances to respect them.

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

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

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

22 **SECOND CLAIM FOR RELIEF**

23 (The Final EIS's Failure to Provide Even General Information on
24 Affected Roadless Areas Violated NEPA)

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

26 55. The approval of the Plans violated NEPA, 42 U.S.C. §4321, *et seq.* NEPA ensures
27 that "public officials make decisions that are based on understanding of environmental
28 consequences" and "that environmental information is available to public officials and citizens

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

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

20 57. The Ninth Circuit has specifically addressed the required NEPA analysis required
21 for a plan that establishes land use designations for roadless areas. In *California v. Block*, 690
22 F.2d at 757-58, *supra*, the Forest Service inventoried and classified roadless areas for proposed
23 designation or study as protected wilderness. Since these decisions would guide potential uses
24 for years until new forest plans were adopted, NEPA required this "decisive allocative decision
25 must . . . be carefully scrutinized now and not when specific development proposals are made."
26 *Id.*, at p.763. The Ninth Circuit held the EIS in *California v. Block* was inadequate because it did
27 not contain information on certain habitat areas, wildlife types and quantity, the presence of rare
28 and endangered species, or any unique characteristics of an area. Instead, it only identified the

1 location and acreage of roadless areas, basic landform and ecosystem types, the number of
2 wilderness-associated species in the area, and a numerical rating of its wilderness attributes. *Id.*,
3 at p. 763.

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

16 **THIRD CLAIM FOR RELIEF**

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

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

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

26 61. The Final EIS for the revised Plans violates NEPA in that it fails to adequately
27 discuss the impacts of the Forest Service's decisions that will allow more off-highway vehicle
28 access over the life of the Plans. The Forest Service has divided the forests into eight land use

1 zones. Based on anticipated uses, motorized access will be permitted in five of these land use
2 zones.

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

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

26 64. The Forest Service also violated NEPA in that the selected alternative (4a) includes
27 a recommended wilderness designation for only a small proportion of the areas that were
28 discussed and recommended by the public. Other than expressing its emphasis on the forests for

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

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

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

1 Wilderness," will remain open to the potential that roads and other detrimental facilities or
2 construction could be implemented under these Plans. There is no analysis of the impact that the
3 Forest Service's decision in selecting Alternative 4a, which leaves 547,443 out of 1,045, 281
4 acres of inventoried roadless areas in the four forests open to the possibility of future
5 development, will have on the forests.

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

12 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

27 71. The California Condor is one of the most endangered vertebrate species in the world
28 and has been the subject of one of the most extensive and ongoing species recovery efforts. In

1 1987, the condor ceased to exist in the wild. The U.S. Fish and Wildlife Service tenaciously ran
2 a captive breeding program to save this species from extinction and condors have been re-
3 introduced at several locations within Los Padres.

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

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

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

27 75. The Forest Service's inadequate discussion of mitigation of impacts to the
28 California Condor and its deferral of discussing possible mitigation until later planning

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

3 **FIFTH CLAIM FOR RELIEF**

4 (The Forest Service Violated NEPA By Failing to Analyze a Reasonable Range of Alternatives.)

5 76. The Attorney General realleges and incorporates the allegations of the preceding
6 paragraphs and avers the following claim for relief.

7 77. NEPA requires agencies, to the fullest extent possible, to study, develop, and
8 describe appropriate alternatives to recommend courses of action in any proposal which involves
9 unresolved conflicts concerning alternative uses of available resources. 42 U.S.C. § 4332(2)(E).
10 NEPA requires that this analysis identify and assess reasonable alternatives to proposed actions
11 in order to avoid or minimize adverse impacts on the environment. 40 C.F.R. § 1500.2(e).

12 78. The Forest Service violated NEPA by selecting the Alternative 4a without
13 providing a reasonable range of alternatives. In the Draft EIS it included two alternatives that
14 contained provisions that ensured they would have no likelihood of serious consideration by the
15 Forest Service. Alternatives 5 and 6 were essentially extremes that were assured of never being
16 implemented. Alternative 5 incorporated such an extreme increase in the availability of
17 motorized access, that it would be safe to assume that the Forest Service could never implement
18 the plan and maintain its obligations to maintain or restore ecological sustainability of the
19 national forest required by the planning guidelines contained at 36 C.F.R. section 219.1(b).
20 Alternative 6, on the other hand, purported to incorporate the wishes of those who would like to
21 see increased protection and conservation of resources. The Forest Service created Alternative 6,
22 and then loaded it up with unnecessary attributes, saddling it with aspects that made it an
23 unacceptable alternative from a fire-fighting point of view, thereby ensuring it would not be
24 seriously considered. Instead, the Forest Service could have just as easily drafted the alternative
25 to allow roads necessary for fire protection. Its failure to do so violates the NEPA requirement
26 that an EIS consider a full range of reasonable alternatives. While an agency is not required to
27 analyze alternatives that do not meet its proposed goal, an agency cannot narrowly define its
28 purpose in order to exclude reasonable alternatives. This failure to provide a reasonable range of

1 alternatives violates NEPA.

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

6 **RELIEF REQUESTED**

7 WHEREFORE, plaintiffs Resources Agency and the Attorney General request that this
8 Court:

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

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

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

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

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

27 ///

28 ///

1 Dated: February __, 2008

Respectfully submitted,

2 EDMUND G. BROWN JR.,
3 Attorney General

4 THEODORA BERGER
5 Senior Assistant Attorney General

6 BRIAN HEMBACHER
7 Deputy Attorney General

8 Attorneys for PEOPLE OF THE STATE OF
9 CALIFORNIA, ex rel. EDMUND G.
10 BROWN JR., ATTORNEY GENERAL

11 J. MATTHEW RODRIQUEZ
12 Senior Assistant Attorney General

13 PETER SOUTHWORTH
14 Attorneys for CALIFORNIA RESOURCES
15 AGENCY and DEPARTMENT OF
16 FORESTRY AND FIRE PROTECTION

EXHIBIT - A



November 15, 2004

The Honorable Ann Veneman
Agriculture Secretary
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Dear Secretary Veneman:

The State of California appreciates the opportunity provided by the U.S. Department of Agriculture (USDA) Forest Service to review the existing management requirements for inventoried roadless areas within the state's 18 National Forests and if warranted, to petition the Department to establish or adjust management requirements. Existing and future management of all National Forest System (NFS) lands—regardless of management designation—is very important to states. Consistent with Governor Schwarzenegger's belief that states must play a stronger role with federal land management agencies to achieve coordinated and comprehensive resource stewardship that can be thoughtfully implemented, we commend the Bush administration for understanding the value that closer partnerships with states can offer for the future of our National Forests.

As promulgated by 36 CFR Part 294, 'Special Areas; State Petitions for Inventoried Roadless Area Management', there is a long and complex history to the planning for inventoried roadless areas within the National Forests. After a careful review of the proposed regulations, we believe that the most prudent method to address the future management of roadless areas in the State of California is by working closely with the individual National Forest representatives as they revise the land management plans in future years.

The 4.4 million acres of NFS roadless area in our state are treasured by Californians for the many benefits they provide us in terms of recreational opportunities, open space, wildlife habitats and water quality. They are also a part of our landscape under many different ownership regimes where environmental threats such as damaging wildfires, invasive species, and poorly maintained roads do not stop at property boundaries.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>

Baldwin Hills Conservancy • California Bay-Delta Authority • California Coastal Commission • California Conservation Corps • California Tahoe Conservancy
Coachella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Water Resources
Energy Resources Conservation & Development Commission • Native American Heritage Commission • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • State Coastal Commission • State Lands Commission • Wildlife Conservation Board



The extent and diversity of the USDA Forest Service roadless areas in California demands a thorough and open planning process to address the benefits and costs of different management strategies. We believe this process can most effectively be done by each of the National Forests addressing the full suite of issues surrounding roadless areas as they revise their land management plans.

The State of California will actively participate in these Forest-specific processes to ensure that the interests of our citizens are addressed. We also feel the National Forest-specific planning exercises will be the most effective way to reach the unique needs of local stakeholders.

As we approach working with individual National Forest plan revisions we would like to emphasize four points for your consideration:

- 1) The 'inventoried roadless area' maps are out of date or inaccurate in some areas; hence the maps need to be updated and field verified by the USFS as part of the review process.
- 2) There will be a need to grandfather in 'unofficial roads' into roadless areas such as those noted by Native American tribes in the eastern Sierra Nevada that are used by tribal elders to reach sacred sites.
- 3) To the extent practical, roads that are not maintained should be decommissioned.
- 4) Limitations associated with roadless status should not unreasonably detract from the ability of the USFS or its cooperators to effectively to deal with wildland fire protection; current policies reflect this position and so should any future policy changes.

While not taking advantage of this petition process, the State of California will continue to take an active and keen interest in the future management of NFS lands for all the recreation, water quality, biodiversity, forest health, timber and fire protection benefits that the public deserves. Thank you again extending the courtesy to states to play a greater role determining the future of inventoried roadless areas.

Sincerely,

Mike Chrisman

MIKE CHRISMAN
Secretary for Resources

EXHIBIT - B



ARNOLD SCHWARZENEGGER, Governor
MIKE CHRISMAN, Secretary

January 24, 2005

Mr. Jack Blackwell
Regional U.S. Forester
1323 Club Drive
Vallejo, CA 94592

Dear Regional Forester Blackwell,

The State of California has a keen interest in the management of all National Forest System lands—regardless of designation—under the stewardship of Region Five of the USDA Forest Service (USFS.)

We note that the USFS Interim Directive 1920-2004-1, that provides guidance for addressing road and forest management activities in inventoried roadless areas, is set to expire January 2006. With the changes listed below, we believe this Interim Directive provides an appropriate level of protection for our inventoried roadless areas (IRAs). The purpose of this letter is to request that the USFS promulgate a rule that provides at least the same level of protection as the Interim Directive with the changes listed below for existing IRAs in California before the Interim Directive expires.

The Region 5 Roadless Areas should be governed by the following principles:

- The USFS Chief should have no greater discretion than the Regional Forester or Forest Supervisor in approving or disapproving road construction or reconstruction in inventoried roadless areas.
- Maps of IRAs need to be updated and shared with the State to confirm that the maps accurately reflect current conditions.
- Where roads exist in IRAs, we must conduct thoughtful, common sense-based reviews of whether these roads should be actively managed or decommissioned. For example, roads that provide access for Native American Tribes to widely acknowledged sacred sites or meet legitimate public safety objectives or well-managed recreational use should be actively managed. Roads that cannot be managed to mitigate sedimentation in sensitive watersheds should be decommissioned.
- Roadless status limitations should not compromise our fire fighting efforts consistent with existing authority.

We believe that California's interests are best served when truly roadless areas remain roadless. However, unlike wilderness areas, a multitude of activities like those mentioned above are allowed in roadless areas so long as new roads are not created for such activities.

The State of California looks forward to working with you to address this important issue.

Sincerely,

Mike Chrisman

MIKE CHRISMAN
Secretary for Resources

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Salwin Hills Conservancy • California Bay Delta Authority • California Coastal Commission • California Conservation Corps • California Tahoe Conservancy
Coastal Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Water Resources
Energy Resources, Conservation & Development Commission • Native American Heritage Commission • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • State Coastal Commission • State Lands Commission • Wildlife Conservation Board



EXHIBIT - C



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

Regional Office, R5
1323 Club Drive
Vallejo, CA 94592
(707) 562-8737 Voice
(707) 562-9130 Text (TDD)

File Code: 1900

Date: JAN 27 2005

Mr. Michael Chrisman
Secretary
CA Resources Agency
1416 Ninth Street - Suite 1311
Sacramento, CA 95814

Dear Secretary Chrisman:

Thank you for your letter of January 21, 2005, concerning the management of Inventoried Roadless Areas in the national forests in California. I share your view that California's interests are best served when truly roadless areas remain roadless consistent with the need to avoid compromising our fire-fighting efforts.

You are correct that Forest Service Interim Directive 1920-2004-1 will expire in January 2005. It is our expectation that the Forest Service will complete a new roadless rule prior to that date. Future roadless protection will be determined by the forthcoming rule.

With respect to the four changes you request for interim roadless protection, we can agree with each.

The Interim Directive does grant the Chief of the Forest Service broader discretion than Regional Foresters to approve road construction in Inventoried Roadless Areas. To date, the Chief has not approved any road construction in roadless areas in California under the terms of the Interim Directive. There are no plans to do so. By this letter, you can assume that will remain the Agency's policy for California pending the completion of a final roadless rule.

We will provide you updated maps of the Inventoried Roadless Areas as they are completed. We concur with the need to provide appropriate access for: 1) Native American sacred sites; 2) legitimate public safety objectives; 3) well-managed recreational use; and 4) fire-fighting efforts. We look forward to continuing to work with the state in decommissioning Forest Service roads that are negatively affecting sensitive watersheds.



Secretary Michael Chrisman

2

Finally, as we complete work on a final roadless rule, we look forward to developing a regulation that fully protects roadless values at least as successfully as the Interim Directive and in a fashion that meets the State's goals for the protection of wild areas in California.

Sincerely,

Jack A. Blackwell
JACK A. BLACKWELL
Regional Forester

EXHIBIT - D



cc: Sandra Ikuta

ARNOLD SCHWARZENEGGER, Governor
MIKE CHRISMAN, Secretary

July 6, 2005

Mr. Mark E. Rey
Undersecretary for Natural Resources and Environment
United States Department of Agriculture
1400 Independence Ave SW
Washington, D.C. 20250

Re: Roadless Protection in California

Dear Undersecretary Rey,

As senior personnel changes are underway at U.S. Department of Agriculture (USDA) Forest Service Region Five, this letter is to confirm that the U.S. Forest Service (USFS) will honor its commitment to the State expressed in correspondence from former Regional Forester Jack Blackwell dated January 27, 2005. To avoid the possibility of any confusion among new Region Five USFS personnel, I think it is important to preserve the continuity of our understanding.

In an exchange of letters between Mr. Blackwell and myself last January (see attached letters dated January 24, 2005 and January 27, 2005), the U.S. Department of Agriculture (USDA) committed to a level of protection for truly roadless areas in California. In particular, my letter of January 24, 2005 requested that the USFS promulgate a *rule* that provided *at least* the same level of protection as the Interim Directive 1920-2004-1, with the following modifications:

1. The USFS Chief should have no greater discretion than the Regional Forester or Forest Supervisor in approving or disapproving road construction or deconstruction in inventoried roadless areas.
2. Maps of IRAs need to be updated and shared with the State to confirm that the maps accurately reflect current conditions.
3. Where roads exist in IRAs, we must conduct thoughtful, common sense-based reviews of whether those roads should be actively managed or decommissioned. For example, roads that provide access for Native American Tribes to widely acknowledged sacred sites or meet legitimate public safety objectives or well-managed recreational use should be actively managed. Roads that cannot be managed to mitigate sedimentation in sensitive watersheds should be decommissioned.
4. Roadless status limitations should not compromise our fire fighting efforts consistent with existing authority.

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Mr. Mark E. Rey
July 6, 2005
Page 2

In his response to my letter, on January 27, 2005, Regional Forester Jack Blackwell gave assurances to the state that USFS would respect the protections of the Interim Directive and the four principles articulated above so that truly roadless areas would remain roadless. In his conclusion, Mr. Blackwell committed to "developing a roadless rule that fully protects roadless values at least as successfully as the Interim Directive and in a fashion that meets the state's goals for the protection of wild areas in California."

There can be no question that the rule we asked for in our letter, and the rule Mr. Blackwell promised in his letter, was a new rule that would establish a level of protection for inventoried roadless areas in California. The plain language of the letters and the understanding of the parties involved make clear that the promised new rule was *not* the same as the pending federal rule establishing a petition process whereby states could petition the USFS to develop a rule for inventoried roadless areas. The petition process rule itself does not provide the protections discussed in the letters. In fact, at the time of the exchange of letters with Mr. Blackwell, California had already declined the USFS's offer to participate in that petition process.

I understand that some USFS staff members may have interpreted the letters as extending the protections of the modified Interim Directive only until such time as a forest-management plan revision is completed, or until the petition process rule becomes final. This interpretation is incorrect. As noted above, Mr. Blackwell's commitment to a level of protection for roadless areas "pending the completion of a final roadless rule" means that the agreed-upon level of protection will remain in place until replaced by a rule protecting inventoried roadless areas, not until the petition process rule becomes final. Moreover, Mr. Blackwell's letter makes no reference to the protections of the Interim Directive lapsing when the forest management plan revisions are completed. A review of the language in the letters makes it clear that USFS's commitments do not lapse until a rule protecting roadless values is in place.

I ask that the USDA reaffirm that the commitment made by Mr. Blackwell on its behalf remain the policy of the USFS. Specifically, USDA should reaffirm that the USFS will not relax the level of protection given to truly roadless areas from that provided in the Interim Directive (as modified by our letters) in the management of National Forests in California. Furthermore, USDA should reaffirm that the USFS will work with the state to develop a protective roadless rule.

In addition, as the forest plan revision process is underway or scheduled for several national forests in California, I ask you to ensure that the state receive timely written notice and a meaningful opportunity to participate in that revision.

Mr. Mark E. Rey
July 6, 2005
Page 3

process. The state has a particular interest when the revision process might include opportunities for the construction of new roads.

I also ask that the state receive such notice and an opportunity to participate before the USFS approves any project that might include such road construction.

As we have stated before, we believe that California's interests are best served when truly roadless areas remain roadless. The State of California looks forward to working with you to address this important issue.

Sincerely,

Mike Chrisman

Mike Chrisman
Secretary for Resources



Cc:

Bernie Weingardt
Regional Forester
USDA Forest Service, Region Five
1323 Club Drive
Vallejo, CA 94592

EXHIBIT - E



July 6, 2005

Jody Noiron, Forest Supervisor
Angeles National Forest
Supervisor's Office
701 N. Santa Anita Avenue
Arcadia, CA 91006

Gloria Brown, Forest Supervisor
Los Padres National Forest
Supervisor's Office
6755 Hollister Avenue, Suite 150
Goleta, CA 93117

Tina Terrell, Forest Supervisor
Cleveland National Forest
10845 Rancho Bernardo Rd, Suite 200
San Diego, CA 92127

Gene Zimmerman
San Bernardino National Forest
1824 Commercenter Circle
San Bernardino, CA 92408-3430

Re: Updated Forest Management Plans

Dear Forest Supervisors,

I am writing to confirm my understanding regarding the four updated Forest Management Plans for the Los Padres, Angeles, Cleveland and San Bernardino National Forests.

Department of Forestry and Fire Protection staff at the Resources Agency has discussed the four updated forest management plans with Ron Pugh, Forest Plan Revision team leader. Based on this discussion, I understand that the USDA Forest Service (USFS) has updated previous Inventoried Roadless Areas (IRA's) to reflect accurate road conditions on these four national forests and has identified 552 miles of roads within these IRAs. In addition, the USFS has identified 107 truly roadless areas in the IRAs and is recommending some 13 of these areas for wilderness status.

Mr. Pugh has also informed us that the updated Forest Management Plans do not currently contain any plans for construction of new roads within these IRA's. However, in the near future, the USFS intends to develop a plan for undertaking a mixture of road closures, road upgrades, and possibly new official roads in IRA's, with a long term goal of reducing overall environmental impacts from use of both official USFS roads and unofficial roads within these IRA's.

I understand that the USFS's future plan for addressing roads within IRA's, as well as subsequent specific road projects, will be reviewed pursuant to the NEPA process, including opportunities for public comment. However, regardless whether the USFS solicits public comment on the future plan for addressing IRA's or on any specific road

Forest Supervisors
July 6, 2005
Page two

project, it is vital that the State have a meaningful opportunity to participate in any decision which might result in the construction of new roads in defined IRA's. Therefore, I request and strongly urge that the USFS provide me with written notice and an opportunity to comment well before any decision is made on such issues.

Please do not hesitate to contact me or Bill Stewart, Assistant Deputy Director (FRAP) at the Department of Forestry and Fire Protection, (916) 653-1586, if you have any questions regarding this letter.

Sincerely,



Mike Chrisman
Secretary for Resources

cc: Mark Rey, Undersecretary for Natural Resources and Environment
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

David Tenny, Deputy Undersecretary for Forestry
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Bernie Weingardt
Regional Forester
USDA Forest Service, Region Five
1323 Club Drive
Vallejo, CA 94592

Ron Pugh
USDA Forest Service
PO Box 96090
Washington, DC 20090-6090

EXHIBIT - F



STATE OF CALIFORNIA

A G E N C Y

March 15, 2006

ARNOLD SCHWARZENEGGER, Governor
MIKE CHRISMAN, Secretary

Bernard Weingardt, Regional Forester
Pacific Southwest Region
UNITED STATES FOREST SERVICE
1323 Club Drive
Vallejo, CA 94592

Re: **Southern California Forest Plans**

Dear Regional Forester Weingardt:

Thank you for your recent decision to withdraw Land Management Plans for the Angeles, Cleveland, Los Padres and San Bernardino national forests in Southern California. Regardless of the issues in question, we appreciate the difficulty of making such a decision and believe that the public will benefit as a result.

We understand that your staff is addressing technical issues so that the four land use management plans can be published in the near future. Prior to your re-issuing the Records of Decision on the Southern California Forests Plans, the Resources Agency requests that you address our concerns regarding certain land designations in the four plans.

As you will recall, on January 24, 2005, I wrote to Regional Forester Jack Blackwell regarding the protection of all National Forest System lands in California (copy attached). This letter requested that the USDA Forest Service (USFS) promulgate a rule that provided at least the same level of protection as the Interim Directive 1920-2004-1, with four specified modifications, including that roadless status limitations should not compromise our fire fighting efforts consistent with existing authority.

In response to my letter, on January 27, 2005, the Regional Forester provided assurances to the state that USFS would respect the protections of the Interim Directive and the four modifications we had specified so that truly roadless areas would remain roadless (copy attached). In light of the Regional Forester's commitment to keep truly roadless areas roadless we were concerned that the Land Management Plans for the four Southern California forests appeared to designate hundreds of thousands of Inventoried Roadless Areas as being suitable for road construction.

Specifically, the Land Management Plans allocate 253,584 acres of Inventoried Roadless Areas to a "Back Country" land-use zoning designation, 245,209 acres of Inventoried Roadless Areas to a "Back Country Motorized Use Restricted" designation and 38,511 acres of Inventoried Roadless Areas to a "Developed Area Interface" designation. (See Final EIS, Vol. I, Table 548, ch. 2 p. 66.) The "Back Country" and "Developed Area Interface" designations allow any and all road construction or re-construction while the "Back Country Motorized Use Restricted" designation allows for "road construction or re-construction" for authorized uses.

Resources Agency, 1001 S. Main Street, Suite 1000, San Francisco, CA 94104-1100. Tel: 415-773-3000. Fax: 415-773-3001. <http://www.sos.ca.gov>

Mr. Wengardt
March 13, 2006
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(See Land Management Plan Part 2, Angeles National Forest Strategy Table 2.1.3; Land Management Plan Part 2, Cleveland National Forest Strategy, Table 2.2.3; Land Management Plan Part 2, Los Padres National Forest Strategy Table 2.3.3; and, Land Management Plan Part 2, San Bernardino National Forest Strategy Table 2.4.3.)

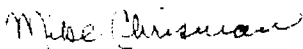
USFS planning staff has informed us that both official and unofficial national forest system routes may be present in these Inventoried Roadless Areas designated "Back Country," "Back Country Motorized Use Restricted," and "Developed Area Interface." We understand that individual national forests are undertaking a route designation process designed to identify the locations of all routes—official and unofficial—on national forest system lands. The USFS is waiting to complete this route designation process until the four Southern California Land Management Plans have been finalized. USFS staff has also informed us that they are considering various projects in the Inventoried Roadless Areas that may require roads, although these projects are not discussed in the land management plans. At the time the public and the decisionmaker were considering the proposed Land Management Plans, they did not have updated route designation information identifying the location of official and unofficial roads in the Inventoried Roadless Areas. Moreover, in considering its land designations in IRAs, the USFS was aware that possible future projects would require roads in the IRAs. This information, which may have affected the USFS's decisions on land designations, was not available to the public. The absence of this data made it difficult for the public and the decisionmaker to evaluate all aspects of the proposed Land Management Plans and their potential environmental impacts.

In light of the information currently available, we are concerned that the four Southern California Land Management Plans do not protect Inventoried Roadless Areas as required by the commitments in your January 27, 2005 letter. Any such failure to protect the Inventoried Roadless Areas would be contrary to federal policy to conserve roadless areas and to provide appropriate deference to state concerns with respect to roadless areas. See Final Rule re State Petitions for Inventoried Roadless Area Management, 70 Fed. Reg. 25653 (May 13, 2005).

Accordingly, we request that the USDA Forest Service take immediate steps to ensure that all Inventoried Roadless Areas are protected in the manner set forth in your January 27, 2005 letter.

Thank you for your immediate attention and consideration of this letter.

Sincerely,



Mike Chrisman, Secretary
CALIFORNIA RESOURCES AGENCY

cc: Judy Noiron, Forest Supervisor
Angeles National Forest
701 N. Santa Anita Avenue
Arcadia, CA 91006

Mr. Wengard
March 13, 2006
Page 3 of 3

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Los Padres National Forest
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Southern California Forest Plan Revisions
USDA FOREST SERVICE CONTENT ANALYSIS CENTER
P.O. Box 22777
Salt Lake City, UT 84122

EXHIBIT - G



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

Regional Office, R5
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File Code: 1900

Date: APR - 4 2006

Secretary Mike Chrisman
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Secretary Chrisman:

We appreciate your letter of March 15, 2006 expressing your concerns regarding certain land designations in the Land Management Plans for the Angeles, Cleveland, Los Padres and San Bernardino National Forests in Southern California. These Land Management Plans set forth a zoning designation developed through an extensive public process to meet the current and projected future needs of stakeholders. Notwithstanding these zoning designations, however, I want to reaffirm the commitment we made to protect Inventoried Roadless Areas (IRAs) throughout the Pacific Southwest Region.

In a letter to you from former Regional Forester Jack Blackwell, dated January 27, 2005, we gave assurances to California that the Forest Service would follow the guidance from the Interim Directive 1920-2004-1, until a final roadless rule was completed for California. Interim Directive 1920-2004-1 has now been extended to July 16, 2007, per Interim Directive 1920-2006-1. By way of background, the Interim Directive provides that IRAs shall generally be managed to preserve their roadless characteristics. Among other things, it allows for the road construction or reconstruction projects described in Section 1925.04b.1 of the Interim Directive (decisions delegated to the Regional Forester), but does not allow other types of road construction or reconstruction in IRAs, unless approved by the Chief. The requirement that the Chief must approve any road construction or reconstruction project not described in Section 1925.04b.1 of the Interim Directive terminates when a forest-scale roads analysis is completed and incorporated into each forest plan. Such an analysis has been completed for most of the 18 national forests in California, and therefore that portion of the Interim Directive no longer applies to those forests. Nevertheless, in light of our agreement with California, we still intend to follow the guidance in the Interim Directive 1920-2004-1, as further amended by the four changes in your letter, until a final roadless rule for California has been completed.

Our January 27th letter also expressed our support for the four changes you proposed for the protection of truly roadless areas in your letter of January 24, 2005. Your changes are listed below and we remain in support of each.

1. The USFS Chief should have no greater discretion than the Regional Forester or Forest Supervisor in approving or disapproving road construction or reconstruction in inventoried roadless areas.



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2. Maps of IRAs need to be updated and shared with the State to confirm that the maps accurately reflect current conditions.
3. Where roads exist in IRAs, we must conduct thoughtful, common sense-based reviews of whether those roads should be actively managed or decommissioned. For example, roads that provide access for Native American Tribes to widely acknowledged sacred sites or meet legitimate public safety objectives or well-managed recreational use should be actively managed. Roads that cannot be managed to mitigate sedimentation in sensitive watersheds should be decommissioned.
4. Roadless status limitations should not compromise our fire fighting efforts consistent with existing authority.

At the conclusion of this letter, we also committed to "developing a roadless rule that fully protects roadless values at least as successfully as the Interim Directive and in a fashion that meets the State's goals for the protection of wild areas in California." We believe that the final rule (adopted May 13, 2005) provides for a state petition process that will, when complete, fulfill this commitment.

Let me assure you that we intend to honor these commitments. We intend to work closely with California throughout the petition process for roadless area management in California until a final rule has been promulgated. And during the interim period, until the petition process is complete and a final rule promulgated, we intend to work with you on roadless area management in national forests in California as follows:


1. We will continue to respect the prohibition on road construction and re-construction set forth in the Interim Directive, as modified by the four changes in your letter, on all national forests in the Region, including those in southern California. Specifically, the Regional Forester: (i) will not authorize road construction or reconstruction projects in IRAs except for the road construction or reconstruction projects described in Section 1925.04b.1 of the Interim Directive (decisions delegated to the Regional Forester), as modified by the four changes in your letter; and (ii) will not recommend to the Chief a decision for any road construction or reconstruction project in an inventoried roadless area within the Chief's decision authority, which is described in Section 1925.04a, para.1. By taking these steps, the Regional Forester can ensure that the USFS will not undertake any road construction or re-construction projects in IRAs in national forests in the Region, except as set forth in the Interim Directive, as modified by the four changes in your letter.
2. Prior to beginning our public scoping process for proposed roads in IRAs, and before we make key NEPA decisions, we will meet with your staff to ensure you agree that our decisions are consistent with the guidance in Interim Directive, as modified by your four changes.
3. If we cannot reach consensus at the staff level, I will meet with you personally to resolve outstanding issues and to ensure consistency with the guidance in Interim Directive, as modified by your four changes.

In addition to these measures, I am affirming our goal of no net increase in miles of roads in inventoried roadless areas within each national forest in California.

There are approximately 260,000 acres of National Forest IRAs in California managed by the Humboldt-Toiyabe National Forest of Region 4 and the Rogue-Siskiyou National Forest of Region 6. I have conferred with the Regional Foresters of Region 4 and Region 6 and they are in agreement with the commitments of this letter and will manage these lands in accordance with the measures outlined in this letter.

I hope that you will find our suggestions agreeable. We believe these measures will help protect roadless values as successfully as the Interim Directive (as modified by the four changes in your letter) until California's petition process is completed and a final rule is in place.

Sincerely,


BERNARD WEINGARDT
Regional Forester