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**UNITED STATES DISTRICT COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**EASTERN DIVISION**

**FRIENDS OF THE BIG BEAR VALLEY**, a nonprofit association;  
**JOHN MUIR PROJECT OF EARTH ISLAND INSTITUTE**, a nonprofit corporation; **SAN BERNARDINO VALLEY AUDUBON SOCIETY**, a nonprofit corporation,

Plaintiffs,

vs.

**UNITED STATES FOREST SERVICE**, an agency of the United States Department of Agriculture; **FREDDIE DUNCAN**, District Ranger, Mountaintop Ranger District, San Bernardino National Forest, in his official capacity,

Defendants

Case No.: 5:23-cv-1609

**COMPLAINT FOR VACATUR, INJUNCTIVE, AND DECLARATORY RELIEF**

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

## JURISDICTION AND VENUE

1  
2 1. This Court has jurisdiction over this action pursuant to 28  
3 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2412 (costs and fees).  
4 Plaintiffs seek judicial review of final agency actions of the United  
5 States Forest Service, as defined by the Administrative Procedure Act  
6 (“APA”), 5 U.S.C. § 704 (actions reviewable).  
7

8  
9 2. Venue is properly rested in this Court pursuant to 28 U.S.C.  
10 § 1391(e)(1) because the events or omissions giving rise to the claims  
11 occurred in this district, primarily in San Bernardino County.  
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13

## INTRODUCTION

14  
15 3. Plaintiffs Friends of Big Bear Valley, John Muir Project of  
16 Earth Island Institute, and San Bernardino Valley Audubon Society  
17 (collectively “Plaintiffs”) challenge Defendant United States Forest  
18 Service’s (“USFS”) Decision Notice/Finding of No Significant Impact  
19 (“DN/FONSI”) approving the North Big Bear Landscape Restoration  
20 Project (“North Big Bear Project” or “Project”). Defendant Freddie  
21 Duncan (“Duncan” or collectively with USFS “Defendants” or “Forest  
22 Service”) signed the DN/FONSI on May 1, 2023. Plaintiffs bring this  
23 challenge on the grounds that the DN/FONSI (1) violates the National  
24 Environmental Policy Act (“NEPA”) and its implementing regulations,  
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1 (2) violates the USFS's objection regulations, and (3) violates the  
2 National Forest Management Act ("NFMA") and its implementing  
3 regulations.  
4

5 4. According to the Forest Service, the stated purpose of the  
6 Project is to curb wildfire behavior to protect adjacent human  
7 communities, while improving forest health and wildlife habitat, by  
8 removing many trees in forests which the Forest Service asserts are  
9 unnaturally and excessively dense.  
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11

12 5. To accomplish the stated goal, the Project as approved will  
13 involve a significant amount of "fuel reduction," which is a euphemism  
14 for tree and vegetation removal by means of prescribed burns as well as  
15 mechanical and/or hand removal of trees and other vegetation. The  
16 Environmental Assessment ("EA") and other Project documents do not  
17 clearly state what the Forest Service intends to do with the thousands  
18 of trees that they propose to cut down, including whether the Forest  
19 Service plans to skin and haul the logs with industrial ground-based  
20 logging machinery. The EA also fails to describe the soil and vegetation  
21 impacts associated with such activities.  
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27 6. Prescribed fires are intentionally set fires that are planned,  
28 managed, and monitored for temperature, humidity, wind, vegetative

1 moisture, and smoke dispersal by the Forest Service. Prescribed fires  
2 also include “broadcast burning” which is the process of setting fire to  
3 most or all of an area within well-defined boundaries for the stated  
4 purpose of reducing fuel hazards and managing biological resources, or  
5 both. The Project documents state that the Project activities, including  
6 widespread tree cutting, ground disturbance, and prescribed fires  
7 adjacent to homes would occur over the duration of 15 to 20 years (EA,  
8 p. 22) on more than 13,000 acres of forest. Yet the Forest Service claims  
9 Project implementation will not result in any potentially significant  
10 impacts. Recently, the Forest Service has acknowledged that the  
11 agency’s prescribed fires, including broadcast burns and pile burning  
12 (i.e., burning of branches on the ground after thinning), has caused  
13 multiple escapes of such prescribed fires, which in turn has led to the  
14 destruction of large portions of adjacent human communities.  
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21           7. According to the DN/FONSI, an area of at least 1,200 acres  
22 but not to exceed 2,000 acres would be subject to prescribed burns  
23 annually within the proposed action area, adjacent to human  
24 communities. The burns would occur in 100-to-600-acre blocks as a  
25 daily prescribed burn during appropriate seasons. Prescribed burns  
26 adjacent to riparian areas would be conducted within a 500-foot buffer  
27  
28

1 when vegetation fuel contains high moistures levels to protect willows  
2 or other riparian shrubs and trees. Each of the project area watersheds  
3  
4 would be subject to prescribed burns up to 1,000 acres every 3 years.

5 8. The Project's proposed fuels management also includes  
6  
7 vegetation thinning in the form of timber removal using mechanical and  
8  
9 hand thinning techniques. "Forest thinning" reduces the number of  
10  
11 trees by cutting and removing them from the forest. The Forest  
12  
13 Service's theory justifying this activity is that reducing the number of  
14  
15 trees could result in lower intensity wildfires or prescribed burns and  
16  
17 ultimately reduce wildfire risk.

18 9. The Forest Service proposes to cut and remove trees using  
19  
20 heavy equipment such as bulldozers, cranes, and woodchippers, a  
21  
22 process which would result in soil disturbance and compaction. Tree  
23  
24 removal activities would also include crews using chainsaws, rakes, and  
25  
26 manually removing forest debris from the Project area.

27 10. Vegetation thinning within riparian conservation areas  
28  
29 ("RCA") could reduce riparian ground cover, e.g., rocks, stumps,  
30  
31 branches, leaves, litter, duff, and living plants less than 5 feet tall, by  
32  
33 up to 30 percent of naturally occurring cover within the Project area.  
34  
35 The total vegetation thinning in watersheds within the Project area

1 would include up to 600 acres of mechanical thinning every 5 years. It is  
2 not clear if nonmechanical thinning or vegetation removal can exceed  
3 this limit.  
4

5 11. Through these efforts, the Forest Service purports to restore  
6 forests within the Project area to pre-settlement conditions and thereby  
7 curb fire behavior, despite highly controversial and uncertain evidence  
8 and impacts, including: (1) the controversy surrounding the purported  
9 evidence that pre-settlement forests were much less dense than today's  
10 conditions, including the fact that the Forest Service's own evidence  
11 shows that current forests in the North Big Bear Project area are  
12 substantially less dense, not more dense, than historical forests; (2) the  
13 controversy created by the existence of abundant scientific evidence  
14 (submitted to the Forest Service by Plaintiffs during the comment  
15 period), including studies by Forest Service scientists, which concluded  
16 that forest fires are driven mainly by weather and climate factors and  
17 that mechanical thinning changes the microclimate of forests, creating  
18 hotter, drier, windier conditions, and promoting the growth and spread  
19 of highly combustible invasive grasses, all of which tends to increase  
20 rather than decrease the rate of spread and overall severity in fires; (3)  
21 the controversy created by the existence of abundant scientific evidence  
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1 from scientists, including the Forest Service's own scientists, concluding  
2 that thinning and other vegetation management in forests distant from  
3 homes does not stop fires from reaching communities and in fact often  
4 makes fires spread faster toward communities, thus increasing threats  
5 to public safety, while defensible space pruning (not logging) within 100  
6 or 200 feet of private properties is highly effective in protecting homes  
7 and lives; (4) the controversy created by the potential for fires set by the  
8 Forest Service to escape and destroy nearby communities; and (5) the  
9 controversy regarding the adverse impacts that the Project would have  
10 on an established Bald Eagle nest location, as pointed out by the over  
11 1,000 comments submitted by the public expressing deep concern  
12 regarding the degradation of habitat and noise disturbance impacts of  
13 the Project to nationally famed Bald Eagles within the Project area,  
14 including areas used by Bald Eagles far from the nest site.

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21 12. The last time the San Bernardino National Forest pursued  
22 the same approach represented by the North Big Bear Project was in  
23 the early to mid-2000s, prior to the Grass Valley wildfire of 2007. This  
24 fire rapidly swept through the areas that had been thinned and burned  
25 down 199 homes—an outcome that the Forest Service's own scientists  
26 blamed on the agency's failure to focus on the homes and the immediate  
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1 vicinity adjacent to homes, as opposed to distant forest wildlands. In its  
2 Response to Comments document, the Forest Service ignored this  
3  
4 evidence and the importance of pursuing the activities known to  
5 actually protect public safety from fires, dismissively rejecting  
6  
7 consideration of this science by disingenuously claiming that focusing  
8 on the safety of adjacent communities is “beyond the scope” of the  
9  
10 Forest Service’s consideration (EA, App. C (Response to Comments) at  
11 p. 9). Furthermore, the North Big Bear Project EA and associated  
12  
13 documents and reports did not meaningfully or adequately address the  
14 potential for the Project to increase the risk to public safety from  
15  
16 wildfires or prescribed fires set by the Forest Service adjacent to  
17 communities, and the potential for escape of such fires toward homes.

18       13. The Forest Service’s analysis of the impacts from this Project  
19  
20 and the decision to approve the Project based on an EA violates NEPA  
21  
22 and established Ninth Circuit precedent by, among other things, failing  
23  
24 to prepare an Environmental Impact Statement (“EIS”) in the face of a  
25  
26 highly controversial debate about the fire outcomes resulting from  
27  
28 mechanical thinning. BARK v. U.S. Forest Service, 958 F.3d 865 (9th  
Cir. 2020).



1           14. In order to prevent the Forest Service from logging in ways  
2 that will increase fire threats to adjacent human communities, degrade  
3 forests that provides essential wildlife habitat, and result in violations  
4 of the Forest Service's duties under NEPA, Plaintiffs seek from this  
5 Court an order and judgment:  
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- 8           a. Declaring that the Forest Service's DN/FONSI for the  
9 Project violates NEPA, 42 U.S.C. § 4321, et seq., and is  
10 arbitrary, capricious, an abuse of discretion, and/or not in  
11 accordance with law under the APA, 5 U.S.C. § 706(2)(A);  
12  
13           b. Vacating and setting aside the Forest Service's  
14 DN/FONSI as an illegal agency action under the APA;  
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16           c. Permanently enjoining the Forest Service from  
17 implementing the North Big Bear Project until the agency  
18 complies with NEPA, USFS Objection regulations, and  
19 NFMA;  
20  
21           d. Enter appropriate injunctive relief to ensure that  
22 Defendants comply with NEPA and specifically to ensure  
23 that Defendants and their agents take no further actions  
24 toward proceeding with the challenged Project until they  
25 have complied with NEPA;  
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- 1 e. Awarding Plaintiff its reasonable attorneys’ fees and costs  
2 pursuant to the Equal Access to Justice Act, 28 U.S.C. §  
3 2412; and  
4  
5 f. Awarding such further relief as the Court deems just and  
6 equitable.  
7

## 8 **PARTIES**

9  
10 15. Plaintiff JOHN MUIR PROJECT is a private organization  
11 with a longstanding interest in the protection of national forests. John  
12 Muir Project is a project of the EARTH ISLAND INSTITUTE (“EII”),  
13 which is a nonprofit corporation organized under the laws of the State  
14 of California. EII is headquartered in Berkeley, California. EII’s mission  
15 is to develop and support projects that counteract threats to the  
16 biological and cultural diversity that sustains the environment.  
17 Through education and activism, these projects promote the  
18 conservation, preservation, and restoration of the earth. One of these  
19 projects is the John Muir Project, whose mission is to protect all federal  
20 public forestlands from commercial exploitation that undermines and  
21 compromises science-based ecological management. The John Muir  
22 Project offices are located in San Bernardino County, California. EII is a  
23 membership organization with over 15,000 members in the United  
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1 States, over 3,000 of whom use and enjoy the National Forests of  
2 California for recreational, educational, aesthetic, spiritual, and other  
3  
4 purposes.

5         16. The John Muir Project and EII’s members include  
6  
7 individuals who regularly use public lands throughout the San  
8 Bernardino National Forest—and specifically Mountaintop District—  
9  
10 for scientific study, recreational enjoyment, aesthetic beauty, and  
11 nature photography. These members’ interests will be irreparably  
12 harmed by the planned logging because they will no longer be able to  
13 scientifically study these areas in their current state, take nature  
14 photographs of the area in its current state, or enjoy the aesthetic  
15 beauty of the unlogged forest habitat and its inhabitants.  
16  
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18         17. Plaintiff FRIENDS OF BIG BEAR VALLEY (“Friends”) is a  
19 non-profit association whose headquarters are in Fawnskin, California,  
20 on the south side of Big Bear Lake. Friends is actively involved in  
21 species and habitat protection issues in and around Big Bear Lake and  
22 has more than 11,000 members and over 850,000 followers/subscribers,  
23 including many members who reside and recreate in and around Big  
24 Bear Lake. One of Friends’ primary missions is to protect and restore  
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1 habitat and populations of imperiled species, including from the  
2 impacts of forest management practices that harm the environment.  
3

4 18. Friends' members and staff include individuals who  
5 regularly use and intend to continue to use the San Bernardino  
6 National Forest, specifically Mountaintop District. These members and  
7 staff use the area for observation, research, aesthetic enjoyment,  
8 spiritual practice, and other recreational, scientific, spiritual, and  
9 educational activities. Friends' staff and members use the area to enjoy  
10 its character and to observe or study species, including the Bald Eagle,  
11 which inhabits the area and/or uses it for foraging. These members'  
12 interests will be irreparably harmed by the planned logging in the  
13 Project area because they will neither be able to visit and enjoy this  
14 area in its current state any longer, nor be able to observe or attempt to  
15 observe the species which use and are dependent on these areas in their  
16 current state.  
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23 19. Plaintiff SAN BERNARDINO VALLEY AUDUBON  
24 SOCIETY ("SBVAS") is a nonprofit corporation organized under the  
25 laws of the State of California. SBVAS, with a membership of over  
26 1,700, strives to bring people to their natural environment. Focusing on  
27 birds and other wildlife, they hope to conserve natural resources in the  
28

1 Southern California's "Inland Empire," specifically San Bernardino,  
2 Riverside, and Imperial Counties. Founded in 1948, SBVAS is  
3  
4 southeastern California's leading non-profit engaging people in the  
5 conservation of birds and their habitats. SBVAS involves people  
6  
7 through recreational birding, education programs, and conservation  
8 actions from counting birds to working with local, state, and national  
9  
10 policy makers.

11         20. This suit is brought by Friends, the John Muir Project of EII,  
12 and SBVAS on behalf of themselves and their adversely affected  
13  
14 members and staff. Plaintiffs have an organizational interest in the  
15 proper and lawful management of the San Bernardino National Forest,  
16  
17 specifically Mountaintop District. Plaintiffs' and their members' present  
18 and future interests in the use of the Mountaintop District area are and  
19  
20 will be directly and adversely affected by the challenged decision. Those  
21  
22 adverse effects include, but are not limited to: (1) endangering public  
23 safety from wildfires and prescribed fires; (2) harm to iconic Bald Eagle  
24 nest and foraging and roosting sites; (3) harm to wildlife, including  
25  
26 protected species, and degradation of their habitats within and around  
27  
28 the Project area from proposed fuel reduction activities; (4) reduction  
and impairment of recreation opportunities; (5) impaired spiritual and

1 aesthetic values of forest lands, trails, and landscapes caused by  
2 Defendants' tree and vegetation removal and related activities; and (6)  
3 loss of scientific investigation and observation opportunities with regard  
4 to wildlife in areas proposed for logging. In addition, Plaintiffs and their  
5 members and staff have an interest in ensuring that Defendants comply  
6 with all applicable laws, regulations, and procedures pertaining to the  
7 management of national forest lands. These are actual, concrete injuries  
8 caused by Defendants' failure to comply with mandatory duties under  
9 NEPA, NFMA, and other federal laws. Because Defendants' actions  
10 approving the Project violate the law, a favorable decision by this Court  
11 will redress the actual and imminent injury to Plaintiffs.  
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17 21. Plaintiffs have participated extensively in administrative  
18 actions to protect their interests within the San Bernardino National  
19 Forest. Friends, John Muir Project, and SBVAS actively participated in  
20 the administrative review process by submitting substantive comments  
21 and objections. The Plaintiffs have exhausted any and all available  
22 administrative remedies.  
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26 22. Pursuant to 5 U.S.C. §§ 702 and 704, a reviewable final  
27 agency action exists and is subject to this Court's review.  
28

1           23. Defendant FOREST SERVICE is an agency of the United  
2 States and is a division of the Department of Agriculture charged with  
3 managing the public lands and resources of the San Bernardino  
4 National Forest in accordance with NEPA and NFMA and their  
5 implementing regulations.  
6

7  
8           24. Defendant FREDDIE DUNCAN, District Ranger for  
9 Mountaintop Ranger Districts, approved the North Big Bear Landscape  
10 Restoration Project in the San Bernardino National Forest and signed  
11 the DN/FONSI. The DN/FONSI is the Forest Service’s final agency  
12 action regarding the North Big Bear Landscape Restoration Project.  
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15           25. Defendant Duncan is sued only in his official capacity.  
16

## 17           **STATUTORY AND REGULATORY FRAMEWORK**

### 18           **National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*)**

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20           26. Congress enacted the National Environmental Policy Act  
21 (“NEPA”) in 1969. NEPA’s primary purposes are to ensure fully  
22 informed decision-making and to provide for public participation in  
23 environmental analysis and decision-making. 40 C.F.R §§ 1500.1(b) &  
24 (c). To this end, NEPA directs all federal agencies to assess the  
25 environmental impacts of proposed actions that significantly affect the  
26 quality of the human environment.  
27  
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1           27. The Council on Environmental Quality (“CEQ”) promulgates  
2 uniform regulations to implement NEPA. These regulations are binding  
3 on all federal agencies and can be found at 40 C.F.R. §§ 1500–1518.4.  
4

5           28. The CEQ regulations require federal agencies to adopt  
6 procedures to implement NEPA that supplement the CEQ regulations.  
7 40 C.F.R. § 1507.3. The USFS’s NEPA procedures can be found at 36  
8 C.F.R. §§ 220.1–220.7.  
9  
10

11           29. NEPA requires all federal agencies to prepare a “detailed  
12 statement,” referred to as an Environmental Impact Statement (“EIS”),  
13 assessing the environmental impacts of all “major Federal actions  
14 significantly affecting the quality of the human environment.” 42 U.S.C.  
15 § 4332(C).  
16  
17

18           30. Alternatively, an agency may instead prepare an  
19 Environmental Assessment (“EA”) to help determine whether or not a  
20 proposed activity will significantly affect the quality of the human  
21 environment. An EA is “a concise public document for which a federal  
22 agency is responsible.” 40 C.F.R. § 1508.9(a). The EA needs to include  
23 sufficient evidence and analysis in order to determine whether an EIS  
24 or a Finding of No Significant Impact (“FONSI”) is required. 40 C.F.R. §  
25 1508.9, *see also* 36 C.F.R. § 220.7(b)(3)(i).  
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1 EA needs to “provide sufficient evidence and analysis for determining  
2 whether to prepare an [EIS] or a [FONSI]”. 40 C.F.R. § 1508.9(a)(1).

3  
4 Public scrutiny is essential to implementing NEPA. 40 C.F.R. §  
5 1500.1(b). NEPA requires agencies to make diligent efforts to involve  
6 the public in preparing and implementing their NEPA procedures. 40  
7 C.F.R. § 1506.6(a). NEPA procedures ensure that environmental  
8 information will be made available to public officials and citizens before  
9 decisions are made and actions are taken. 40 C.F.R. § 1500.1(b).

10  
11  
12 35. NEPA requires that all agencies “study, develop, and  
13 describe appropriate alternatives to recommend courses of action.” 42  
14 U.S.C. § 4332(2)(E). This requirement “extends to all such proposals,  
15 not just . . . [environmental] impact statements.” 40 C.F.R. § 1507.2(d).

16  
17 The EA shall also provide sufficient evidence and analysis of the  
18 environmental impacts of the proposed action, as well as the  
19 alternative(s). 36 C.F.R. § 220.7(b)(3)(i).

20  
21  
22 36. NEPA requires agencies to take a hard look at the  
23 environmental consequences before taking a major action. This includes  
24 considering all foreseeable direct and indirect impacts, as well as  
25 cumulative impacts.  
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1           37. To determine the significance of a federal action, CEQ  
2 regulations require agencies to look to both the context and intensity of  
3 the action. 40 C.F.R. § 1508.27. Context refers to the significance of the  
4 action in regards to society as a whole, the affected region, the affected  
5 interests, and the locality. Both short- and long-term effects are  
6 relevant to the action’s context. 40 C.F.R. § 1508.27(a). The intensity of  
7 the action is evaluated based on several factors, including, but not  
8 limited to, the degree to which the possible effects on the human  
9 environment are highly controversial or uncertain or involve unknown  
10 characteristics or risks, the degree to which the action may establish a  
11 precedent for future actions with significant effects or represents a  
12 decision in principle about a future consideration, whether the action is  
13 related to other actions with individually insignificant but cumulatively  
14 significant impacts, and the degree to which an action may adversely  
15 affect an endangered or threatened species or its habitat that has been  
16 determined to be critical under the Endangered Species Act. 40 C.F.R. §  
17 1508.27(b). “Significance exists if it is reasonable to anticipate a  
18 cumulatively significant impact on the environment.” 40 C.F.R. §  
19 1508.27(b)(7).

1 38. Accurate scientific analysis is essential to NEPA  
2 implementation. 40 C.F.R. § 1500.1(b).

3  
4 39. NEPA documents need to be written in plain language so  
5 that decisionmakers and the public can readily understand them.  
6 Documents are unacceptable if they are indecipherable to the public.

7  
8 40. After completing an adequate EA, the agency shall prepare  
9 either an EIS or a FONSI. An agency must prepare an EIS when it  
10 makes a determination that the action has the potential to significantly  
11 affect the natural or human environment. 36 C.F.R. § 220.6(c).

12  
13 41. A FONSI will be prepared if the action causes no significant  
14 effect to the environment; but the agency must provide a convincing  
15 statement of reasons to explain how the impacts are insignificant. 40  
16 C.F.R. § 1508.13.

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20 ***United States Forest Service Project-Level Predecisional***  
21 ***Administrative Review Process Regulations (36 C.F.R. Pt. 218)***

22  
23 42. The USFS provides regulations establishing a predecisional  
24 administrative review (also known as objection) process for proposed  
25 actions of USFS projects. 36 C.F.R. § 218.1.

26  
27 43. Objections are written documents seeking predecisional  
28 administrative review of a proposed project implementing a land

1 management plan that are documented with an EA. They can be filed  
2 by those who have submitted written comments to the specific project  
3 during the commenting opportunity. 36 C.F.R. § 218.2.

4  
5 44. These regulations note that certain projects are subject to  
6 legal notice and the opportunity to comment; among these are projects  
7 for which a revised EA is prepared based on consideration of new  
8 information or changed circumstances. 36 C.F.R. § 218.22(d). This not  
9 only provides the public with an opportunity to comment but ensures  
10 that the right to file an objection is maintained for those who comment.  
11 36 C.F.R. § 218.5.

12  
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15 ***Administrative Procedure Act (5 U.S.C. § 551 et seq.)***

16  
17 45. Section 702 of the APA provides a private cause of action to  
18 any person “suffering legal wrong because of agency action, or adversely  
19 affected or aggrieved by agency action within the meaning of a relevant  
20 statute.” 5 U.S.C. § 702.

21  
22  
23 46. Under section 704 of the APA, only “final agency actions” are  
24 reviewable. 5 U.S.C. § 704. A final agency action is one that marks the  
25 consummation of the agency’s decision-making process and one by  
26 which rights or obligations have been determined or from which legal  
27 consequences flow. Bennett v. Spear, 520 U.S. 154, 177-78 (1997).  
28



1 uncharacteristically large or severe wildfires, or  
2 vegetation type conversion resulting from extensive  
3 mortality outside the range of natural variability;  
4

5 4) Restore historic vegetation heterogeneity across the  
6 project area to improve native plant and wildlife habitat  
7 by moving species composition mix to conditions more like  
8 pre-settlement composition;  
9  
10

11 5) Restore and protect habitats for rare and sensitive plant  
12 and wildlife species;  
13

14 6) Reduce drought stress to trees, and potential for  
15 uncharacteristically severe insect infestation due to  
16 vegetation densities exceeding the natural range of  
17 variation;  
18

19 7) Maintain roads and trails to Forest Service standards to  
20 prevent erosion and impacts to vegetation;  
21

22 8) Reduce road density to improve watershed conditions and  
23 achieve travel management objectives; and  
24

25 9) Rehabilitate undesired user-created roads and trails with  
26 native vegetation.  
27  
28

1           49. According to the Forest Service, “[p]rescribed fire, including  
2 broadcast, pile, and jackpot burning may occur over the entire project  
3 area, except pebble plains. In general, prescribed fire occurs between  
4 the months of November and June.” (EA, p. 5).

- 5  
6           • Broadcast burning, or burning surface fuels, small plants,  
7 shrubs and small trees, would occur in plant community  
8 types that historically had low-severity and mixed-  
9 severity fire regimes such as yellow pine and mixed  
10 conifer, meadow, and sagebrush ecosystems. Broadcast  
11 burning may occur as a stand-alone treatment where  
12 fuels are optimal to support low to moderate intensity  
13 fire, or may occur post-mechanical thinning. Broadcast  
14 burning is expected to be a continuous and ongoing  
15 treatment. The timing of broadcast burning would be  
16 dependent on a combination of factors including  
17 vegetation response, fuels conditions, weather conditions,  
18 availability of resources and is expected to occur with a  
19 frequency of 4-10 years per broadcast burn unit.
- 20  
21           • Pile burning is burning of slash piles, usually limbs,  
22 shrubs and small trees, after mechanical treatments. Pile  
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1 burning may occur intermittently after mechanical  
2 treatment for maintenance of fuel breaks within pinyon-  
3 juniper ecosystems.  
4

- 5 • Thinning would include hand and mechanical treatments.

6 Hand thinning treatments would occur in areas where  
7 slope exceeds 35%, or where there is a significant concern  
8 about impacting cultural resources, sensitive plant, soil  
9 conditions, or wildlife species and habitat. Variable  
10 density thinning, including creation of clumps of trees,  
11 widely spaced individual trees, and canopy openings for  
12 structural diversity, will occur in yellow pine and mixed  
13 conifer stands where stand density is high.  
14

- 15 • Thinning to a canopy spacing of approximately 17 trees  
16 per acre would occur in pinyon-juniper and mountain  
17 mahogany dominated stands within the Wildland Urban  
18 Interface (WUI) defense zone to a distance of 300' from  
19 structures, private lands, infrastructure and egress  
20 routes. Within the WUI defense zone large shrubs may be  
21 topped to 2' in height to maintain lower flame lengths. It  
22 is expected the overstory thinning will be a one-time  
23  
24  
25  
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28

1 treatment. Removal of small trees and shrubs may occur  
2 as needed to maintain treatment effectiveness.

- 3
- 4 • Within un-occupied California spotted owl protected  
5 activity centers (PACs) hand-thinning of understory white  
6 fir may occur to reduce fire behavior. White fir thinning is  
7 anticipated to be a one-time treatment limited to  
8 unoccupied PACs and will be maintained by prescribed  
9 fire. No thinning is planned in occupied PACs.
- 10
- 11
- 12 • Within canyon live oak dominated stands, canyon live oak  
13 would be pruned to avoid aggressive resprouting.
- 14
- 15 • Canopy openings of up to 1 acre in pinyon-juniper  
16 dominated stands may be created in post-settlement  
17 colonized stands, located where advantageous to fire  
18 suppression up to 1/3 of pinyon-juniper dominated stands.
- 19
- 20
- 21 • Removing conifers established post-settlement from  
22 meadows and pebble plains. (EA, pp. 5-7).
- 23

24 50. The EA admits that “[a]pplication of prescribed fire has the  
25 potential to induce fire-based mortality upon residual trees due to  
26 scorching of the bole, crown, and/or root system.” (EA, p. 18).



1           56. Accurate scientific analysis is essential to NEPA  
2 implementation. 40 C.F.R. § 1500.1(b). Moreover, an agency needs to set  
3  
4 forth its reasoning clearly enough to permit the public to meaningfully  
5 and constructively comment. It is fundamental that the public be given  
6  
7 an indication of what the agency proposes to do.

8           57. The EA contains several inaccuracies and misstatements  
9 that undermine the Forest Service’s conclusion that the Project will not  
10 result in any significant impacts on the environment. For example,  
11 Land Management Plan (“LMP”) Standard S18 requires protection of  
12 known raptor nest trees “including not treating the areas within ¼-mile  
13 of bald eagle habitat during the period when the most eagles are  
14 present (December 1 to April 1).” EA, p. 29. However, as Friends noted  
15  
16 in their Objection, contrary to the statement in the EA, bald eagles are  
17 present in Grout Bay and utilize the same nest year-round. Friends  
18 warned that “If mechanical thinning and prescribed fires are continued  
19 in the nest area up to January, the eagle pair will most likely abandon  
20 the nest since their nesting activities would be interrupted.” (Friends  
21 comments on EA).

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27           58. Similarly, the Biological Evaluation (“BE”)—on which the  
28 EA relies—assumes that the eagles’ nesting period begins in January,

1 ignoring the detailed documentation Friends provided with its  
2 comments demonstrating that each year the eagle pair begins nesting  
3 activities in early October. Elsewhere, the BE incorrectly claims that  
4 the “timing of nesting in the San Bernardino Mountains is not  
5 documented,” ignoring the fact that the timing of the resident bonded  
6 eagle pair in Grout Bay has been carefully observed and that the timing  
7 of the initiation of their nest has been documented at least since 2015.  
8  
9  
10

11 BE, p. 24

12  
13 59. The map of night roost locations for bald eagles is based on  
14 outdated data collected in 1990 and updated in 2010. This mapping  
15 effort ignores more recent reliable data and will result in insufficient  
16 protection for current roosting sites. The EA’s analysis of impact on the  
17 bald eagle is tainted by this reliance on outdated data.  
18  
19

20 60. The EA claims that current forests are unnaturally dense  
21 relative to historical forests in the Project area, but the Forest Service’s  
22 own current forest survey data in the Project area as well as sources  
23 relied upon in the EA document the fact that current forests are  
24 substantially less dense than historical forests in the Project area, as  
25 detailed in John Muir Project’s Objection. (JMP Objection, p. 4).  
26  
27  
28

## CLAIM FOR RELIEF 2

1                   **(Failure to Take the Requisite “Hard Look” at Impacts)**

2           61. NEPA requires agencies to take a “hard look” at  
3  
4 environmental consequences before taking an action. Robertson v.  
5 Methow Valley Citizens Council, 490 U.S. 332 (1989).  
6

7           62. In order to satisfy NEPA’s “hard look” requirement,  
8 agencies need to consider all foreseeable direct and indirect impacts  
9 that the action poses, along with cumulative impacts that result from  
10 the proposed project together with other projects (past, present, or  
11 future). In determining an action’s significance, the agency needs to  
12 analyze both the context and intensity of the action—including looking  
13 at short- and long-term effects as well as cumulative impacts. 40 C.F.R.  
14 § 1508.27.  
15  
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18           63. The EA fails to take a “hard look” at scientific evidence and  
19 arguments, advanced by Plaintiffs, which cast doubt on the veracity of a  
20 number of assumptions this Project is based on, particularly the  
21 assumption that fuel reduction by tree removal, i.e., thinning, will  
22 necessarily reduce the severity of forest fires and represents an effective  
23 way to protect adjacent human communities, and the assumption that  
24 current forests are denser than historical forests in the Project area. As  
25 set forth more fully below, comments of Plaintiff John Muir Project,  
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28

1 citing credible and recent studies, including research by Forest Service  
2 scientists, cast serious doubt on some of the most fundamental  
3 assumptions underlying the entire Project. The Forest Service’s  
4 inadequate, dismissive, and cursory response to these comments  
5 demonstrates that the Forest Service failed to take the requisite hard  
6 look at this contrary evidence.  
7  
8

9  
10 64. The EA’s analysis of direct, indirect, and cumulative impacts  
11 on famed resident bald eagles does not pass muster under the “hard  
12 look” standard.  
13

- 14 • The BE at page 23 states that the duration of the limited  
15 operating period (“LOP”) for the bald eagles will be  
16 determined based on whether eagles are spotted in the  
17 work area doing breeding and nesting behavior but fails  
18 to specify any qualifications or other specific guidelines as  
19 to how the “spotting” is to be accomplished. This omission  
20 is significant because bald eagles are known for being  
21 secretive and are therefore not easily spotted. Qualified  
22 individuals with specific expertise are needed. The EA did  
23 not take a “hard look” at the efficacy and feasibility of this  
24 mitigation measure.  
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- 1 • The BE at page 24 includes guidelines that direct the  
2 Service to “[a]void treatments in mapped bald eagle nest  
3 and night roost habitat **unless treatments are**  
4 **designed to improve habitat protection,**” (emphasis  
5 added) but fails to define “improve habitat protection” in  
6 this context and does not set forth any criteria for  
7 evaluation of any proposed action. That guideline also  
8 provides that “[w]here that is not feasible to avoid  
9 treatments due to community protection measures or not  
10 desirable for habitat protection,” other guidelines will be  
11 followed. However, other guidelines are inadequate and  
12 unreliable in part because they incorrectly claim that the  
13 “timing of nesting in the San Bernardino Mountains is not  
14 documented.” (BE, p. 25). The nesting has been actively  
15 and widely documented since 2015 when the live stream  
16 camera was installed on the nest and all activities have  
17 been documented thoroughly on the Facebook page  
18 <https://www.facebook.com/FOBBV> and the YouTube  
19 channel <https://www.youtube.com/c/FOBBVCAM>.

20 Accordingly, the guidelines must be revised in light of the  
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1           wealth of information that has been collected about the  
2           timing of bald eagle nesting in this area.

- 3
- 4           • The EA fails to evaluate the impact of removing all live  
5           trees less than 16 inches in diameter at breast height  
6           (DBH) from the eagle nesting area. There is evidence that  
7           removing trees between 8” and 16” can and will  
8           substantially affect the canopy cover, which is known to  
9           impact bald eagle nesting, yet the EA does not discuss the  
10          impact on the canopy cover and in turn, on the eagles.  
11          Ironically, the Response to Comments at page 4  
12          acknowledges that forest canopy cover must be retained  
13          in bald eagle nest stands and night roosts but fails to  
14          acknowledge that the removal of trees up to 16 inches in  
15          diameter in these areas, which comprise the vast majority  
16          of the trees in the Project area (according to Figure 1 of  
17          the Silviculture Report), would result in the removal of  
18          most of the canopy, creating a fundamental and arbitrary  
19          inconsistency and conflict within the EA.  
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- 1 • The EA fails to evaluate the potential impacts on the bald  
2 eagle and other raptors that could result from the removal  
3 of trees up to 16” DBH.
- 4 • The BE notes that if removal of daytime perches would  
5 leave an area devoid of daytime perch sites, the loss of  
6 each perch tree will be mitigated by creating windows in  
7 green trees or installing artificial perches on a 2:1 basis.  
8 There is no data presented or in the record to show this  
9 mitigation would be effective in reducing the impact on  
10 Bald Eagles. In fact, this mitigation has been used  
11 previously in our valley. The perches were not maintained  
12 and fell within a few years of installation and bald eagles  
13 no longer utilize that area where the trees were cut down.
- 14 • The BE notes that the many rare species in the area will  
15 be severely impacted by the project activities and states  
16 harm cannot be avoided. For some species, such as  
17 Dammer’s Blue Butterfly, the BE explains that the work  
18 in this species’ habitat would be minimal, such as hand  
19 thinning, and claims that some of the trail work may be of  
20 benefit. This conclusion, however, is not supported by any  
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1 concrete evidence or analysis of the potential risk of harm  
2 relative to any realistic long-term benefit to any of these  
3 species. For other species with broader habitat range, the  
4 BE states that the Project will “attempt to retain” habitat  
5 (BE, p. 18) and again claims that some of the trail work  
6 “may” be of benefit, but again fails to include any analysis  
7 of the purported benefits of thinning in those areas or of  
8 adding trails compared to the risk of direct harm to  
9 sensitive species and their habitat.  
10  
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13

### 14 **CLAIM FOR RELIEF 3**

#### 15 **(Improper Analysis of Conflicting Science)**

16  
17 65. Accurate scientific analysis is essential to the NEPA process.  
18 40 C.F.R. § 1500.1. NEPA requires agencies to disclose, analyze, and  
19 make good faith response to contrary scientific opinions and studies.  
20

21 66. In their comments and objections to the proposed Project,  
22 Plaintiffs argued that mechanical thinning, which includes widespread  
23 removal of thousands of mature trees, could potentially increase, not  
24 decrease, fire severity.  
25  
26

27 67. This argument was based on citations to numerous scientific  
28 studies that were submitted with the comments, including Forest

1 Service research. In their objections and comments, Plaintiff John Muir  
2 Project argued that the studies that the Forest Service relied on were  
3 outdated and biased to the extent that they were prepared on behalf of  
4 logging interests. During the objection period, Plaintiffs notified the  
5 Forest Service of additional scientific sources finding that thinning  
6 increases fire risk and effects, as well as a newly-published study,  
7 Baker et al. (2023) (<https://www.mdpi.com/2571-6255/6/4/146>), which  
8 critiqued Hagmann et al. (2021)  
9 (<https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1002/eap.2431>), a  
10 Forest Service study the EA largely and fundamentally relies upon and  
11 cites with approval with regard to forest density, fire behavior, and  
12 thinning. Baker et al. (2023) meticulously documented the fact that  
13 Hagmann et al. (2021) represented a “falsification of the scientific  
14 record.”

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21 68. The reliability and validity of the scientific papers on which  
22 Plaintiffs’ arguments are based was recognized by the Ninth Circuit  
23 Court of Appeals in the BARK v. United States Forest Service, 958 F.3d  
24 865, 869-871 (9th Cir. 2020).

25  
26  
27 69. Referring to some of the scientific studies cited in Plaintiffs’  
28 comments and objections here, the Ninth Circuit found that the

1 plaintiffs in BARK had identified “considerable scientific evidence  
2 showing that variable density thinning will not achieve” the purpose of  
3 “reduc[ing] the risk of wildfires and promot[ing] safe fire-suppression  
4 activities.” BARK v. United States Forest Service, 958 F.3d 865, 870  
5 (9th Cir. 2020). Considering both context and intensity, as required by  
6 40 C.F.R. § 1508.27, this evidence raises substantial questions about  
7 the Project's environmental impact, and an EIS is required.” BARK v.  
8 United States Forest Service, 958 F.3d 865, 870 (9th Cir. 2020).  
9  
10  
11

12 70. The Court further found that “[s]ubstantial expert opinion  
13 presented by the Appellants during the administrative process disputes  
14 the USFS's conclusion that thinning is helpful for fire suppression and  
15 safety. For example, Oregon Wild pointed out in its EA comments that  
16 ‘[f]uel treatments have a modest effect on fire behavior, and could even  
17 make fire worse instead of better.’ It averred that removing mature  
18 trees is especially likely to have a net negative effect on fire  
19 suppression. Importantly, the organization pointed to expert studies  
20 and research reviews that support this assertion.” BARK v. United  
21 States Forest Service, 958 F.3d 865, 870 (9th Cir. 2020)  
22  
23  
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27 71. The Court also cited with approval plaintiff BARK’s  
28 assertion that “reducing fuels does not consistently prevent large forest

1 fires, and seldom significantly reduces the outcome of these large fires,’  
2 citing an article from Forest Ecology and Management. BARK also  
3  
4 directed the USFS to a recent study published in The Open Forest  
5 Science Journal, which concluded that fuel treatments are unlikely to  
6  
7 reduce fire severity and consequent impacts, because often the treated  
8 area is not affected by fire before the fuels return to normal levels.”

9  
10 BARK v. United States Forest Service, 958 F.3d 865, 870 (9th Cir.  
11 2020).

12  
13 72. BARK further noted that, while "BARK discussed [during  
14 the scoping process] the studies that have found that fuel reduction may  
15 actually exacerbate fire severity in some cases as such projects leave  
16 behind combustible slash, open the forest canopy to create more ground-  
17 level biomass, and increase solar radiation which dries out the  
18 understory[,] [t]he EA did not discuss this information.” BARK v.  
19  
20 United States Forest Service, 958 F.3d 865, 871 (9th Cir. 2020).

21  
22  
23 73. NEPA requires agencies to disclose, analyze, and make good  
24 faith responses to considered contrary scientific opinions, but the Forest  
25 Service failed to make a good faith response to the contrary scientific  
26 opinions cited by Plaintiffs. The Forest Service’s failure to analyze the  
27  
28

1 newer conflicting science cited by Plaintiffs was arbitrary, capricious, or  
2 not in accordance with NEPA, in violation of 5 U.S.C. § 706(2)(A).  
3

#### 4 **CLAIM FOR RELIEF 4**

##### 5 **(Improper Denial of Scientific Controversy)**

6  
7 74. One of the factors the Forest Service was required to  
8 consider is “the degree to which the effects on the quality of the human  
9 environment are likely to be highly controversial.” 40 C.F.R. § 1508.27.  
10

11 75. Instead of acknowledging and meaningfully addressing the  
12 scientific controversy surrounding the effects of widespread tree  
13 removal on wildfires and providing a good faith analysis of the opposing  
14 views, the Forest Service denied the existence of any controversy  
15 whatsoever. In this regard, the DN/FONSI, on p. 11, claimed “[t]here is  
16 no known credible scientific controversy over the impacts of the  
17 proposed action, and the scoping has not raised substantive scientific  
18 controversy related to the effects of the proposed project on the human  
19 environment.”  
20  
21  
22  
23

24 76. Regarding the studies cited by Plaintiffs in their comments  
25 and objections, the DN/FONSI merely states that “some stakeholders  
26 asserted .... there is significant scientific dispute regarding the efficacy  
27 of forest thinning and prescribed burning in reducing fire hazard.  
28

1 However, the overwhelming body of science supports the analysis and  
2 conclusions in the EA .... And the contrary opinion does not rise to the  
3 level of a credible scientific dispute indicating substantial controversy  
4 or uncertainty.” DN/FONSI, p. 11. These arguments and contentions  
5 are disingenuous at best, and directly contradict BARK v. United States  
6 Forest Service, 958 F.3d 865 (9th Cir. 2020), which reached the opposite  
7 conclusion. Similarly, the DN/FONSI, on p. 10, dismissed the threat  
8 this Project poses to public safety from increased wildfire severity due  
9 to thinning, and the risk of prescribed fire escapes, claiming the  
10 following: “There will be no significant effects on public health and  
11 safety.”  
12  
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16

## 17 CLAIM FOR RELIEF 5

### 18 (Improper Assessment of a Finding of No Significant Impact)

19  
20 77. A FONSI can be prepared if the Defendants determine on  
21 the basis of the EA that an EIS is not required because there will be no  
22 significant effects to the human environment from the proposed action.  
23 40 C.F.R. § 1501.4(e).  
24

25  
26 78. The DN/FONSI prepared in this case was improper because  
27 the EA on which it was based was plainly inadequate and did not  
28 provide sufficient support for a finding of no significant impact as a



1 result of the Defendants’ action. Defendants’ DN/FONSI and the  
2 conclusions on which it was based were arbitrary, capricious, or not in  
3 accordance with NEPA, in violation of 5 U.S.C. § 706(2)(A).  
4

5 **CLAIM FOR RELIEF 6**

6 **(Failure to Prepare an EIS)**

7  
8 79. NEPA requires that Defendants prepare an EIS “in every  
9 recommendation or report on proposals for legislation and other major  
10 federal actions significantly affecting the quality of the human  
11 environment.” 42 U.S.C. § 4332(C); *see also*, 40 C.F.R. § 1502.3. These  
12 agencies must complete an EIS if (1) the proposed project “is a major  
13 federal action” and (2) the proposed project may “significantly affect the  
14 quality of the human environment.” 42 U.S.C. § 4332; *see also*, 40  
15 C.F.R. § 1508.18.  
16  
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19  
20 80. Although NEPA regulations allow an agency to avoid  
21 initially preparing a complete EIS by first preparing an EA and then  
22 issuing a FONSI, if appropriate (40 C.F.R. § 1508.9), the inadequate EA  
23 and underlying record here do not support the Defendants’ DN/FONSI  
24 and failure to prepare an EIS.  
25  
26

27 81. Given the impacts that the Project may have on the human  
28 environment, including the safety of adjacent communities, impacts to

1 protected species, as well as the inadequacy and inaccuracy of the EA,  
2 Defendants' failure to prepare an EIS was arbitrary, capricious, or not  
3  
4 in accordance with NEPA, in violation of 5 U.S.C. § 706(2)(A).

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs respectfully pray for an order and  
8 judgment:

- 9  
10 a. Declaring that the Forest Service's DN/FONSI for the  
11 Project violates NEPA, and is arbitrary, capricious, or not  
12 in accordance with law under the APA, 5 U.S.C. §  
13 706(2)(A);  
14  
15 b. Vacating and setting aside the USFS's DN/FONSI for the  
16 Project as an illegal agency action under the APA;  
17  
18 c. Permanently enjoining the Forest Service from  
19 implementing the Project unless and until the agency  
20 complies with NEPA;  
21  
22 d. Entering appropriate injunctive relief to ensure that  
23 Defendants comply with NEPA, and specifically to ensure  
24 that Defendants and their agents take no further actions  
25 toward proceeding with the challenged Project unless and  
26 until they have complied with NEPA;  
27  
28

- 1 e. Awarding Plaintiff its reasonable attorneys' fees and costs  
2 pursuant to the Equal Access to Justice Act, 28 U.S.C. §  
3 2412; and  
4  
5 f. Awarding such further relief as the Court deems just and  
6 equitable.  
7

8 Respectfully submitted this 10th day of August, 2023.  
9

10 *Babak Naficy*

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Babak Naficy  
12 *Attorney for Plaintiffs*  
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