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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

15 MOUNTAIN COMMUNITIES FOR )  
16 FIRE SAFETY; LOS PADRES )  
17 FORESTWATCH; and EARTH )  
18 ISLAND INSTITUTE, )

19 Plaintiffs, )

20 v. )

21 KEVIN ELLIOTT, in his official )  
22 capacity as the Forest Supervisor of the )  
23 Los Padres National Forest and the )  
24 UNITED STATES FOREST )  
25 SERVICE, )

26 Defendants. )

Case No.: 2:19-cv-6539

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Administrative Procedure Act, 5 U.S.C.  
§§ 701 *et seq.*)

1 **INTRODUCTION**

2 1. This is a civil action for declaratory and injunctive relief challenging  
3 Federal Defendants' (the Forest Service's) actions related to the 1,200-acre Cuddy  
4 Valley Forest Health/Fuel Reduction Project (Cuddy Valley Project), which  
5 includes mechanical thinning by commercial logging of up to 601 acres of Jeffrey  
6 pine and pinyon-juniper forest in the Los Padres National Forest.

7 2. Plaintiffs seek a declaration that the Forest Service has violated the  
8 National Environmental Policy Act (NEPA) and the National Forest Management  
9 Act (NFMA) by proceeding with the Cuddy Valley Project without the necessary  
10 environmental analysis, an order setting aside the Cuddy Valley Project decision,  
11 and, if necessary, an injunction to avert harms from logging and other project  
12 activities on sensitive resources and values in the Cuddy Valley Project area.

13 3. The Forest Service has violated NEPA by authorizing a commercial  
14 timber sale project using a categorical exclusion (CE) on up to 601 acres, greatly  
15 exceeding the 70- and 250-acre limits for CEs of this type, and instead must  
16 prepare at least an Environmental Assessment (EA).

17 4. Moreover, the Forest Service has failed to consider or analyze  
18 significant factors regarding the degree to which the effects from logging or  
19 thinning on the quality of the human environment are likely to be highly  
20 controversial and the degree to which the proposed action is likely to affect public  
21 health or safety. Thinning is highly controversial because there is a significant  
22 scientific dispute as to the efficacy of thinning to reduce wildfire risk, and instead  
23 there is substantial evidence that thinning will actually make matters worse by  
24 increasing fire risk, which, in turn, implicates the potential that these effects will  
25 have significant effects on public health and safety.

26 5. Plaintiffs have also submitted evidence that the Forest Service has  
27 greatly overstated the density of trees and the need to reduce this tree density. The  
28 Forest Service has erroneously included very small trees (between 1-4 inches in





1 endangered species working their way to sustainability. MCFS stays informed and  
2 helps others access the best information available to stay safe and protect their  
3 forest.

4 14. Plaintiff LOS PADRES FORESTWATCH (LPFW) is a non-profit,  
5 501(c)(3) corporation headquartered in Santa Barbara, California. The  
6 organization's mission is to protect and restore public lands throughout the Central  
7 Coast region through policy and legal advocacy, scientific collaboration, and  
8 community outreach. ForestWatch focuses its work throughout the Los Padres  
9 National Forest and nearby public lands. To further its mission and protect the  
10 interests of its members and supporters in preserving public lands, ForestWatch  
11 monitors forest conditions and activities in the Los Padres National Forest and  
12 reviews and comments on proposed Forest Service projects. ForestWatch also  
13 organizes habitat restoration and forest stewardship projects using crews of  
14 volunteers, making the forest a better place for all to enjoy and visit. In addition,  
15 ForestWatch programs seek to engage underserved youth by providing them with  
16 opportunities to explore nature and foster an appreciation of the outdoors.

17 15. LPFW's members include individuals who regularly use public lands  
18 within the Los Padres National Forest, including the Cuddy Valley Project areas  
19 proposed for logging, for scientific study, recreational enjoyment, aesthetic beauty,  
20 and nature photography. These members' interests will be irreparably harmed by  
21 the planned logging, as they will no longer be able to take nature photographs of  
22 the area in its pre-logging state, or enjoy the aesthetic beauty of the unlogged forest  
23 habitat and its inhabitants.

24 16. Plaintiff EARTH ISLAND INSTITUTE (EII) is a nonprofit  
25 corporation organized under the laws of the State of California. EII is  
26 headquartered in Berkeley, California. EII's mission is to develop and support  
27 projects that counteract threats to the biological and cultural diversity that sustains  
28 the environment. Through education and activism, these projects promote the

1 conservation, preservation and restoration of the earth. One of these projects is the  
2 John Muir Project (JMP)—whose mission is to protect all federal public  
3 forestlands from commercial exploitation that undermines and compromises  
4 science-based ecological management. JMP’s offices are in San Bernardino  
5 County, California. EII is a membership organization with over 15,000 members  
6 in the U.S., over 3,000 of whom use and enjoy the National Forests of California  
7 for recreational, educational, aesthetic, spiritual, and other purposes. EII through  
8 JMP has a longstanding interest in protection of national forests. JMP and EII  
9 members actively participate in governmental decision-making processes with  
10 respect to national forest lands in California and rely on information provided  
11 through the NEPA processes to increase the effectiveness of their participation.  
12 JMP and EII members include individuals who regularly use and continue to use  
13 public lands within the Los Padres National Forest, including the exact tracts of  
14 lands in the Cuddy Valley Project area proposed for logging, in particular, for  
15 scientific study, recreational enjoyment, aesthetic beauty, and nature photography.  
16 These members’ interests will be irreparably harmed by the planned logging, as  
17 they will no longer be able to scientifically study these areas in their pre-logging  
18 state, take nature photographs of the area in its pre-logging state, or enjoy the  
19 aesthetic beauty of the unlogged forest habitat and its inhabitants.

20 17. This suit is brought by MCFS, LPFW, and EII/JMP on behalf of  
21 themselves and their adversely affected members and staff. Plaintiffs and their  
22 members’ present and future interests in and use of the Cuddy Valley Project area  
23 are and will be directly and adversely affected by the agency’s impending actions.  
24 Those adverse effects include, but are not limited to: (1) public safety hazards from  
25 increased wildfire risks associated with the project, (2) impacts to native plants and  
26 wildlife and their habitats within and around the Project areas from logging; (3)  
27 reduction and impairment of recreation opportunities; (4) impaired aesthetic value  
28 of forest lands, trails, and landscapes caused by Defendants’ logging; and (5) loss

1 of scientific study and viewing opportunities with regard to wildlife in areas  
2 proposed for logging. In addition, Plaintiffs and their members and staff have an  
3 interest in ensuring that Defendants comply with all applicable laws, regulations,  
4 and procedures pertaining to the management of national forest lands.

5 18. The Forest Service's implementation of the Cuddy Valley Project is in  
6 contravention of NEPA and NFMA. Because Defendants' actions approving the  
7 Project violate the law, a favorable decision by this Court will redress the actual  
8 and imminent injuries to Plaintiffs. To comply with NEPA, the Forest Service  
9 would prepare Environmental Assessments (EAs) or Environmental Impact  
10 Statements (EISs) to consider the significant effects from these projects, given the  
11 potential for significant effects on public health or safety and the fact that the  
12 effects on the quality of the human environment are highly controversial. The  
13 analysis would consider alternatives, including non-commercial alternatives to the  
14 proposed action, which would minimize or avert the harm to Plaintiffs' members  
15 caused by the logging of trees and destruction of wildlife habitat and other  
16 resources by the proposed actions. To comply with NFMA, the Forest Service  
17 would need to analyze whether or not the proposed actions comply with Forest  
18 Plan standards for high scenic integrity and how it is consistent with the Mt. Pinos  
19 Place Area values for old growth and maintaining a naturally appearing landscape.

20 19. Defendant KEVIN ELLIOTT is sued in his official capacity as the  
21 Forest Supervisor of the Los Padres National Forest of the United States Forest  
22 Service. Supervisor Elliott is directly responsible for forest management in the Los  
23 Padres National Forest and for ensuring that all resource management decisions  
24 comply with applicable laws and regulations. The Forest Supervisor signed the  
25 decision for the Cuddy Valley Project challenged here.

26 20. Defendant UNITED STATES FOREST SERVICE is a federal  
27 government agency within the Department of Agriculture, which holds the  
28

1 National Forests in trust for the American people and is responsible for actions in  
2 the Cuddy Valley Project area.

3 **FACTS**

4 The Cuddy Valley Area, Project, and Decision

5 21. Cuddy Valley is located about 12 miles west of Interstate 5, Exit  
6 205—the Frazier Mountain Park Road exit.

7 22. The Cuddy Valley Project area is located on the western and southern  
8 sides of Cuddy Valley in the Mt. Pinos Ranger District in an area designated as the  
9 Mt. Pinos Place Management Area of the Los Padres National Forest. The project  
10 area is located adjacent to a remote mountain community called Pinon Pines  
11 Estates and to the west of the community of Lake of the Woods, another small  
12 mountain community surrounded by the national forest.

13 23. The Los Padres Land and Resources Management Plan (or Forest  
14 Plan) states that the “Desired Condition” of the Mt. Pinos Place Management Area  
15 is that the area is maintained as a naturally evolving and naturally appearing  
16 landscape that functions as a big tree (old growth) recreation environment. It states  
17 that the valued landscape attributes to be preserved over time are the big tree (old  
18 growth) Jeffrey pine forested areas, the natural appearing backdrop to rural  
19 communities, and the rustic mountain-built environment. In this Management  
20 Area, Forest Service managers are expected to focus on perpetuating healthy  
21 conifer forests that are one of the main attractions for national forest visitors.  
22 Managers are also expected to main the big tree (old growth) appearance of the  
23 Jeffrey pine forests with vegetative treatments that address stand densification  
24 issues. Consistent with these values, the Cuddy Valley area is designated on the  
25 Forest Plan Scenic Integrity Objectives Map to meet a standard of high scenic  
26 integrity.

27 24. The Forest Plan defines “Old Growth” as “Old forests, which often  
28 contain several canopy layers, variety in tree sizes, species, decadent old trees, and

1 standing and dead woody material.” Forest Plan standards require that thinning of  
2 these forests favor retention of large-diameter trees.

3 25. The 1,200 acre Cuddy Valley Project area is composed of 409 acres of  
4 sagebrush scrub, which transitions into 791 acres of pinyon-juniper woodlands  
5 mixed with montane conifer forest of Jeffrey pine, as the forest extends up the  
6 lower slopes of Mount Pinos.

7 26. The Cuddy Valley Project includes a type of commercial logging  
8 known as mechanical thinning on up to 601 acres of pinyon-juniper woodlands and  
9 Jeffrey pine forest, which the Forest Service intends to implement using a  
10 commercial timber sale.

11 27. In a recent management decision in the Mt. Pinos Place Management  
12 Area—the 2012 Frazier Mountain Project—the Forest Service responded to the  
13 public’s concerns about the use of commercial logging by choosing an alternative  
14 with a ten-inch diameter limit for the removal of trees, implementing the project  
15 without a timber sale. Moreover, the Frazier Mountain Project, which is similar to  
16 the Cuddy Valley Project, was analyzed more rigorously under NEPA in an  
17 Environmental Assessment and included both commercial and non-commercial  
18 alternatives. There, the Forest Service determined it could meet its goals of  
19 wildfire risk reduction without a commercial timber sale.

20 28. Despite the Mt. Pinos Management Area’s goal to maintain the area’s  
21 big tree (old growth) appearance, the Cuddy Valley Project allows tree removal  
22 without a diameter limit and by means of a timber sale, overriding the public’s  
23 ongoing concerns about adverse impacts from commercial logging on wildlife,  
24 visual quality, or scenic resources.

25 29. Trees would be removed throughout all diameter classes and would  
26 include the removal of large commercial trees. While the project proposes to retain  
27 some of the larger Jeffrey pines, the project places no diameter limits on Jeffrey  
28 pine removal, so even the largest and oldest Jeffrey pines are at risk of removal,

1 and the project does not prohibit the removal of old growth pinyon pines or  
2 junipers.

3 30. The project decision does not state how it is consistent with the Mt.  
4 Pinos Place Management Area's desired conditions to maintain the area's big tree  
5 (old growth) appearance or how the area will be maintained as a naturally evolving  
6 and naturally appearing landscape.

7 31. Finally, the project decision does not state how visual impacts from  
8 the removal of trees (including large and old-growth trees) and shrubs will allow  
9 the Forest Service to meet the Forest Plan's visual quality objectives and its  
10 standard of high scenic integrity, when instead the project will substantially  
11 degrade scenic integrity.

#### 12 The Mt. Pinos Community Wildfire Protection Plan

13 32. In its decision, the Forest Service asserts that it has been working with  
14 local individuals and groups via efforts such as the Mt. Pinos Communities  
15 Wildfire Protection Plan (CWPP) to establish priorities. The CWPP was created  
16 by the Mt. Pinos Communities Fire Safe Council. The Council, however, was  
17 disbanded and stopped meeting many years before the Forest Service sent out its  
18 scoping notice for the Cuddy Valley Project.

19 33. The CWPP does include a proposal that overlaps the Cuddy Valley  
20 Project area—the *Organizational Camps Project* (OCP). That proposal, however,  
21 included treatments of a much smaller scale than the Cuddy Valley Project and  
22 with substantially less intensive thinning. The OCP's proposed size is 700 acres  
23 and would reduce basal area of plantations to about 100 sq. ft. (per acre) and  
24 reduce tree densities, leaving about 200 trees per acre. Stands of natural-occurring  
25 Jeffrey pine/pinyon pine/white fir would only be thinned to about 100-140 sq. ft of  
26 basal area, leaving all trees larger than 30 inches. The OCP proposal included only  
27 25 acres of sagebrush treatments. These proposed actions were deemed sufficient  
28 to protect the communities from wildfire risks.

1           34. By contrast, the Forest Service's Cuddy Valley Project is substantially  
2 larger and more intense. At 1,200 acres, it includes up to 791 acres of thinning in  
3 Jeffrey pine/pinyon pine forest (including up to 601 acres of mechanical thinning)  
4 and the removal of 409 acres of sagebrush scrub. It would reduce stand densities  
5 down to 60-100 sq. ft. basal area, leaving only 93 trees per acre, and it does not  
6 include a diameter limit on the removal of larger trees.

7           35. Since the Cuddy Valley Project substantially exceeds the size and  
8 intensity of the CWPP's OCP proposal, it is therefore inconsistent with a proposal  
9 reached in agreement with members of the local communities. Moreover, the  
10 Forest Service's assertion that it worked with members of the community to craft  
11 the Cuddy Valley Project by referring to the CWPP is disingenuous, misleading, or  
12 outright false. Instead, the public overwhelmingly opposes the proposed logging.

13           36. The likely reason for the larger size and intensity of the Cuddy Valley  
14 Project is to offer more and larger trees for sale so the project is more attractive to  
15 commercial logging interests.

#### 16 Minimal Public Involvement and Failure to Address the Public's Concerns

17           37. On March 13, 2018, the Forest Service sent out a short scoping letter  
18 and project summary seeking comments on the proposed Cuddy Valley Project.  
19 This was the only comment period for this controversial project.

20           38. On April 19, 2018, Plaintiffs LPFW and JMP submitted highly critical  
21 and very specific comments with regard concerns about using a categorical  
22 exclusion (CE) instead of a more rigorous Environmental Assessment (EA) for a  
23 commercial timber sale project. They documented that recent projects of similar  
24 size, such as the Frazier Mountain Project, had been analyzed using an EA,  
25 asserting that Forest Service regulations allow the use of a CE for these types of  
26 small timber sales only for those projects which are 70 or 250 acres and smaller.  
27 LPFW and JMP also pointed out several significant issues and concerns, including  
28 the highly controversial nature of the efficacy of this type of project to reduce

1 wildfire risks and the potential for adverse effects on public health and safety by  
2 increasing fire risk.

3 39. In addition, the Forest Service received over 600 comments from the  
4 public during the public scoping period, with the vast majority requesting  
5 additional opportunities for public input and that the Forest Service not conduct  
6 any commercial logging.

7 40. Despite the many concerns expressed by the Plaintiffs and others, on  
8 November 13, 2018, Forest Supervisor Kevin Elliott issued a decision  
9 memorandum (DM), excluding the Cuddy Valley Project from a detailed NEPA  
10 analysis in an EA or EIS, and allowed the project to move forward as a commercial  
11 timber sale without any further public comment opportunities.

12 41. The Forest Service in its DM, or otherwise, has not responded in  
13 writing to most of the specific concerns raised by the Plaintiffs or the public.

14 The Highly Controversial Nature of Thinning and Public Health and Safety

15 42. In their comments, LPFW and JMP explained the significant scientific  
16 controversies regarding the efficacy of thinning to reduce wildfire risks, which  
17 implicate the potential significant effects from the project on public health and  
18 safety.

19 43. As their comments explained, there is substantial scientific evidence  
20 that thinning can make the fuel hazard worse instead of better. Plaintiffs'  
21 comments provided references to numerous scientific publications and government  
22 reports, which describe the problems and concerns with thinning and the potential  
23 for increased wildfire risk to communities.

24 44. Regarding the controversial scientific dispute, Plaintiffs pointed to a  
25 General Accounting Office report prepared of Congress, which stated, "We do not  
26 presume that there is a broad scientific consensus surrounding appropriate methods  
27 or techniques for dealing with fuel build-up or agreement on the size of areas  
28

1 where, and the time frames when, such methods or techniques should be applied.”  
2 US GAO RCED-99-65.1999:56.

3 45. As Plaintiffs’ comments explained, thinning can alter the heating of  
4 the understory and subsequently reduce moisture levels. Thinning opens stands to  
5 greater solar radiation and wind movement, resulting in warmer temperatures and  
6 drier fuels throughout the fire season. This openness can encourage a wildland fire  
7 to spread faster. Opening up closed forests through selective logging can  
8 accelerate the spread of fire through them, and this is especially true when larger,  
9 mature trees are removed.<sup>1</sup>

10 46. One scientific study found that thinned areas predominantly burned at  
11 high severity, while unthinned areas burned predominantly at low and moderate  
12 severity. That is, combined mortality was higher in thinned than in unthinned  
13 units. The study suggests that mechanical thinning may have effectively lowered  
14 the fire weather threshold necessary for high severity fire occurrence.

15 47. Rather than address the significant and highly controversial concerns  
16 about the efficacy of thinning to reduce wildfire risk or the risk to public health and  
17 safety raised by these comments, neither the Cuddy Valley Project decision nor the  
18 Fire/Fuels Report addressed or discussed the concerns raised by Plaintiffs’  
19 comments. This is not surprising, given that the Fire/Fuels Report posted on the  
20 Forest Service website, dated 12/13/2017 and updated on 02/06/2018, was  
21 prepared before the Forest Service even accepted public scoping comments. Nor  
22 did the Forest Service respond to scientific information submitted by Plaintiffs,  
23 demonstrating that the most effective way to protect homes from wildland fire is to

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24  
25 <sup>1</sup> This is precisely what occurred in the deadly 2018 Camp Fire, which rapidly  
26 burned through the community of Paradise and caused the loss of 85 lives in  
27 Northern California. This wind-driven fire raced through areas that had been  
28 [previously thinned or logged before it encountered the community \(see  
https://www.buzzfeednews.com/article/peteraldhous/logging-forest-california-  
wildfires, Nov. 20, 2018, last visited July 19, 2019\)](https://www.buzzfeednews.com/article/peteraldhous/logging-forest-california-wildfires))

1 inform and assist homeowners in making their homes more fire-safe and  
2 conducting defensible space pruning of vegetation (which does not involve  
3 removal of mature trees) within 100 feet of homes.

4 48. Ironically, while the Cuddy Valley Project is advanced by the Forest  
5 Service as a means to help protect adjacent communities and structures, it fails to  
6 discuss the potential for these significant effects on public health and safety  
7 implicated by the highly controversial nature of thinning for wildfire risk  
8 reduction, which may instead increase wildfire risk and significantly affect public  
9 health and safety.

10 Overstating the Need for Thinning to Reduce Density

11 49. Even though requested during the comment period, the Forest Service  
12 did not provide LPFW and JMP with a full set of the stand exam data for the  
13 Cuddy Valley Project area until after the scoping comment deadline had passed.

14 50. After finally receiving stand exam data of existing conditions in the  
15 Cuddy Valley Project area, on December 13, 2018, Dr. Chad Hanson of Plaintiff  
16 JMP submitted a supplemental letter in which he explained to the Forest Service  
17 that it had greatly overstated current average stand densities of 480 trees per acre  
18 based on the inclusion of trees between 1-4 inches in diameter, whereas the  
19 historical studies relied on by the Forest Service did not include these small trees,  
20 as well as the Forest Service's inclusion of tree species that were not included in  
21 the historical study, such as pinyon pine and oak.

22 51. Based on Dr. Hanson's calculations, current average stand densities  
23 using the Forest Service's own stand exam data—without inclusion of these 1-4  
24 inch trees or tree species excluded from the historical study—is currently 83 trees  
25 per acre. This average tree density is already below the project's proposed stand  
26 density reduction goal of 93 trees per acre. This finding obviates the need to thin  
27 trees to historic densities, or obviates the need to thin trees greater than 1-4 inches  
28 in diameter to reduce wildfire risks and achieve its tree density goals.

1           52. The Forest Service has never responded to Dr. Hanson’s supplemental  
2 letter, and has otherwise failed to explain or correct its current stand density  
3 assertions or erroneous calculations.

4 Forest Service Sensitive Mammal Species

5           53. The Cuddy Valley Project area contains habitat for Forest Service  
6 sensitive mammal species, including the Tehachapi white-eared pocket mouse,  
7 which is considered a “species of special concern” due to its rarity and may be  
8 threatened with extinction according to the California Department of Fish &  
9 Wildlife

10           54. Forest Service sensitive species are defined as plant and animal  
11 species identified by a Regional Forester for which population viability is a  
12 concern as evidenced by significant current or predicted downward trend in  
13 numbers or density.

14           55. The analysis erroneously states that the project will not impact the  
15 Tehachapi pocket mouse because this species has not been documented within the  
16 project area. Instead, as Plaintiffs pointed out, the California Natural Diversity  
17 Database (CNDDDB) lists at least one occurrence of the pocket mouse in the project  
18 area. Moreover, as Plaintiffs pointed out, the CNDDDB shows several hundred  
19 acres of “predicted habitat” for the pocket mouse in the project area.

20           56. A 2012 statement by the Forest Service states that impacts to the  
21 pocket mouse from logging projects were “likely” and “especially important” for  
22 such species with limited distributions. And a California Department of Fish and  
23 Wildlife report from 1998 concluded that the Forest Service should conduct  
24 surveys of the pocket mouse and make adjustments to its land management  
25 activities given the limited distribution of the species.

26           57. But the Forest Service has never conducted formal surveys for the  
27 Tehachapi white-eared pocket mouse. Moreover, its “no effect” determination  
28

1 based on its erroneous assertion that it has not been documented in the project area  
2 cannot be supported by any other facts in the record.

### 3 **APPLICABLE LAW**

#### 4 The National Environmental Policy Act

5 58. Congress enacted the National Environmental Policy Act “[t]o declare  
6 a national policy which will encourage productive and enjoyable harmony between  
7 man and his environment; to promote efforts which will prevent or eliminate  
8 damage to the environment and biosphere and stimulate the health and welfare of  
9 man; [and] to enrich the understanding of the ecological systems and natural  
10 resources important to the Nation.” 42 U.S.C. § 4321.

11 59. To accomplish these purposes, NEPA requires all agencies of the  
12 federal government to prepare a “detailed statement” that discusses the  
13 environmental impacts of, and reasonable alternatives to, all “major Federal  
14 actions significantly affecting the quality of the human environment.” 42 U.S.C. §  
15 4332(2)(C). This statement is commonly known as an environmental impact  
16 statement (“EIS”). The EIS must describe the adverse environmental effects of the  
17 proposed action and alternatives to the proposed action. *Id.*

18 60. NEPA also requires that “all agencies of the Federal Government shall  
19 ... study, develop, and describe appropriate alternatives to recommended courses  
20 of action in any proposal which involves unresolved conflicts concerning  
21 alternative uses of available resources....” 42 U.S.C. § 4332(E); NEPA Section  
22 102(2)(E); *see* 40 C.F.R. § 1507.2(d) (“This requirement of section 102(2)(E)  
23 extends to all such proposals, not just the more limited scope of section  
24 102(2)(C)(iii) where the discussion of alternatives is confined to impact  
25 statements.”).

26 61. The Council on Environmental Quality (CEQ) has promulgated  
27 regulations implementing NEPA, which are binding on all federal agencies. 40  
28 C.F.R. § 1507.1. The CEQ regulations establish additional requirements for

1 environmental impact statements (EISs) and other requirements of NEPA. 40  
2 C.F.R. § 1508.9. To further the purposes of NEPA, the Forest Service has also  
3 promulgated its own NEPA regulations, *see* 36 C.F.R. § 220 *et seq.*, which are  
4 binding upon the agency.

5 62. To determine whether a proposed action significantly affects the  
6 environment, the agency must consider both the context and intensity of the  
7 proposed action, including whether the project will take place in “ecologically  
8 critical areas,” whether it will affect endangered or sensitive species, whether the  
9 effects of the project are highly controversial or uncertain, and whether the project  
10 implicates public health or safety. 40 C.F.R. § 1508.27. In making its  
11 determinations, NEPA requires that the agency use the best available data and  
12 ensure the scientific integrity, disclose opposing scientific viewpoints, and follow  
13 specified procedures to address gaps in data and scientific uncertainty. 40 C.F.R.  
14 §§ 1500.1, 1502.9, 1502.22, 1502.24.

15 63. To determine whether a proposed action significantly affects the  
16 environment, and whether an EIS is required, the acting agency may first prepare  
17 an Environmental Assessment (EA). 40 C.F.R. § 1508.9. An EA must provide  
18 sufficient evidence and analysis to determine whether to prepare an EIS. *Id.* If the  
19 agency concludes that a project may have significant impacts on the environment,  
20 it must prepare an EIS. 40 C.F.R. § 1501.4. If the EA concludes that there are no  
21 significant impacts to the environment, the federal agency must provide a detailed  
22 statement of reasons why the project’s impacts are insignificant and issue a  
23 “finding of no significant impact” (FONSI). 40 C.F.R. § 1508.13.

24 64. Certain proposed actions are considered “categorically excluded”  
25 from detailed NEPA analysis and do not require preparation of an EIS or an EA.  
26 *Id.* § 1508.4. The Forest Service has promulgated numerous categorical  
27 exclusions, which require a project or case file and decision memo to satisfy  
28 NEPA. *See* 36 C.F.R. § 220.6(e). In promulgating its CEs, the Forest Service has

1 acknowledged that “only routine actions that have no extraordinary circumstances  
2 should be within categories for exclusion.” 57 Fed. Reg. 43,180 (Sept. 18, 1992).<sup>2</sup>

3 65. The four relevant categorical exclusions in this case are:

4 (6) Timber stand and/or wildlife habitat improvement activities that  
5 do not include the use of herbicides or do not require more than  
6 1 mile of low standard road construction. Examples include, but  
7 are not limited to:

8 (i) Girdling trees to create snags;

9 (ii) Thinning or brush control to improve growth or to reduce  
10 fire hazard including the opening of an existing road to a  
11 dense timber stand;

12 (iii) Prescribed burning to control understory hardwoods in  
13 stands of southern pine; and

14 (iv) Prescribed burning to reduce natural fuel build-up and  
15 improve plant vigor.

16 36 CFR 220.6(e)(6);

17 (12) Harvest of live trees not to exceed 70 acres, requiring no more  
18 than 1/2 mile of temporary road construction. Do not use this  
19 category for even-aged regeneration harvest or vegetation type  
20 conversion. The proposed action may include incidental  
21 removal of trees for landings, skid trails, and road clearing.

22 Examples include, but are not limited to:

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23  
24 <sup>2</sup> See at 73 Fed. Reg. 43,084, 43,091 (July 24, 2008) (final rule placing CE rules  
25 from the Forest Service Handbook (FSH) to the CFR, explaining that “[t]his final  
26 rule is moving established categories and language on extraordinary circumstances  
27 from the Forest Service NEPA procedures previously located in FSH 1909.15 to 36  
28 CFR 220.6. These categories and requirements were established following public  
review and comment, in consultation with CEQ and with CEQ's concurrence. The  
final rule does not add any new categories, nor does it substantively alter existing  
requirements regarding extraordinary circumstances.”).

- 1 (i) Removal of individual trees for sawlogs, specialty
- 2 products, or fuelwood, and
- 3 (ii) Commercial thinning of overstocked stands to achieve
- 4 the desired stocking level to increase health and vigor.

5 36 CFR 220.6(e)(12);

- 6 (13) Salvage of dead and/or dying trees not to exceed 250 acres,
- 7 requiring no more than 1/2 mile of temporary road construction.
- 8 The proposed action may include incidental removal of live or
- 9 dead trees for landings, skid trails, and road clearing. Examples
- 10 include, but are not limited to:

- 11 (i) Harvest of a portion of a stand damaged by a wind or ice
- 12 event and construction of a short temporary road to
- 13 access the damaged trees, and
- 14 (ii) Harvest of fire-damaged trees.

15 36 C.F.R. §§ 220.6(e)(13); and

- 16 (14) Commercial and non-commercial sanitation harvest of trees to
- 17 control insects or disease not to exceed 250 acres, requiring no
- 18 more than 1/2 mile of temporary road construction, including
- 19 removal of infested/infected trees and adjacent live uninfested/
- 20 uninfected trees as determined necessary to control the spread
- 21 of insects or disease. The proposed action may include
- 22 incidental removal of live or dead trees for landings, skid trails,
- 23 and road clearing. Examples include, but are not limited to:

- 24 (i) Felling and harvest of trees infested with southern pine
- 25 beetles and immediately adjacent uninfested trees to
- 26 control expanding spot infestations, and
- 27 (ii) Removal and/or destruction of infested trees affected by
- 28 a new exotic insect or disease, such as emerald ash borer,

1 Asian long horned beetle, and sudden oak death  
2 pathogen.

3 36 C.F.R. §§ 220.6(e)(14).

4 66. “Scoping is required for all Forest Service proposed actions, including  
5 those that would appear to be categorically excluded from further analysis and  
6 documentation in an EA or an EIS.” 36 C.F.R. § 220.4(e)(1).

7 67. If, based on scoping, the responsible official determines that “it is  
8 uncertain whether [a] proposed action may have a significant effect on the  
9 environment,” an EA should be prepared. 36 C.F.R. § 220.6(c). If, based on  
10 scoping, the responsible official determines “that the proposed action may have a  
11 significant environmental effect,” an EIS should be prepared. *Id.*

12 68. Federal agencies are also required to “provide for extraordinary  
13 circumstances,” which are circumstances “in which a normally excluded action  
14 may have a significant environmental impact.” 40 C.F.R. § 1508.4. To comply  
15 with NEPA when evaluating a particular project for categorical exclusion, an  
16 agency must first determine whether the proposed action falls within a categorical  
17 exclusion and then determine whether “extraordinary circumstances” exist that  
18 would prevent application of the exclusion. *Id.*

19 69. In providing for “extraordinary circumstances” sufficient to preclude  
20 use of its categorical exclusions, the Forest Service has determined that:

21 Resource considerations that *should* be considered in determining  
22 whether extraordinary circumstances related to a proposed action  
23 warrant further analysis and documentation in an EA or an EIS  
24 [including]: (i) Federally listed threatened or endangered species or  
25 designated critical habitat, species proposed for Federal listing or  
26 proposed critical habitat, or Forest Service sensitive species;....

27 36 C.F.R. § 220.6(b)(1) (emphasis added).

28

1           70. Moreover, in considering extraordinary circumstances, the Forest  
2 Service must look beyond the list of resource conditions:

3           The extraordinary circumstances requirements include a list of  
4 resource conditions that “should” be considered. “Should” is used  
5 instead of “shall” because “should” underscores that the list is not  
6 intended to be exhaustive. The list of resource conditions is intended  
7 as a starting place and does not preclude consideration of other factors  
8 or conditions by the responsible official with the potential for  
9 significant environmental effects.

10 73 Fed. Reg. 43084, 43091 (July 24, 2008) (rule for 36 C.F.R. § 220 *et seq.*)

11           71. NEPA regulations include several significance factors applicable to  
12 this case: “The following should be considered in evaluating intensity: ... The  
13 degree to which the proposed action affects public health or safety. ... [and] The  
14 degree to which the effects on the quality of the human environment are likely to  
15 be highly controversial.” 40 C.F.R. § 1509.27(b)

16           72. “When an agency decides to proceed with an action in the absence of  
17 an EA or EIS, the agency must adequately explain its decision.” *Alaska Ctr. for*  
18 *Env’t v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999). If the agency asserts  
19 that an activity will have an insignificant effect on the environment, the agency “  
20 ‘must supply a convincing statement of reasons why potential effects are  
21 insignificant.’ ” *Id.* (quoting *The Steamboaters v. FERC*, 759 F.2d 1382, 1393 (9th  
22 Cir. 1985)).

23           73. A federal agency must consider and evaluate “significant new  
24 circumstances or information relevant to environmental concerns and bearing on  
25 the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

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1 The National Forest Management Act (NFMA)

2 74. NFMA requires that all “[r]esource plans and permits, contracts, and  
3 other instruments for the use and occupancy of National Forest System lands shall  
4 be consistent with the land management plans.” 16 U.S.C. § 1604(i). “[A]ll  
5 management activities undertaken by the Forest Service must comply with the  
6 forest plan, which in turn must comply with [NFMA]. . . .” *Idaho Sporting  
7 Congress v. Rittenhouse*, 305 F.3d 957, 962 (9th Cir. 2002).

8 75. Moreover, the Forest Service’s NFMA regulations require that:  
9 Every project and activity must be consistent with the applicable plan  
10 components. A project or activity approval document must describe  
11 how the project or activity is consistent with applicable plan  
12 components developed or revised in conformance with this part by  
13 meeting the following criteria:

14 (1) Goals, desired conditions, and objectives. The project or  
15 activity contributes to the maintenance or attainment of one or  
16 more goals, desired conditions, or objectives, or does not  
17 foreclose the opportunity to maintain or achieve any goals,  
18 desired conditions, or objectives, over the long term.

19 (2) Standards. The project or activity complies with applicable  
20 standards.

21 (3) Guidelines. The project or activity:

22 (i) Complies with applicable guidelines as set out in the plan;  
23 or

24 (ii) Is designed in a way that is as effective in achieving the  
25 purpose of the applicable guidelines (§ 219.7(e)(1)(iv)).

26 36 C.F.R. § 219.15(d)(1) – (3).

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1 **CLAIMS FOR RELIEF**

2 **National Environmental Policy Act (NEPA) Violations**

3 76. The paragraphs above are incorporated herein by reference.

4 Exceeding CE Limits for Commercial Timber Sales

5 77. Under NEPA, federal agencies must prepare a detailed written  
6 statement known as an environmental impact statement (EIS) for “major Federal  
7 actions significantly affecting the quality of the human environment.” 42 U.S.C. §  
8 4332(C); 40 C.F.R. § 1508.11.

9 78. Unless the action is categorically excluded, an agency must prepare an  
10 environmental assessment (EA) to determine whether preparation of an EIS is  
11 necessary. 40 C.F.R. § 1501.4(a)-(c).

12 79. The Cuddy Valley Project is a timber sale project that involves  
13 thinning, which would harvest trees from up to 601 acres. As such, the Project  
14 greatly exceeds the 70 acre limitation of the small thinning categorical exclusion  
15 (CE) in 36 C.F.R. § 220.6(e)(12), and also exceeds the 250 acre limitations of the  
16 timber salvage and sanitation CEs in 36 C.F.R. §§ 220.6(e)(13) and (14).  
17 Therefore, the Forest Service was required to prepare an EA or EIS. In similar  
18 wildfire protection projects, such as in the Frazier Mountain Project, the Los  
19 Padres National Forest has prepared an EA. Here, however, the Forest Service  
20 decided to limit its NEPA analysis by inappropriately choosing the “timber stand  
21 and/or wildlife habitat improvement activities” CE (36 C.F.R. § 220.6(e)(6)),  
22 which does not fit the type of commercial logging activities proposed in the Cuddy  
23 Valley Project. The Forest Service’s failure to prepare an EA for a commercial  
24 timber sale to implement this project violates its own regulations and NEPA.

25 Failure to Consider Potential Significant Effects and Extraordinary Circumstances

26 80. To comply with NEPA, the Forest Service must adequately consider  
27 “[t]he degree to which the effects on the quality of the human environment are  
28

1 likely to be highly controversial” and “[t]he degree to which the proposed action  
2 affects public health or safety.” 40 C.F.R. § 1509.27(b).

3 81. Plaintiffs have presented substantial scientific evidence that thinning  
4 can increase wildfire risk and make matters worse instead of better by referencing  
5 numerous scientific publications and government reports, which describe concerns  
6 with thinning and the potential for increased wildfire risk.

7 82. Rather than address the significant and highly controversial concerns  
8 about the efficacy of thinning to reduce wildfire risk raised by Plaintiffs’  
9 comments, neither the Cuddy Valley Project decision nor the Fire/Fuels Report  
10 (dated before scoping began) addressed the concerns raised by Plaintiffs.

11 83. While the Cuddy Valley Project has been promoted by the Forest  
12 Service as a means to help protect adjacent communities from wildfire risk, it fails  
13 to discuss the controversy or the likely potential that these significant effects may  
14 have on public health and safety, as implicated by the highly controversial nature  
15 of thinning for wildfire risk reduction, and the findings that thinning may instead  
16 increase wildfire risk and therefore adversely affect public health and safety.

17 84. At the very least, if the Forest Service decides to proceed with an  
18 action in the absence of an EA or EIS, it must adequately explain its decision and  
19 must supply a convincing statement of reasons why potential effects are  
20 insignificant. *Alaska Ctr. for Env’t v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th  
21 Cir. 1999). Here, the Forest Service has failed to do so.

22 85. Moreover, extraordinary circumstances preclude the use of categorical  
23 exclusions if a project is likely to adversely affect a Forest Service sensitive  
24 species. 36 C.F.R. § 220.6(b)(1).

25 86. With respect to the Tehachapi pocket mouse, a sensitive species, the  
26 Forest Service has failed to adequately consider or explain the effects on this  
27 species because it erroneously stated that it did not occur in the project area,  
28 making a “no effect” determination due to erroneous assertion of its absence,

1 whereas Plaintiffs specifically presented information that the Tehachapi pocket  
2 mouse has been observed in the Cuddy Valley Project area and there are hundreds  
3 of acres of habitat within the project area.

4 Failure to Ensure Scientific Accuracy and Integrity

5 87. A federal agency must consider and evaluate “significant new  
6 circumstances or information relevant to environmental concerns and bearing on  
7 the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

8 88. Dr. Chad Hanson of Plaintiff JMP submitted a supplemental letter to  
9 the Forest Service presenting significant new information that would obviate the  
10 need to do much of the proposed thinning or density reduction proposed in the  
11 Cuddy Valley Project. In his letter, he explained that the Forest Service had  
12 greatly overstated current average stand densities of 480 trees per acre based by  
13 including 1-4 inch diameter trees in its calculations, whereas the studies of  
14 historical data relied on by the Forest Service did not include these small trees.  
15 Further, Dr. Hanson notes that the historical study excluded several tree species  
16 (species of trees that are not valuable for commercial logging as lumber), but the  
17 Forest Service here included those tree species to calculate stand densities.

18 89. NEPA requires that the Forest Service ensure scientific accuracy and  
19 integrity in NEPA documents, and must also clearly divulge its methodologies for  
20 key findings, and present hard data upon which those findings are based. 40  
21 C.F.R. § 1502.24.

22 90. The Forest Service failed to comply with these provision of NEPA by  
23 failing to consider and respond to this significant new information, and it violates  
24 NEPA because the analysis (a) greatly overstates current average stand densities of  
25 480 trees per acre based on the inclusion of trees between 1-4 inches in diameter  
26 and non-timber tree species, whereas the historical studies relied on by the Forest  
27  
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1 Service did not include these trees to determine stand densities; (b) makes  
2 erroneous comparisons between current and historic stand densities; (c) fails to  
3 divulge the methodology it used to assess current stand density (i.e., the inclusion  
4 of all trees between 1-4 inches in diameter and non-timber tree species) in  
5 comparison to historic density (which did not include these trees); and (d) fails to  
6 correct the analysis or re-analyze whether density reduction is still necessary or  
7 should be reduced or limited to only very small diameter trees.  
8

9         91. By its various violations of NEPA, Defendants have taken final  
10 agency actions that are arbitrary, capricious, and otherwise not in accordance with  
11 law, or without observance of procedure required by law, within the meaning of  
12 the Administrative Procedure Act. 5 U.S.C. § 706(2). As such, the Court should  
13 hold Defendants' actions as unlawful and set them aside. *Id.*

#### 14                   **National Forest Management Act (NFMA) Violations**

15         92. The paragraphs above are incorporated herein by reference.

16         93. Defendants have authorized the Cuddy Valley Project in violation of  
17 the Los Padres Land and Resources Management Plan (the Forest Plan or land  
18 management plan). NFMA requires that all “[r]esource plans and permits,  
19 contracts, and other instruments for the use and occupancy of National Forest  
20 System lands shall be consistent with the land management plans.” 16 U.S.C. §  
21 1604(i). To that effect, the Forest Service’s NFMA regulations require that every  
22 project and activity must be consistent with the applicable plan components, and it  
23 must describe how the project or activity is consistent with those components,  
24 including goals, desired conditions, objectives, standards, and guidelines. 36  
25 C.F.R. § 219.15(d).  
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- 1           b) Set aside the Cuddy Valley Project decision;
- 2           c) Compel Defendants to supplement their NEPA analysis with an EA or
- 3 EIS for the Cuddy Valley Project, consider and prepare alternatives to the proposed
- 4 action, and otherwise order it to comply with NEPA before issuing a new decision;
- 5           d) Compel Defendants to comply with the Forest Plan's requirements for
- 6 the Mt. Pinos Place Management Area and standard for high scenic integrity;
- 7           e) Enjoin Defendants from felling or removing trees until the Defendants
- 8 have properly complied with NEPA and NFMA;
- 9           f) Award Plaintiffs their costs of litigation, including reasonable
- 10 attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 11           g) Provide such other relief as the Court deems just and proper.

12 Respectfully submitted this 29th day of July, 2019.

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16 René Voss

17

18 /s/Douglas P. Carstens (as authorized 7/26/19)

19 Douglas P. Carstens

20 Michelle Black

21 *Attorneys for Plaintiff*

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