

1 BILL LOCKYER, Attorney General
of the State of California
2 THEODORA BERGER
Senior Assistant Attorney General
3 KEN ALEX (State Bar No. 111236)
Supervising Deputy Attorney General
4 RAÏSSA LERNER (State Bar No. 187038)
Deputy Attorney General
5 1515 Clay Street, 20th Floor
Oakland, CA 94612-1413
6 Telephone: (510) 622-2100
Fax: (510) 622-2270

7 Attorneys for Plaintiff
8 PEOPLE OF THE STATE OF CALIFORNIA *ex rel.*
BILL LOCKYER, ATTORNEY GENERAL
9

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13

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

Plaintiff,

17
18 **v.**

19 **UNITED STATES FOREST SERVICE, JACK**
BLACKWELL, in his official capacity as
20 **Regional Forester For the Pacific Southwest**
Region, and ARTHUR L. GAFFREY, in his
21 **official capacity as Forest Supervisor of the**
Sequoia National Forest,

22 Defendants.
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Case No.:

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. This is an action for declaratory judgment and injunctive relief against the United States
3 Forest Service (“Service”), Jack Blackwell, in his capacity as Regional Forester for the Pacific
4 Southwest Region of the Service (“Regional Forester”), and Arthur Gaffrey in his capacity as the
5 Forest Supervisor for the Sequoia National Forest (“Forest Supervisor”), for failure to comply with
6 the National Environment Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and NEPA’s
7 implementing regulations, in approving the Sequoia National Forest Fire Management Plan (“Fire
8 Plan”). In July 2003, Defendants approved the Fire Plan without public notice, review or input, and
9 without performing any of the environmental analysis that NEPA and its implementing regulations
10 require.

11 2. This action arises under and alleges violations of NEPA, 42 U.S.C. §§ 4321 *et seq.*,
12 regulations adopted by the Council of Environmental Quality, 40 C.F.R. §§ 1500 *et seq.*, and the
13 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 *et seq.*

14 3. Plaintiff seeks a declaratory judgment that NEPA and its implementing regulations require
15 Defendants to have prepared an Environment Assessment (EA) or an Environment Impact Statement
16 (EIS) in connection with developing and considering the Fire Plan, prior to approving the Plan.
17 Plaintiff seeks injunctive relief requiring Defendants to prepare an EIS or an EA, as appropriate, for
18 the Fire Plan, and enjoining Defendants from implementing any provisions of the Plan that may have
19 an adverse environmental impact unless and until Defendants comply fully with NEPA and its
20 implementing regulations.

21 **JURISDICTION AND VENUE**

22 4. Jurisdiction exists in this Court under Title 28 of the United States Code, Section 1331,
23 because the question presented is a federal question, and under Section 1346, because the United
24 States is a defendant. 28 U.S.C. §§ 1331, 1346. Because this action seeks declaratory and injunctive
25 relief, jurisdiction also exists under Title 28, Sections 2201 and 2202, respectively. Finally,
26 jurisdiction exists under Title 5, Section 706, for resolution of questions arising under the APA.

27 5. Venue is properly vested in this Court under Title 28 of the United States Code, Section
28 1391(e)(4), as Plaintiff maintains offices within this district, in San Francisco and Oakland, and the

1 action does not involve “real property” within the meaning of this Section.

2 **INTRADISTRICT ASSIGNMENT**

3 6. Under Civil Local Rule 3-2(c), this case may be assigned to either the San Francisco or
4 the Oakland Division, since venue is grounded on Plaintiff residing in counties within both districts.

5 **PARTIES**

6 7. Plaintiff is the People of the State of California *ex rel.* Bill Lockyer, Attorney General
7 (“People”). The Attorney General has authority under state law to maintain an action for equitable
8 relief in the name of the people of the State of California against any person for the protection of the
9 natural resources of the state from pollution, impairment, or destruction. See Cal. Gov. Code §
10 12607. The Attorney General sues herein in the name of the People.

11 8. The People enjoy recreational, aesthetic, conservation and other benefits from the Sequoia
12 National Forest. The People enjoy, use and value wilderness and roadless areas within the Forest
13 that are free of artificial alterations. The People rely on Defendants’ compliance with NEPA’s
14 procedural requirements in order to obtain timely information about management plans that may
15 have significant adverse environmental effects or that may impair or otherwise affect the
16 environment, and to meaningfully participate in the decision-making process regarding such plans.
17 Defendants’ failure to comply with these requirements in developing and approving the Fire Plan
18 adversely affects the People in that it thwarts their ability to obtain such information and to
19 participate in a public process to develop an appropriate fire plan for the Forest. This failure has
20 resulted in adoption of a fire plan without the benefit of full information or public input, and without
21 analysis or public consideration of the environmental consequences of the chosen methods of
22 dealing with forest fires, nor any analysis or public consideration of a range of reasonable
23 alternatives.

24 9. Defendant UNITED STATES FOREST SERVICE (“Forest Service”) is a federal agency
25 within the Department of Agriculture that is responsible for managing national forests in compliance
26 with NEPA and its implementing regulations.

27 10. Defendant JACK BLACKWELL is the Regional Forester for the Pacific Southwest
28 Region of the Forest Service. He is sued herein in his official capacity.

1 11. Defendant ARTHUR L. GAFFREY is the Forest Supervisor for the Sequoia National
2 Forest. He is sued herein in his official capacity.

3 **BACKGROUND**

4 **A. The Sequoia National Forest**

5 12. The Sequoia National Forest is made up of several discontinuous districts located in and
6 around the southern Sierra Nevada mountain range, within Tulare, Kern and Fresno Counties, in
7 California. Within the Forest boundaries there are approximately 1.1 million acres of National
8 Forest or National Monument lands, and approximately 54,000 acres under other ownership (private,
9 county, state, etc.).

10 13. The Forest is situated largely within the headwaters of the Tulare Lake Basin, at the
11 southern end of the San Joaquin Valley, and is a major source of runoff entering the Basin.
12 Approximately forty percent of the Forest is roadless. The Forest encompasses several established
13 wilderness areas and inventoried roadless areas.

14 14. The Giant Sequoia National Monument lies within the Forest boundaries. The Forest,
15 including Monument lands, contain most of California's last standing groves of ancient Giant
16 Sequoias, among the oldest and largest trees on Earth. The Forest also includes significant areas of
17 old growth and mature trees.

18 15. The vegetative diversity within the Sequoia National Forest provides a variety of
19 ecosystems and habitats supportive of well over 300 species of fish and wildlife. Riparian areas and
20 meadows within the Forest have an importance to wildlife which is highly disproportionate to their
21 overall acreage within the Forest. Timber removal in and adjacent to these areas can damage their
22 integrity as wildlife habitat.

23 16. There are approximately two dozen species inhabiting the Sequoia National Forest that
24 are listed by federal or state authorities as endangered, threatened, sensitive, or of "special concern."
25 Because of habitat losses outside the Sequoia National Forest due to increasing urbanization,
26 wildlife species have become increasingly dependent upon Forest resources.

27 17. The Sequoia National Forest contains more than 2,000 species of plants, over one-fourth
28 of the State's total flora. Approximately two dozen of these species are considered "sensitive" by

1 the Regional Forester, and require special management.

2 18. The lands of the Sequoia National Forest are rich in cultural resources, including pre-
3 historic and historic Native American and other significant resources.

4 19. Commercial timber harvesting is a significant activity within the Forest, except on lands
5 within the Monument.

6 20. The Forest, including Monument lands, contains approximately 732 miles of fishable
7 waterways, and supports an active sport fishing industry. Hiking, camping, motorized travel, horse-
8 back riding, hunting, water-related activities, off-road vehicle use, skiing, and wildflower
9 photography are other popular recreational activities within the Forest.

10 21. The Forest contains a wide range of scenic features, creating public demand for visual
11 quality. Research, education and scenic appreciation are other public uses of the Forest.

12 22. Air quality in the area where the Sequoia National Forest is located has presented a serious
13 and deteriorating problem in recent years.

14 23. The risk of wildfire and catastrophic fire within the Forest has increased in the past several
15 decades due to timber harvesting, fuel loading caused by the discard of logging slash, increasing
16 numbers of young, uniform timber stands and plantations, increasing recreational use, expanding
17 private development, and lack of a fuels management policy. This situation is cause for significant
18 and on-going public concern. The Fire Plan is intended to address this situation. The Fire Plan was
19 developed and approved, however, without notice to the public or opportunity for public
20 participation.

21 **Plans, Agreements and Amendments Governing the Sequoia National Forest**

22 24. In 1988, the Forest Service and Forester Supervisor for the Sequoia National Forest issued
23 a proposed land management plan for the Forest (“1988 Forest Plan”). Many appeals were filed
24 challenging the proposed Plan, including one filed by the California Attorney General on behalf of
25 the People of the State. The Service proposed a mediation process to resolve the appeals, which
26 resulted, in 1990, in a Mediated Settlement Agreement (“MSA”).

27 25. The MSA significantly altered the 1988 Forest Plan, and still applies to the Sequoia
28 National Forest today. Among other things, the MSA protects the ancient Giant Sequoia groves

1 within the Forest from commercial logging.

2 26. One of the management directives for the Sequoia National Forest contained in the 1988
3 Forest Plan is the need to balance gains and losses of suitable wildlife habitat to insure species
4 survival, while also meeting a variety of public needs. This element of the Forest Plan was not
5 altered by the MSA.

6 27. The 1988 Forest Plan states that a fire management plan for the Sequoia National Forest
7 will be developed, and will be incorporated by amendment into the Forest Plan. This element of the
8 Forest Plan was not altered by the MSA.

9 28. In 1992, the first President Bush issued a proclamation explicitly precluding any
10 commercial logging and mining in the Giant Sequoia groves within the Sequoia National Forest.

11 29. In April 2000, President Clinton created the Giant Sequoia National Monument on
12 approximately 328,000 acres of Sequoia National Forest lands, encompassing many of the Giant
13 Sequoia groves. The Proclamation describes and protects many objects of scientific and historic
14 interest, including the Giant Sequoia groves and their surrounding ecosystems. The Proclamation
15 requires the Forest Service to prepare a Monument management plan to implement the purposes and
16 provisions of the Proclamation, within 3 years.

17 30. In January 2001, the Forest Service and the Regional Forester issued a final EIS and
18 Record of Decision (“ROD”) for the Sierra Nevada Forest Plan Amendments, a region-wide set of
19 amendments applicable to the existing forest plans for eleven national forests within the Region,
20 including the Sequoia National Forest (“2001 SNFPA”). The Forest Service received nearly 47,000
21 public comments on the 2001 SNFPA.

22 31. The 2001 SNFPA sets priorities for fire management actions, and specifies general goals
23 and objectives for national forest land management to reflect the role and consequence of wildland
24 fire.

25 32. The ROD for the 2001 SNFPA states that a fire management plan that defines a program
26 to manage wildland and prescribed fires will be completed for each national forest covered by the
27 SNFPA. This ROD states that the fire management plans should develop strategies and tactics that
28 include the appropriate suppression response and apply minimum impact suppression tactics as

1 appropriate in sensitive habitats. The ROD also specifies that a fire management plan describing
2 how prescribed fires and naturally caused wildland fires will achieve resource management
3 objectives must be developed before wildland fires can be used within any forest covered by the
4 2001 SNFPA.

5 33. The ROD for the 2001 SNFPA states that each fire management plan will cover the
6 management of wildland fire ignitions with the appropriate management response or range of
7 response tactics.

8 34. In 2003, the Forest Service and Forest Supervisor of the Sequoia National Forest issued
9 a draft EIS for the Giant Sequoia National Monument Management Plan. Well over 15,000 public
10 comments were submitted concerning this draft EIS. A final EIS (“Monument Plan FEIS”) and
11 ROD for the Monument Management Plan was issued in January, 2004.

12 35. In response to public comments on the draft EIS concerning fire suppression policy within
13 the Monument, the Monument Plan FEIS states that discussion regarding wildfire suppression
14 policies and practices is beyond the scope of this FEIS. The Monument Plan FEIS refers persons
15 interested in these issues to the Fire Plan for documentation of the conditions under which a land
16 manager can allow a wildfire to burn or to be suppressed.

17 36. The Monument Plan FEIS states that, based upon the Fire Plan, management actions on
18 wildland fires within the Monument will no longer be driven by fire type designation, and fires will
19 no longer be extinguished under a default response. This FEIS further states that the specific
20 rationale for fires that will be managed for resource benefits are identified in the Fire Plan, and that
21 the Fire Plan gives management direction on wildland fire use. The Monument Plan FEIS refers
22 readers and commenters to the Fire Plan for further information about fire policy within the
23 Monument.

24 37. In 2003, the Forest Service issued a draft Supplemental EIS for a new set of Sierra Nevada
25 Forest Plan Amendments that purport to supercede the 2001 SNFPA. The Service received
26 approximately 56,000 public comments on this draft EIS. In January 2004, the Forest Service
27 issued a Final Supplemental EIS and ROD for the new Plan Amendments (“2004 SNFPA”).

28 38. The 2004 SNFPA states that it was necessary to review and supercede the 2001 SNFPA

1 because, among other things, of the uncertainty of successful implementation of the fire and fuels
2 management strategy adopted under the 2001 SNFPA. In particular, the 2004 SNFPA states that
3 using prescribed fire to the extent envisioned under the 2001 SNFPA is not realistic, and that the fire
4 and fuels management direction contained in the 2001 SNFPA must be adjusted to make it less
5 complicated and costly to implement. The ROD for the 2004 SNFPA states that the Forest Service
6 cannot do the job it needs to do regarding fire and fuels management under the direction provided
7 in the 2001 SNFPA.

8 **Sequoia National Forest Fire Plan (July 2003)**

9 39. In 1995, the Departments of Agriculture and Interior jointly developed the 1995 Federal
10 Wildland Fire Policy (“1995 Fire Policy”). This Policy requires that every federal area have an
11 approved fire management plan.

12 40. In 1998, the Departments of Agriculture and Interior developed the Wildland and
13 Prescribed Fire Management Policy Implementation Procedures Reference Guide (“1998 Fire
14 Management Guide”), which provides additional direction for development of fire management
15 plans. This Guide states that fire management plans should strive to satisfy NEPA requirements,
16 and that NEPA compliance must be completed before taking advantage of the Fire Policy and full
17 range of management options thereunder.

18 41. The Regional Forester for the Sequoia National Forest approved the Fire Plan for the
19 Sequoia National Forest in July, 2003.

20 42. The Fire Plan states that it is not a decision document because it merely implements the
21 1988 Forest Plan and the 2001 SNFPA. The Fire Plan states that it follows the goals and objectives
22 of the 1988 Forest Plan and the 2001 SNFPA. The Fire Plan states because it follows the goals and
23 objectives of the 1988 Forest Plan and the 2001 SNFPA, each of which were subject to NEPA
24 requirements prior to final approval, the Fire Plan itself meets the requirements of NEPA, and
25 further compliance with NEPA is not required.

26 43. The Fire Plan divides the Sequoia National Forest into three fire management units
27 (“FMUs”) according to the dominant management strategy selected for lands included in each unit.
28 The Fire Plan designates the three units as (1) Wilderness/Wildland Fire Use, in which the dominant

1 fire management objective is designated as maintenance of the characteristics and components of
2 the historic fire regime; (2) Suppression and Restricted Wildland Fire Use, in which the dominant
3 fire management objective is designated as gradual restoration of conditions approximating the
4 historic fire regime and lowering the potential for large and severe wildfire; and (3) Suppression,
5 in which the dominant fire management goal is the protection of life and property by suppression
6 of naturally ignited fires, enhancing fire suppression capabilities, and modifying fire behavior.

7 44. The Fire Plan provides a rationale, goals and objectives for each FMU. For each FMU,
8 the Fire Plan provides a range of appropriate management responses, and actions and
9 implementation procedures to facilitate these responses, based on the objectives of each FMU. The
10 Fire Plan contains a map showing the designation of each area of the Sequoia National Forest into
11 one of the three FMUs.

12 45. The Fire Plan contains programmatic decisions regarding where and to what degree fuel
13 management and fire suppression activities will be undertaken within specific areas of the Sequoia
14 National Forest, what activities are approved for which conditions, where prescribed burns will be
15 allowed and under what conditions, and where and under what circumstances wildland fire will be
16 allowed to burn under natural conditions. These specific decisions were not made in the process of
17 developing and approving other prior existing plans applicable to the Forest, such as the 1988 Forest
18 Plan, the 1990 MSA, or the 2001 SNFPA.

19 46. Neither the 1988 Forest Plan, the MSA, nor the 2001 SNFPA specifies FMUs or any other
20 fire management zones or rationales for the Sequoia National Forest. None of these plans, nor any
21 other plan pre-dating approval of the Fire Plan, specifies which areas of the Forest will be treated
22 with which types of fire management responses. Nor does any such plan contain prescribed fire
23 management responses tailored to specifically designated areas of the Forest.

24 47. The Fire Plan states that the goals for fire management contained in the Plan have been
25 expanded from those outlined in the 2001 SNFPA.

26 48. The specific decisions regarding where and to what degree fire suppression, prescribed
27 fire and wildland fire use will take place within the Sequoia National Forest, described and approved
28 in the Fire Plan, may have significant adverse environmental effects. These decisions may also

1 impair the natural resources of the State of California.

2 49. The specific decisions regarding where and to what degree fire suppression, prescribed
3 fire and wildland fire use will take place within the Sequoia National Forest, described and approved
4 in the Fire Plan, are matters of significant public concern and interest.

5 50. Defendants never conducted an EA or any other scoping in order to determine whether
6 or not the Fire Plan would have significant adverse environmental effects and whether, if it would,
7 those effects could be mitigated to less than significant through program alterations, alternatives or
8 mitigation measures.

9 51. Defendants never determined whether or not the Fire Plan would have a significant effect
10 on the human environment.

11 52. Defendants never considered any alternatives to the Fire Plan.

12 53. Defendants did not notify the public of its consideration of the Fire Plan. Defendants did
13 not make a draft of the Fire Plan available to the public for review prior to final approval of the Fire
14 Plan. Defendants did not solicit public comments on the Fire Plan before issuing final approval of
15 the Plan in July of 2003.

16 54. Defendants issued a final approval of the Fire Plan without complying with NEPA and its
17 implementing regulations, and without any other provision for public notice and participation prior
18 to approval of the Plan.

19 55. The People first discovered the existence of the Fire Plan many months after its final
20 approval, when examining the Monument Plan FEIS, released in January of 2004. Responses to
21 certain public comments contained in an appendix to the Monument Plan FEIS reference the
22 existence of the Fire Plan and its approval in July of 2003.

23 **Applicable Statutory and Regulatory Background**

24 56. NEPA and its implementing regulations require federal agencies to prepare an EA and/or
25 an EIS for any proposal for major federal action “significantly affecting the quality of the human
26 environment.” 42 U.S.C. § 4332(2)(C). *See* 40 C.F.R. § 1501.4.

27 57. Federal agencies are required to determine whether an EA or an EIS should be prepared
28 for any proposal under consideration. 40 C.F.R. § 1501.4.

1 58. A “categorical exclusion” from the requirement that an EA and/or EIS be prepared means
2 “a category of actions which do not individually or cumulatively have a significant effect on the
3 human environment and which have been found to have no such effect in procedures adopted by a
4 Federal agency” 40 C.F.R. § 1508.4.

5 59. Because Defendants excluded the Fire Plan from the NEPA process, and issued a final
6 approval of the Plan without following the procedures NEPA requires for public notice and
7 participation, no administrative appeal or other administrative remedy was available to the People.

8 **CLAIM FOR RELIEF**

9 **Violations of**
10 **National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*;**
Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

11 60. Plaintiff incorporates and realleges each of the foregoing paragraphs in this Complaint.

12 61. The Sequoia National Forest Fire Plan is a major federal action significantly affecting the
13 quality of the human environment within the meaning of NEPA and its implementing regulations.
14 42 U.S.C. § 4332. 40 C.F.R. §§ 1508.18, 1508.27.

15 62. The Fire Plan contains specific management directives and makes specific fire
16 management decisions applicable to the Sequoia National Forest that were not previously approved
17 according to NEPA procedures in any other decision-making document or process that occurred
18 prior to approval of the Fire Plan.

19 63. The Fire Plan makes decisions regarding which fire management strategies will be applied
20 in which specific areas within the Sequoia National Forest that are not reflected in any other
21 decision-making document approved pursuant to NEPA prior to approval of the Fire Plan.

22 64. Defendants failed to prepare either an EA or an EIS prior to issuing final approval of the
23 Fire Plan.

24 65. Defendants did not comply with the public notice and participation requirements of NEPA
25 and its implementing regulations in developing, considering and issuing final approval of the Fire
26 Plan.

27 66. Defendants did not comply in any other respect with the requirements of NEPA and its
28 implementing regulations in developing, considering and issuing final approval of the Fire Plan.

1 NEPA and its implementing regulations

2 (5) Grant such additional and further relief as is just and proper.

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4 Dated: April __, 2004

Respectfully submitted,

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BILL LOCKYER
Attorney General of the State of California
THEODORA BERGER
Senior Assistant Attorney General
KEN ALEX
Supervising Deputy Attorney General

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RAÏSSA S. LERNER
Deputy Attorney General

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Attorneys for Plaintiff People of the State of California
ex rel. Bill Lockyer, Attorney General

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