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 13 **UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14 **WESTERN DIVISION**

15 LOS PADRES FORESTWATCH; KEEP 16 SESPE WILD COMMITTEE; EARTH 17 ISLAND INSTITUTE; AMERICAN 18 ALPINE CLUB; CENTER FOR 19 BIOLOGICAL DIVERSITY; PATAGONIA WORKS; AND CALIFORNIA CHAPARRAL INSTITUTE, 20 Plaintiffs, 21 v. 22 UNITED STATES FOREST SERVICE; 23 KARINA MEDINA, District Ranger, United States Forest Service; TOM 24 VILSACK, Secretary of Agriculture, United States Department of Agriculture; 25 and UNITED STATES FISH AND 26 WILDLIFE SERVICE, 27 Defendants.) Case No. 2:22-cv-2781))) COMPLAINT FOR) DECLARATORY AND) INJUNCTIVE RELIEF)) (National Environmental Policy Act,) 42 U.S.C. § 4321 <i>et seq.</i> ;) Administrative Procedure Act, 5) U.S.C. § 551 <i>et seq.</i> ; Endangered) Species Act, 16 U.S.C. § 1531 <i>et</i>) <i>seq.</i> ; National Forest Management) Act, 16 U.S.C. § 1604; Healthy) Forest Restoration Act, 16 U.S.C.) §§ 6591b & 6591d; and The) Roadless Area Conservation Rule, 36) C.F.R. §§ 294.12 & 294.13)))
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 COMPLAINT

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
3 (federal question), 28 U.S.C. § 1346 (United States as a defendant), and 5 U.S.C. §§
4 701-706 (Administrative Procedure Act, “APA”). The federal statutes and rules at issue
5 in this case include the National Environmental Policy Act (“NEPA”; 42 U.S.C.
6 §§ 4321-4370h), the Endangered Species Act (“ESA”; 16 U.S.C. § 1536), the Healthy
7 Forest Restoration Act (“HFRA”; 16 U.S.C. §§ 6591b & 6591d), the Roadless Area
8 Conservation Rule (“Roadless Rule”; Roadless Area Conservation Final Rule, 66 Fed.
9 Reg. 3,244 (Jan. 12, 2001) (to be codified in 36 C.F.R. pt. 294)),¹ and the National
10 Forest Management Act (“NFMA”; 16 U.S.C. § 1604). This Court has authority to grant
11 the requested relief pursuant to 28 U.S.C. §§ 2201-2202 (declaratory and injunctive
12 relief) and 5 U.S.C. §§ 701-706 (APA).

13 2. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e)(1) because
14 Plaintiffs Los Padres ForestWatch and Keep Sespe Wild Committee are located and
15 reside in this District, Defendants reside in this District, and a substantial part of the
16 events or omissions giving rise to Plaintiffs’ claims occurred in this District. Plaintiff
17 Los Padres ForestWatch’s office is located in Santa Barbara, California. Keep Sespe
18 Wild Committee is based in Ojai, California. Patagonia Works is headquartered in
19 Ventura, California. This case challenges approval of a logging project located in
20 Ventura County, California.

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23 _____
24 ¹ The Roadless Rule appears in the 2001-2004 editions of the Code of Federal
25 Regulations, at 36 C.F.R. §§ 294.10-14. In 2005, it was replaced by the State Petitions
26 Rule. 70 Fed. Reg. 25,654 (May 13, 2005). When that replacement was set aside the
27 following year, the Roadless Rule was reinstated. *California ex rel. Lockyer v. USDA*,
28 459 F. Supp. 2d 874 (N.D. Cal. 2006), *aff’d*, 575 F.3d 999 (9th Cir. 2009)). However,
the General Printing Office has thus far not conformed the current published Code
accordingly. This complaint includes citations to 36 C.F.R. part 294.

1 **INTRODUCTION**

2 3. Plaintiffs challenge the United States Forest Service’s authorization of the
3 Reyes Peak Forest Health and Fuels Reduction Project (“Reyes Peak Project” or
4 “Project”) located on Pine Mountain in Los Padres National Forest. The Project will
5 involve logging and mastication of more than 750 acres of public land, including in the
6 Sespe-Frazier Inventoried Roadless Area (“IRA”). Plaintiffs regularly use the Reyes
7 Peak area for cultural, educational, scientific, aesthetic, and recreational purposes, and
8 seek to prevent the area’s wild character from being harmed by the Project. The Forest
9 Service intends to log thousands of trees in the Project area, including an unlimited
10 number of old-growth trees as large as sixty-four inches in diameter. Furthermore, the
11 agency plans to masticate old-growth chaparral, a shrub dominated ecosystem that is
12 native to the area and is important for wildlife. Mastication means a tractor-like machine
13 is used to chop the chaparral into small chips.

14 4. Reyes Peak is one of the most biologically-diverse hotspots in Los Padres
15 National Forest. Pine Mountain hosts the greatest diversity of coniferous tree species in
16 Ventura County, which occur next to large expanses of rare old-growth chaparral.
17 Moreover, Reyes Peak contains the only “sky island” near Santa Barbara or Los
18 Angeles, meaning it provides unique habitat to higher-elevation species that cannot
19 survive in the nearby lowland regions. The Reyes Peak and Pine Mountain ridgeline
20 form the northern rim of the Sespe watershed, at over 7,000 feet elevation. The ridge is
21 home to over 400 species of native plants, including dozens that are rare or sensitive. It
22 is also home to an abundance of wildlife including the endangered California condor,
23 California spotted owl, northern goshawk, and several sensitive bat species.

24 5. The Reyes Peak Project is also located entirely within ancestral lands of the
25 Chumash people, and Pine Mountain (known by its traditional name of “Opnow”) is a
26 sacred peak that is significant to the spiritual and religious beliefs of the Chumash. The
27 Project area contains culturally significant sites, as well as items like grinding bowls and
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1 medicinal plants that could be destroyed by the Project. Tribal members also visit Pine
2 Mountain and Reyes Peak for prayer and ceremony, and the Project would permanently
3 alter the landscape where they pray.

4 6. The Forest Service violated NEPA when approving the Reyes Peak Project.
5 The agency wrongly relied on categorical exclusions (“CEs”) instead of conducting an
6 environmental assessment (“EA”) or environmental impact statement (“EIS”), thereby
7 short-circuiting public involvement and the consideration of alternatives. This matters
8 because alternatives to the Project could have avoided harm to the wild character of the
9 Project area and the cultural sites it contains.

10 7. Moreover, the Forest Service ignored the requirements of the CEs that were
11 relied upon. All Forest Service CEs, which are found at 36 C.F.R. § 220.6, require what
12 is called “scoping.” 36 C.F.R. § 220.4(e) (2008); 36 C.F.R. § 220.6(c) (2008). Scoping is
13 how the Forest Service ensures that the public is provided notice of, and the ability to
14 comment on, any Forest Service project. Here, the Forest Service did not state in its
15 scoping letter that the agency intended to rely upon the CE found at 36 C.F.R.
16 § 220.6(e)(6) (1992), and consequently the public was not properly notified that the
17 agency would be using that particular CE. The Forest Service is therefore in violation of
18 its own regulations and cannot proceed under 36 C.F.R. § 220.6(e)(6) (1992).

19 8. Furthermore, 36 C.F.R. § 220.6(e)(6) (1992) cannot be used for this Project
20 because 36 C.F.R. § 220.6(e)(6) does not authorize commercial thinning. It also does not
21 authorize the logging of large trees that contain dwarf mistletoe, or the removal of snags
22 or downed wood.

23 9. The Forest Service likewise ignored the requirements of the other CEs it
24 relied upon—16 U.S.C. §§ 6591b, 6591d. In order for the Forest Service to utilize these
25 HFRA statutory CEs, the agency must maximize the retention of old-growth and large
26 trees, consider the best available scientific information, and develop and implement the
27 project using a collaborative process. Here, the Forest Service wrongly authorized the
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1 logging of old-growth and large trees, ignored the best available science with respect to
2 maintaining the integrity of the area's forest and chaparral ecosystem, failed to
3 collaborate with local Native American tribes and other community stakeholders when
4 developing the Project, and violated the terms of Los Padres National Forest's Land and
5 Resource Management Plan ("Forest Plan").

6 10. An EA or EIS is also required because NEPA regulations preclude the use
7 of CEs when there are "extraordinary circumstances" present. 36 C.F.R. § 220.6(b), (c)
8 (2008). "Extraordinary circumstances" exist here because the Project may cause serious
9 harm to local "resource conditions" including Native American religious and cultural
10 sites, rare wildlife, and a proposed wilderness area and the Sespe-Frazier IRA. *Id.* To the
11 degree that there is uncertainty regarding impacts to these resources, further analysis is
12 required under NEPA. *See* Forest Service Handbook 1909.15.31.2 ("If the degree of
13 potential effect raises uncertainty over its significance, then an extraordinary
14 circumstance exists, precluding use of a categorical exclusion.").

15 11. Wildlife impacts were also wrongly ignored under the ESA. The Project
16 area is home to the endangered California condor, which uses large trees for roosting.
17 The United States Fish and Wildlife Service ("FWS"), when concluding that the Project
18 would "not likely adversely affect" condors or their critical habitat, asserted that "[o]ne
19 of the project goals is to retain larger trees throughout the project area." FWS ESA
20 Section 7 Consultation Concurrence Letter ("FWS Concurrence") at 5. The Project, as
21 approved, however, allows large trees (up to sixty-four inches in diameter) that contain
22 dwarf mistletoe to be logged, and places no limit on the amount of such trees that can be
23 cut and removed. It was therefore not possible for the FWS to ensure that the Project
24 would not adversely affect important condor roosting trees.

25 12. In addition, the Sespe-Frazier IRA is protected by the Roadless Rule. This
26 Rule forbids logging in any IRA except in very limited circumstances, such as the
27 logging of small diameter trees. 36 C.F.R. § 294.13 (2001). Here, the Forest Service
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1 violated the Roadless Rule by authorizing the unlimited logging of trees up to sixty-four
2 inches in diameter in the Sespe-Frazier IRA, thereby failing to protect the IRA's wild
3 character.

4 13. Moreover, the Project violates NFMA, which requires that projects in
5 National Forests be consistent with the Forest's Forest Plan. 16 U.S.C. § 1604(i). The
6 Reyes Peak Project contravenes the Forest Plan for Los Padres National Forest because
7 the removal of trees and shrubs from the Project area fails to protect the area's "High
8 Scenic Integrity" and its "undeveloped character and natural appearance." *See e.g.*, Los
9 Padres National Forest Plan, Part 3, Standards 9 and 10. In addition, the Project does not
10 adhere to the Forest Plan's findings regarding safeguarding communities from wildfire
11 because the Project is not located within the defense zone or threat zone of the wildland
12 urban interface ("WUI"). *See e.g.*, Los Padres National Forest Plan, Part 3, Standard 7.

13 14. Finally, the HFRA provisions at issue in this case (16 U.S.C. §§ 6591b,
14 6591d), in order to ensure agency accountability, require annual reports containing "a
15 description of all acres (or other appropriate unit) treated through projects carried out
16 under [these CEs]." 16 U.S.C. § 6591b(g). As far as Plaintiffs are aware, not a single
17 annual report has yet been prepared or submitted as HFRA requires.

18 15. Plaintiffs bring this case seeking declaratory relief that: the Forest Service
19 violated NEPA, the Roadless Area Conservation Rule, NFMA, HFRA, and the APA in
20 approving the Reyes Peak Project; the FWS violated the ESA and APA in concluding
21 that the Project is not likely to adversely affect California condors or their critical
22 habitat; and the Forest Service and Secretary of Agriculture Tom Vilsack violated the
23 HFRA and the APA in failing to issue annual reports pertaining to the use of CEs as
24 required by HFRA. Plaintiffs seek to have this Court declare unlawful, vacate, and set
25 aside the Forest Service's Decision approving the Reyes Peak Project and the FWS's
26 decision that the Reyes Peak Project is not likely to adversely affect California condors
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1 or their critical habitat. Plaintiffs also seek injunctive relief to remedy Defendants’
2 violations.

3 **PARTIES**

4 16. Plaintiffs’ members have used and enjoyed the tracts of forest and lands
5 where the Reyes Peak Project is set to occur and have specific plans to return. They will
6 be directly harmed by this Project. A favorable ruling from this Court would redress
7 those harms.

8 17. Plaintiff LOS PADRES FORESTWATCH (“ForestWatch”) is a nonprofit
9 corporation headquartered in Santa Barbara, California. The organization’s primary
10 purpose is to protect and restore the natural and cultural heritage of Los Padres National
11 Forest and its surrounding public lands using law, science, education, and community
12 involvement. To further its mission and protect the interests of its members and
13 supporters in preserving public lands, ForestWatch monitors forest conditions and
14 activities in Los Padres National Forest and reviews and comments on proposed Forest
15 Service projects. ForestWatch also organizes habitat restoration and forest stewardship
16 projects using crews of volunteers, making the forest a better place for all to enjoy and
17 visit. In addition, ForestWatch programs seek to engage underserved youth by providing
18 them with opportunities to explore nature and foster an appreciation of the outdoors.

19 18. ForestWatch’s members include individuals who regularly use the Reyes
20 Peak Project area for educational efforts, Native American cultural purposes, scientific
21 study, recreational enjoyment, aesthetic beauty, and nature photography. These
22 members’ interests will be irreparably harmed by the planned logging, as they will no
23 longer be able to, for example, take nature photographs of the area in its pre-logging
24 state, utilize and honor sacred cultural sites, or enjoy the aesthetic beauty of the
25 unlogged forest habitat and its inhabitants.

26 19. Plaintiff KEEP SESPE WILD COMMITTEE (“KSWC”) is a volunteer
27 non-profit watershed protection organization, focused on Sespe Creek and its watershed
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1 in Los Padres National Forest in Ventura County. Founded in 1989, KSWC helped pass
2 the 1992 federal Wilderness and Wild & Scenic River protections that cover a majority
3 of the Sespe watershed. It also supports current legislation before Congress that would
4 substantially increase these protected areas. The organization has roughly 1,500
5 members. KSWC monitors all environmental issues concerning this area, including
6 endangered species, exotic invasive species, project proposals that might threaten the
7 natural values of the watershed, and restoration projects. For three decades it has
8 engaged in the removal of invasive exotic tamarisk plants in Sespe Creek, as well as in
9 monthly trash collection along four miles of State Highway 33 adjacent to Sespe Creek's
10 upper reaches, with volunteer assistance.

11 20. KSWC's members use the Project area for camping, hiking, bird watching,
12 photography, plant walks, bouldering, and other recreation activities. The Project area is
13 especially important to KSWC's members because of its high elevation conifers along
14 this ridgeline, which are a rare example of ancient "sky island" habitats that are
15 threatened by climate change, and because of the road that allows easy access to the
16 visiting public.

17 21. Plaintiff THE AMERICAN ALPINE CLUB ("AAC") is a 501(c)(3) non-
18 profit organization based in Golden, Colorado with over 25,000 members nationally. It
19 was founded in 1902 to support the research and exploration of mountainous regions.
20 The AAC remains committed to supporting the climbing and human-powered outdoor
21 recreation communities. Grounded in community and place, the AAC's mission is to
22 share and support our passion for climbing and respect for the places we climb. Through
23 education, community gatherings, stewardship, policy, advocacy, and scientific research,
24 the AAC strives to build a united community of competent climbers and healthy
25 climbing landscapes. To further its' mission, the AAC Policy Department strives to grow
26 and convene the community of civically active climbers, empower them with
27 information, and partner with them in advocacy.

1 22. The AAC’s members include individuals that regularly use the Reyes Peak
2 Project area for outdoor recreation activities including climbing, hiking, biking, and
3 camping. These members’ experiences will be adversely affected by the planned logging
4 project which will permanently alter the primitive and remote setting which
5 characterizes the aesthetic value of Pine Mountain.

6 23. Plaintiff EARTH ISLAND INSTITUTE (“EII”) is a nonprofit corporation
7 organized under the laws of the State of California. EII is headquartered in Berkeley,
8 California. EII’s mission is to develop and support projects that counteract threats to the
9 biological and cultural diversity that sustains the environment. Through education and
10 activism, these projects promote the conservation, preservation and restoration of the
11 earth. One of these projects is the John Muir Project—whose mission is to protect all
12 federal public forestlands from exploitation that undermines and compromises science-
13 based ecological management. John Muir Project offices are in San Bernardino County,
14 California. EII is a membership organization with over 15,000 members in the U.S., over
15 3,000 of whom use and enjoy the National Forests of California for recreational,
16 educational, aesthetic, spiritual, and other purposes. EII through its John Muir Project
17 has a longstanding interest in protection of national forests. EII’s John Muir Project and
18 EII members actively participate in governmental decision-making processes with
19 respect to national forest lands in California and rely on information provided through
20 the NEPA processes to increase the effectiveness of their participation.

21 24. EII’s members include individuals who regularly use the Reyes Peak
22 Project area for scientific study, recreational enjoyment, aesthetic beauty, and nature
23 photography. These members’ interests will be irreparably harmed by the planned
24 logging, as they will, for example, no longer be able to scientifically study these areas in
25 their pre-logging state, take nature photographs of the area in its pre-logging state, or
26 enjoy the aesthetic beauty of the unlogged forest habitat and its inhabitants.

1 25. Plaintiff PATAGONIA WORKS (“Patagonia”) is a private, closely held,
2 outdoor apparel company with its headquarters in Ventura, California where 750 of its
3 employees and their families live and recreate, in and around the Project area that will be
4 negatively impacted by logging. Patagonia has a 40-year history of environmental
5 activism and has funded more than \$100 million in grants to thousands of grassroots
6 environmental organizations. Protecting and preserving the environment is a core
7 business tenet and, in 2012, Patagonia became a California benefit corporation,
8 enshrining its blended goals of business and environmental conservation into its Articles
9 of Incorporation. Cal. Corp. Code §§ 14600-14631. Patagonia’s mission statement is
10 “We’re in business to save our home planet.” Patagonia also has a business interest in
11 protecting and preserving the natural environment because the outdoor recreation
12 industry depends on a healthy and sustainable environment in which customers can
13 recreate, including the opportunity to see wild places in their native conditions.

14 26. For Patagonia, this project hits close to home. Pine Mountain is a well
15 known and loved recreation area close to Patagonia’s headquarters in Ventura, CA.
16 Patagonia’s employees at its Ventura headquarters come to work at Patagonia in part
17 because of their love for the outdoors and for the recreational opportunities that Los
18 Padres National Forest has to offer. Patagonia’s employees include individuals who
19 regularly use the Project area for recreational enjoyment, aesthetic beauty, and nature
20 photography. These employees’ interests will be irreparably harmed by the planned
21 logging, as they will, for example, no longer be able to enjoy the Project area in its pre-
22 logging state, take nature photographs of the area in its pre-logging state, or enjoy the
23 aesthetic beauty of the unlogged forest habitat and its inhabitants. In addition, protecting
24 old forests like those on Pine Mountain is important to Patagonia and its employees
25 because such forests store large amounts of carbon and are therefore critical in the fight
26 against climate change. Moreover, over thirty percent of the Project would occur within
27 two proposed additions to the Sespe Wilderness approved by the House of
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1 Representatives with the passage of the Central Coast Heritage Protection Act. Patagonia
2 has advocated for the Central Coast Heritage Protection Act since it was first introduced
3 by Representative Salud Carbajal (D-CA) and Senator Kamala Harris (D-CA). The bill
4 was recently passed in the House and is awaiting a vote in the Senate. Patagonia's
5 employees feel strongly that it makes no sense to permanently damage an old-growth
6 forest that the House has already voted to designate as Wilderness.

7 27. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a
8 non-profit corporation with offices in Oakland, Los Angeles, and Joshua Tree,
9 California. The Center is actively involved in species and habitat protection issues
10 throughout North America and has about 69,000 members, including many members
11 who reside and recreate in California. One of the Center's primary missions is to protect
12 and restore habitat and populations of imperiled species, including from the impacts of
13 logging.

14 28. The Center's members and staff include individuals who regularly use and
15 intend to continue to use Los Padres National Forest, including the lands that are now
16 planned for logging as part of the Reyes Peak Project. These members and staff use the
17 area for observation, cultural appreciation and practices, aesthetic enjoyment, and other
18 recreational, scientific, spiritual, and educational activities. Many of the Center's staff
19 and members use the area to enjoy its wild character and to observe the forest and
20 wildlife in the Project area. These members' interests will be irreparably harmed by the
21 planned logging in the Project area, as they will no longer be able to visit and enjoy this
22 area in its unlogged state any longer.

23 29. Plaintiff CALIFORNIA CHAPARRAL INSTITUTE ("CCI") is a 501(c)(3)
24 nonprofit corporation headquartered in Escondido, California. Its members provide
25 donations to CCI in the form of direct funding and in-kind contributions such as efforts
26 to preserve and research California's native shrublands. CCI's purpose is to ensure
27 native California shrublands, especially the chaparral, remain intact and to promote an
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1 understanding and appreciation of these unique ecosystems through educational
2 programs. Chaparral is a semi-arid, shrub-dominated association of woody shrubs, that is
3 extremely sensitive to disturbance such as increased fire frequencies, vegetation
4 “treatments,” and climate change. It is at risk of being destroyed in certain parts of
5 California, where it is often viewed more as “fuel” than a living community, for the
6 purported purpose of fire risk reduction, as well as landscape management and
7 development. To further its purpose, CCI conducts and facilitates research about
8 California native shrublands, educates the public about the importance of chaparral, and
9 advocates for policies and projects that will protect and preserve chaparral for the benefit
10 of future generations. Its members are scientists, firefighters, naturalists, educators, and
11 community members who value chaparral as a unique ecosystem, want to see it
12 preserved, and rely on CCI to help them achieve that goal.

13 30. CCI’s members include individuals who enjoy the Reyes Peak Project area
14 for ecological research, emotional renewal, recreation, aesthetic beauty, and nature
15 photography. These members’ interests will be irreparably harmed by the proposed
16 clearance of intact chaparral habitat and planned logging, as such activity will destroy
17 the naturally dense composition of the Project’s chaparral plant communities, creating a
18 disturbed environment that will no longer be suitable for ecological research,
19 photography of a natural setting, or enjoyment of the aesthetic beauty of the undisturbed
20 native shrubland habitat and its inhabitants.

21 31. Plaintiffs and their members’/employees’ present and future interests in and
22 use of the Reyes Peak Project area are and will be directly and adversely affected by the
23 challenged decision. Those adverse effects include but are not limited to: (1) impacts to
24 native plants and wildlife and their habitats within and around the Project area; (2) harm
25 to ancestral lands of the Chumash people and culturally sensitive and/or sacred
26 resources; (3) impaired aesthetic value of forest lands, trails, and landscapes; (4) loss of
27 scientific study and viewing opportunities; and (5) reduction and impairment of
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1 recreational opportunities. In addition, Plaintiffs and their members and staff have an
2 interest in ensuring that Defendants comply with all applicable laws, regulations, and
3 procedures pertaining to the management of national forest lands.

4 32. Because Defendants' actions approving the Project violate the law, a
5 favorable decision by this Court will redress the actual and imminent injury to Plaintiffs.
6 For example, if the Forest Service had complied with its legal duties, it would have
7 collaborated with Plaintiffs' organizations when developing the Project, and provided
8 more opportunity for Plaintiffs, the public, and other agencies to engage and comment,
9 providing information that the Forest Service would have been required to consider prior
10 to making a decision. For example, during an EA or EIS process, there is an opportunity
11 to review, comment on, and rebut the Forest Service's analysis and conclusions
12 contained in the agency's reports, whereas during the Reyes Peak CE process those
13 reports were never made available for comment. In addition, a lawful consultation
14 process under the ESA would have ensured important safeguards for the endangered
15 California condor and their critical habitat, designed to avoid jeopardizing the species.
16 Had that occurred, many or all of the Project's harmful impacts could have been avoided
17 or mitigated, thereby minimizing or averting the harm to Plaintiffs' members that will be
18 caused from the destruction of forest habitat by the Project.

19 33. Defendant UNITED STATES FOREST SERVICE is a federal government
20 agency within the Department of Agriculture, which holds the National Forests in trust
21 for the American people and is responsible for actions in the Reyes Peak Project area.

22 34. Defendant KARINA MEDINA is a District Ranger for Los Padres National
23 Forest and signed the Decision Memo approving the Reyes Peak Project on September
24 30, 2021. She is included in this action in her official capacity.

25 35. Defendant TOM VILSACK is the Secretary of Agriculture within the
26 United States Department of Agriculture and is charged with responsibilities under
27 HFRA. He is included in this action in his official capacity.

1 36. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the
2 federal agency within the Department of Interior charged with responsibility for
3 conserving endangered and threatened species under the Endangered Species Act, for
4 enforcing and implementing the ESA, and for complying with the APA in connection
5 with the Service’s ESA actions.

6 **LEGAL FRAMEWORK**

7 **THE ADMINISTRATIVE PROCEDURE ACT**

8 37. The APA allows persons and organizations to challenge final agency
9 actions in the federal courts. 5 U.S.C. §§ 702, 704.

10 38. The APA declares that a court shall hold unlawful and set aside agency
11 actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
12 accordance with law. 5 U.S.C. § 706(2)(A).

13 **THE NATIONAL ENVIRONMENTAL POLICY ACT**

14 39. Congress enacted NEPA, 42 U.S.C. §§ 4321-4370h, to, among other things,
15 “encourage productive and enjoyable harmony between man and his environment” and
16 to promote government efforts “that will prevent or eliminate damage to the
17 environment.” *Id.* § 4321. As a general matter, NEPA requires that federal agencies
18 analyze and disclose to the public the environmental impacts of their actions. *Id.* §
19 4332(2)(C).

20 40. To this end, the Council on Environmental Quality (“CEQ”) has
21 promulgated regulations implementing NEPA. Among other things, the rules are
22 intended to “tell federal agencies what they must do to comply with the procedures and
23 achieve the goal of [NEPA],” to “insure that environmental information is available to
24 public officials and citizens before decisions are made and before actions are taken,” and
25 to ensure “better decisions” and “foster excellent action.” 40 C.F.R. § 1500.1(a)-(c)

1 (1978).² Moreover, “[a]ccurate scientific analysis, expert agency comments, and public
2 scrutiny are essential to implementing NEPA.” *Id.*

3 41. NEPA and its implementing regulations promulgated by the CEQ require
4 federal agencies to prepare an EIS for “major Federal actions significantly affecting the
5 quality of the human environment.” 42 U.S.C. §4332(2)(C).

6 42. If an agency is unsure whether a proposed action may have significant
7 environmental effects, it may prepare a shorter document called an “environmental
8 assessment” to determine if the proposed action will have significant environmental
9 effects and whether an EIS is necessary. 40 C.F.R. §1501.4(c) (1978).

10 43. When conducting environmental analysis pursuant to an EA or EIS, an
11 agency must consider alternatives to the proposed action. *See, e.g.*, 40 C.F.R. §
12 1508.9(b) (1978).

13 44. In narrow situations, neither an EA nor an EIS is required, and federal
14 agencies may invoke a “categorical exclusion” from NEPA. 40 C.F.R. §1501.4(a)
15 (1978).

16 45. A “categorical exclusion” is defined as “a category of actions that the
17 agency has determined, in its agency NEPA procedures (§1507.3 of this chapter),
18 normally do not have a significant effect on the human environment.” 40 C.F.R. §1508.4
19 (1978). The Forest Service’s established CEs can be found at 36 C.F.R. § 220.6.

22 ² Scoping for the Reyes Peak Project began on May 27, 2020. On July 16, 2020, the
23 Council on Environmental Quality issued new NEPA regulations at 40 C.F.R. Part 1500,
24 replacing previous regulations from 1978. *See* 85 Fed. Reg. 43304 (July 16, 2020)
25 (*available at* <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>). The new NEPA regulations specifically provide that they
26 “apply to any NEPA processes begun after September 14, 2020.” 40 C.F.R. § 1506.13
27 (2020). Because the NEPA process for this matter began before September 14, 2020, and
28 because the agency relied on the 1978 regulations when approving the Project, the 1978 regulations apply here.

1 46. Here, the Forest Service relies in part on 36 C.F.R. § 220.6(e)(6), which
2 applies to “[t]imber stand ... improvement activities that do not include the use of
3 herbicides or do not require more than 1 mile of low standard road construction.” 36
4 C.F.R. § 220.6(e)(6) (1992). “Examples include, but are not limited to: (i) Girdling trees
5 to create snags; (ii) Thinning or brush control to improve growth or to reduce fire hazard
6 including the opening of an existing road to a dense timber stand; (iii) Prescribed
7 burning to control understory hardwoods in stands of southern pine; and (iv) Prescribed
8 burning to reduce natural fuel build-up and improve plant vigor.” *Id.* “Timber stand
9 improvement” is defined in the Forest Service Manual to only include the following
10 practices: “1. Release and weeding. 2. Precommercial thinning. 3. Pruning. 4. Control of
11 understory vegetation. 5. Fertilization. 6. Animal damage control.” Forest Service
12 Manual, Chapter 2470.

13 47. If a project appropriately falls under an adopted CE, the agency generally
14 need not prepare further analysis. *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir.
15 2002). However, an agency adopting a CE must “provide for extraordinary
16 circumstances in which a normally excluded action may have a significant
17 environmental effect.” 40 C.F.R. 1508.4 (1978). If extraordinary circumstances are
18 present, use of a CE is improper. *Norton*, 311 F.3d at 1175.

19 48. The Forest Service’s regulations include a list of seven resource conditions
20 that must be considered in determining whether “extraordinary circumstances” related to
21 a proposed action make the use of a CE inappropriate, and include the following:

- 22 (i) Federally listed threatened or endangered species or designated critical habitat,
23 species proposed for Federal listing or proposed critical habitat, or Forest Service
24 sensitive species;
25 (ii) Flood plains, wetlands, or municipal watersheds;
26 (iii) Congressionally designated areas, such as wilderness, wilderness study areas,
27 or national recreation areas;
28 (iv) Inventoried roadless area or potential wilderness area;
 (v) Research natural areas;
 (vi) American Indians and Alaska Native religious or cultural sites; and

1 (vii) Archaeological sites, or historic properties or areas.

2 36 C.F.R. § 220.6(b) (2008).

3 49. If a “cause-effect” relationship between the proposed action and these
4 resource conditions exists, it is the “degree of the potential effect of a proposed action on
5 these resource conditions that determines whether extraordinary circumstances exist.” 36
6 C.F.R. § 220.6(b)(2) (2008).

7 50. The Forest Service’s Handbook provides: “If the degree of potential effect
8 raises uncertainty over its significance, then an extraordinary circumstance exists,
9 precluding use of a categorical exclusion.” Forest Service Handbook 1909.15.31.2.

10 51. If there is substantial evidence in the record that exceptions “may apply,”
11 use of the CE is prohibited. *Norton*, 311 F.3d at 1177.

12 52. In addition, Forest Service regulations identify classes of actions that
13 “normally” require preparation of an EIS, and these include “[p]roposals that would
14 substantially alter the undeveloped character of an inventoried roadless area.” 36 C.F.R.
15 § 220.5(a)(2) (2008).

16 53. The Forest Service’s regulations require “scoping” prior to the use of a CE.
17 *See* 36 C.F.R. § 220.6(c) (2008) (determination of potential for significant effects must
18 be “based on scoping”); 36 C.F.R. § 220.4 (2008) (“Scoping is required for all Forest
19 Service proposed actions, including those that would appear to be categorically excluded
20 from further analysis and documentation in an EA or an EIS (§ 220.6).)”

21 54. “Scoping” is the “early and open process for determining the scope of
22 issues to be addressed and for identifying the significant issues related to a proposed
23 action.” 40 C.F.R. § 1501.7 (1978); *see also* 36 C.F.R. § 220.6(c) (2008). As discussed
24 in the Forest Service Handbook, “scoping is important to discover information that could
25 point to the need for an EA or EIS versus a CE.” Forest Service Handbook §1909.15,
26 Section 31.3.

1 55. If, “based on scoping, it is uncertain whether the proposed action may have
2 a significant effect on the environment,” the agency “must prepare an EA.” 36 C.F.R. §
3 220.6(c) (2008). If “the proposed action may have a significant environmental effect,”
4 then the agency “must prepare an EIS.” *Id.*

5 56. In addition to the Forest Service’s regulatory CEs, Congress has created
6 statutory CEs that the Forest Service may use. For purposes of this case, the statutory
7 CEs can be found in HFRA at 16 U.S.C. §§ 6591b and 6591d.

8 57. When using 16 U.S.C. § 6591b or 16 U.S.C. § 6591d, the Forest Service
9 must “maximize the retention of old-growth and large trees, as appropriate for the forest
10 type, to the extent that the trees promote stands that are resilient to insects and disease,”
11 must “consider the best available scientific information to maintain or restore the
12 [forest’s] ecological integrity, including maintaining or restoring structure, function,
13 composition, and connectivity,” the project must be “developed and implemented
14 through a collaborative process that includes multiple interested persons representing
15 diverse interests and is transparent and nonexclusive, and the project must “be consistent
16 with the land and resource management plan.” 16 U.S.C. § 6591b; 16 U.S.C. § 6591d.
17 Even if a project falls within a statutory CE, the presence of “extraordinary
18 circumstances” can preclude use of the CE. 16 U.S.C. § 6591d(c)(4).

19 58. HFRA’s statutory CEs also require “an annual report on the use of
20 categorical exclusions under [6591b and 6591d] that includes a description of all acres
21 (or other appropriate unit) treated through projects carried out under [these sections].” 16
22 U.S.C. § 6591b(g); 16 U.S.C. § 6591d(g). To fulfill the legislature’s oversight authority,
23 HFRA requires the Forest Service to submit these annual reports to various
24 Congressional committees as well as the Government Accountability Office. 16 U.S.C. §
25 6591b(g)(2).

26 THE ENDANGERED SPECIES ACT

27 59. Section 7 of the ESA requires each federal agency, in consultation with the
28

1 FWS, to insure that any action authorized, funded, or carried out by the agency is not
2 likely to (1) jeopardize the continued existence of any threatened or endangered species
3 or (2) result in the destruction or adverse modification of the critical habitat of such
4 species. 16 U.S.C. § 1536(a)(2).

5 60. If listed or proposed species may be present in the project area, the federal
6 agency must prepare a “biological assessment” to determine whether the listed species
7 may be affected by the proposed action. 50 C.F.R. § 402.12 (1986).

8 61. If the agency determines that its proposed action may affect any listed
9 species or critical habitat, the agency must normally engage in “formal consultation”
10 with the FWS. 50 C.F.R. § 402.14 (1986). However, an agency need not initiate formal
11 consultation if, as a result of the preparation of a biological assessment or as a result of
12 informal consultation with the FWS, the agency determines, with the written
13 concurrence of the FWS, that the proposed action is not likely to adversely affect any
14 listed species or critical habitat. *Id.*

15 62. If the FWS concludes that the proposed action “will jeopardize the
16 continued existence” of a listed species, a “biological opinion” must outline “reasonable
17 and prudent alternatives.” 16 U.S.C. § 1536(b)(3)(A). If the biological opinion concludes
18 that the action is not likely to jeopardize the continued existence of a listed species, and
19 will not result in the destruction or adverse modification of critical habitat, the FWS
20 must provide an “incidental take statement,” specifying the amount or extent of such
21 incidental taking on the species, any “reasonable and prudent measures” that the FWS
22 considers necessary or appropriate to minimize such impact, and setting forth the “terms
23 and conditions” that must be complied with by the agency to implement those measures.
24 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i) (1986).

25 63. In fulfilling its obligation to ensure that its actions do not jeopardize the
26 continued existence of any endangered species or destroy or adversely modify its critical
27 habitat, the federal agency is required to use the best scientific and commercial data
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1 available. 16 U.S.C. § 1536(a)(2).

2 THE ROADLESS AREA CONSERVATION RULE

3 64. Inventoried roadless areas “comprise only 2% of the land base in the
4 continental United States,” but “provide many social and ecological benefits.” 66 Fed.
5 Reg. at 3,245. For example, these remnant undeveloped areas “provide clean drinking
6 water and function as biological strongholds for populations of threatened and
7 endangered species, . . . provide large, relatively undisturbed landscapes that are
8 important to biological diversity and the long-term survival of many at-risk species . . .
9 [and] provide opportunities for dispersed outdoor recreation, opportunities that diminish
10 as open space and natural settings are developed elsewhere.” *Id.*

11 65. In 2001, in order “to protect and conserve inventoried roadless areas on
12 National Forest System lands,” the Forest Service established the Roadless Area
13 Conservation Rule. Roadless Area Conservation Final Rule, 66 Fed. Reg. 3,244 (Jan. 12,
14 2001). To achieve its intent, the Roadless Rule “prohibits road construction,
15 reconstruction, and timber harvest in inventoried roadless areas because [these activities]
16 have the greatest likelihood of altering and fragmenting landscapes, resulting in
17 immediate, long-term loss of roadless area values and characteristics.” *Id.*

18 66. The Forest Service may, however, approve logging “infrequent[ly]” in
19 inventoried roadless areas if the agency determines that certain circumstances exist,
20 including the following:

- 21 (1) The cutting, sale, or removal of *generally small diameter timber* is
22 needed for one of the following purposes and will maintain or
23 improve one or more of the roadless area characteristics as defined in
§ 294.11.
- 24 (i) To improve threatened, endangered, proposed, or sensitive species
habitat; or
 - 25 (ii) To maintain or restore the characteristics of ecosystem
26 composition and structure, such as to reduce the risk of
27 uncharacteristic wildfire effects, within the range of variability
28 that would be expected to occur under natural disturbance regimes
of the current climatic period.

1 36 C.F.R. § 294.13 (2001) (emphasis added).

2 67. Roadless area characteristics as defined in § 294.11 are as follows: (1) High
3 quality or undisturbed soil, water, and air; (2) Sources of public drinking water; (3)
4 Diversity of plant and animal communities; (4) Habitat for threatened, endangered,
5 proposed, candidate, and sensitive species and for those species dependent on large,
6 undisturbed areas of land; (5) Primitive, semi-primitive nonmotorized and semi-
7 primitive motorized classes of dispersed recreation; (6) Reference landscapes; (7)
8 Natural appearing landscapes with high scenic quality; (8) Traditional cultural properties
9 and sacred sites; and (9) Other locally identified unique characteristics. 36 C.F.R.
10 § 294.11 (2001).

11 **THE NATIONAL FOREST MANAGEMENT ACT**

12 68. NFMA directs the Forest Service to develop Forest Plans (Land and
13 Resource Management Plans) by which to manage each National Forest. 16 U.S.C. §
14 1604.

15 69. The Forest Service implements a Forest Plan by approving or disapproving
16 particular projects such as the Reyes Peak Project here. Proposed projects must be
17 consistent with the Forest Plan. *Id.* at § 1604(i).

18 70. A Project that is inconsistent with a Forest Plan cannot be approved using
19 the statutory CEs under 16 U.S.C. §§ 6591b and 6591d.

20 **FACTUAL BACKGROUND**

21 **A. Reyes Peak Project Collaboration and Scoping Process**

22 71. On May 27, 2020, the Forest Service proposed the Reyes Peak Project in
23 Los Padres National Forest by issuing a scoping letter and associated project proposal.
24 Forest Service Scoping Letter for Reyes Peak Project, May 27, 2020, (“Scoping Letter”);
25 Forest Service Project Proposal for Reyes Peak Project, May 8, 2020 (“Project
26 Proposal”).

27 72. The Forest Service did not collaborate with Plaintiffs or many other
28

1 community stakeholders when developing the Reyes Peak Project prior to scoping.
2 Plaintiffs and a majority of community stakeholders, including local Native American
3 tribes, conservation groups, academics, scientists, industry groups, and local property
4 owners, were not invited to assist with preparation of the Project and were not notified of
5 the Project until scoping was announced.

6 73. By that time, the Forest Service had already delineated the Project
7 boundary, developed the Project description and design, determined the Project purpose
8 and need, and chosen to proceed via CE rather than an EA or EIS.

9 74. The Forest Service scoping letter stated that the agency did not plan to
10 conduct an EA or EIS for the Project because the agency believed the Project “falls
11 within two categories of actions that do not require documentation in an Environmental
12 Assessment or an Environmental Impact Statement: Categories statutorily established by
13 Congress: Section 603 of HFRA (16 U.S.C. 6591b), Insect and Disease Infestation;
14 Section 605 of HFRA (16 U.S.C. 6591d), Wildfire Resilience.” Scoping Letter at 2.

15 75. The scoping letter did not speak to any other CEs under NEPA.

16 76. The Project Proposal document stated that the Forest Service planned to
17 conduct vegetation treatments, such as commercial thinning of trees and mastication of
18 chaparral, on approximately 755 acres of Los Padres National Forest, including within
19 the Sespe-Frazier IRA. Project Proposal at 1.

20 77. The Project was proposed in the wake of former President Trump’s
21 December 2018 Executive Order (13855), which directed the Forest Service to sell 3.8
22 billion board feet of timber. An internal memo sent to Regional Foresters from the
23 agency’s Acting Deputy Chief on May 30, 2019, and another internal memo sent from
24 the Acting Deputy Chief on June 5, 2019, indicate that the Project may be intended to
25 meet timber quotas with minimal environmental review. The May 2019 memo also
26 encouraged Forest Service officials to invoke CEs as “the first choice and used
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1 whenever possible” and encouraged the agency to “explore creative methods” to exclude
2 actions like the Reyes Peak Project from environmental review. May 2019 Memo at 1.

3 **B. Scoping Comment Letters and Project Impacts**

4 78. The Forest Service received an outpouring of public opposition to the
5 Project, with roughly 16,000 comments submitted on the Project and over ninety-nine
6 percent in opposition.

7 79. Plaintiffs submitted comments along with many other entities, including:
8 former Ojai Mayor Johnny Johnston, Ventura County Supervisor Linda Parks and
9 former Supervisor and current State Assemblyman Steve Bennett, former State Senator
10 Hannah-Beth Jackson, Congressmembers Julia Brownley and Salud Carbajal, leaders
11 from local Native American groups, the California Department of Fish and Wildlife,
12 nearly 100 local businesses, and seventy environmental organizations.

13 80. Plaintiffs’ comment letters, as well as those submitted by agencies and
14 academics, discussed at length how the Project would harm the forest, wildlife, cultural
15 sites, and the Sespe-Frazier IRA. *See, e.g.*, Los Padres ForestWatch, Center for
16 Biological Diversity, John Muir Project of Earth Island Institute, Wishtoyo Chumash
17 Foundation, and California Chaparral Institute, Scoping Comments on Reyes Peak
18 Project, August 14, 2020 (“LPFW, *et al.* Comments”); Patagonia Scoping Comments on
19 Reyes Peak Project, August 4, 2020 (“Patagonia Comments”); Keep Sespe Wild
20 Committee Scoping Comments on Reyes Peak Project, August 13, 2020 (“KSWC
21 Comments”); Environmental Groups Sign On Letter Scoping Comments on Reyes Peak
22 Project including LPFW, the Center, and AAC, among others, August 14, 2020. These
23 impacts are described below.

24 **1. Impacts to Ecosystem Health**

25 81. Because the Project would authorize the logging of any tree up to twenty-
26 four inches in diameter, as well as any tree up to sixty-four inches in diameter if it
27 contains dwarf mistletoe, Plaintiffs’ comments discussed the harm this could cause to
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1 forest health and ecosystem integrity. For example, the forests on Pine Mountain
2 naturally contain dwarf mistletoe, a native parasitic plant that grows primarily on Jeffrey
3 pine in the area. Bennetts *et al.* (1996) found that the presence of dwarf mistletoe is
4 associated with increased avian diversity and is necessary for “healthy diverse forest
5 ecosystems.” LPFW, *et al.* Comments at 6. Moreover, Hanson and Odion (2016) found
6 that trees approaching twenty-four inches in diameter are often old-growth (i.e., 100 -
7 200 years old or more). *Id.* at 5.

8 82. Because the Project Proposal asserted the Project is needed to prevent tree
9 mortality from bark beetles and wildfire, Plaintiffs explained in their comments that it is
10 likely that many more trees would be killed and removed from the forest by the Project
11 than would ever succumb to bark beetles or fire. LPFW, *et al.* Comments at 13.
12 Plaintiffs further explained that trees killed by bark beetles and fire remain in the forest
13 and are themselves important for forest health because dead trees provide habitat for
14 countless species from woodpeckers to fungi. *Id.* at 78. Dead trees also eventually fall
15 and become downed woody debris, which not only decomposes over time and recycles
16 nutrients, but also provides important habitat for chipmunks and other small rodents,
17 lizards and salamanders, insects, and more. *Id.* at 47, 69.

18 83. Not only would the Project remove numerous trees, it would likewise
19 destroy old-growth chaparral, a native shrub dominated ecosystem that provides critical
20 wildlife habitat. Decision Memo at 15. Plaintiffs’ comments pointed out that the Forest
21 Service failed to properly classify the relationship between chaparral and wildfire in the
22 Project area. LPFW, *et al.* Comments at 17-18. Specifically, chaparral has evolved to
23 burn at high-severity, and the Forest Service even acknowledges this reality when it
24 states: “Being prone to infrequent large, high intensity wildfires is the natural condition
25 of chaparral (California Chaparral Institute).” Project Proposal at 5. Yet the agency then
26 classified most of the chaparral-dominated area within the Project area as Fire Regime
27 Group I (i.e., frequent low or mixed severity wildfire) or III (i.e., infrequent low or
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1 mixed severity wildfire), when in fact chaparral falls under the definition of Fire Regime
2 Group IV (i.e., infrequent high-severity wildfire). Areas that fall under Fire Regime
3 Group I or III can qualify for the CEs found at 16 U.S.C. 6591b and 16 U.S.C. 6591d,
4 whereas areas under Fire Regime Group IV cannot. *See* 16 U.S.C. § 6591b(c)(2)(B); 16
5 U.S.C. § 6591d(c)(2)(B).

6 84. The Forest Service also misstated a number of facts regarding the forest
7 conditions in the Project area. For example, the methods and the data used by the agency
8 show an average number of trees per acre of 80.5, whereas the Decision Memo asserts
9 there are 100 trees per acre currently. Decision Memo at 5. Moreover, the data shows
10 there are fewer trees in the Project Area today as compared to 1930. LPFW, *et al.*
11 Comments at 34. The Forest Service based its decision to log the Project area on these
12 wrongful assumptions.

13 2. Impacts to Cultural Resources

14 85. The Project area is located entirely within ancestral lands of the Chumash
15 people and is a culturally significant area to the Chumash Peoples. Archaeologists'
16 Group Comment Letter on Reyes Peak Project, August 14, 2020 ("Archaeologists'
17 Comments") at 2; Coastal Band of the Chumash Nation Comments on Reyes Peak
18 Project, August 14, 2020 ("Coastal Band Chumash Comments") at 1; Wishtoyo
19 Chumash Foundation Comment Letter on Reyes Peak Project, August 14 2020
20 ("Wishtoyo Comments") at 1.

21 86. Pine Mountain Ridge and Reyes Peak are among the highest promontories
22 in Chumash territory and are saturated with extraordinary cultural significance.
23 Barbareño/Ventureño Band of Mission Indians, August 9, 2020 ("BVBMI") Comment
24 Letter at 2. Moreover, Pine Mountain is a sacred peak that is significant to the spiritual
25 and religious beliefs of the Ventureño Chumash. Archaeologists' Comments at 3.

26 87. Several Native American Tribes submitted comments in opposition to the
27 Project, and identified the presence of valuable cultural and religious resources in the
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1 Project area that would be significantly impacted by the Project. For example, the
2 Coastal Band of Chumash Nation identified grinding bowls and medicinal plants that
3 would be destroyed by the Project. Coastal Band Chumash Comments at 1. Their tribal
4 members also visit Pine Mountain and Reyes Peak for prayer and ceremony, and the
5 Project would permanently alter landscape where they pray. *Id.* at 2.

6 88. The Forest Service itself acknowledges that cultural sites are likely present
7 in the Reyes Peak Project area. In the 2015 Forest Service’s Strategic Fuel Break
8 Assessment for the four ranger districts in the southern Los Padres National Forest (p.
9 235), the agency states that cultural values (sites) are present within 300 feet and 1000
10 feet of a hypothetical fuel break stretching along the ridgeline from Hwy 33 to Reyes
11 Peak. It is therefore likely that cultural sites exist within the Project area and could be
12 negatively impacted.

13 89. “Cultural sites” include former village sites, work sites, sacred sites,
14 petroglyph and arborglyph sites, and burials of human remains and associated cultural
15 materials. These sites are of great cultural importance to Chumash Peoples and must be
16 protected regardless of the level of previous disturbance or environmental degradation of
17 the area.

18 90. Cultural sites also include traditional gathering sites for ceremonial plants,
19 medicine plants, food plants, basketry plants, and other material culture plants. Wishtoyo
20 Comments at 2. Traditional gathering sites are irreplaceable and not interchangeable
21 with other locations that have the same plant species. Traditional gathering sites have
22 unique features that make the plants grow in a manner appropriate for their traditional
23 uses and have often been intentionally and carefully tended by Chumash families for
24 generations. *Id.*

25 91. Unlike archaeological sites, which can be identified from previous
26 archaeological documentation, cultural sites can only be identified through consultation
27 with Chumash tribes, bands, clans, and family groups. Wishtoyo Comments at 2. This
28

1 information is generally closely held by culture bearers and under normal circumstances
2 is not shared with the public, academia, or agencies. *Id.* Exceptions, under confidential
3 conditions, can be made in order to protect these natural cultural resources. *Id.*

4 92. There are several Chumash tribes, bands, clans, and family groups
5 associated with the Project area. Wishtoyo Comments at 2. These tribal entities are not
6 interchangeable and culture bearers in each tribal group hold unique traditional
7 knowledge relevant to cultural sites in the project area. *Id.*

8 93. The Forest Service did not consult with several of the local Chumash tribes,
9 bands, clans, and family groups in order to identify cultural resources on the Project site.

10 94. The Project does not include Chumash monitors on site necessary to
11 identify and prevent cultural resources from being significantly affected by the Project's
12 logging and mastication activities.

13 3. Impacts to Wildlife and Plant Species

14 95. The Project would authorize the logging of live trees up to twenty-four
15 inches in diameter, and live trees up to sixty-four inches in diameter if they contain
16 dwarf mistletoe. This tree removal will have significant adverse impacts on all bird
17 species in the Project area that rely on these trees for habitat needs, including the
18 California condor (*Gymnogyps californianus*), California spotted owl (*Strix occidentalis*
19 *occidentalis*, "CSO"), and northern goshawk (*Accipiter gentilis*). Nowhere in the Forest
20 Service's Decision Memo does the agency indicate that any kind of numeric limitation
21 will be set as to how many large trees may be removed. Based on Plaintiffs' visits to the
22 Project area, many large trees in the Project area contain some amount of dwarf
23 mistletoe and thus might be removed. Therefore, the unlimited removal of large trees
24 may degrade important habitat for these bird species.

25 96. In addition, the Project would authorize the unlimited removal of snags
26 (i.e., dead trees) and downed material, if deemed a hazard. While the Decision Memo
27 states that "an effort would be made to retain large snags" there is nothing in the
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1 Decision Memo to ensure their retention because an “exception” is “allowed in
2 wildland-urban interface defense zones, fuelbreaks, and where [snags] pose a safety
3 hazard.” Decision Memo at 37. This exception also applies to downed logs and therefore
4 the Project may remove *all* dead and downed material from forested treatment areas,
5 without limitation. *See, e.g.*, Reyes Peak Project Biological Assessment at 21
6 (“Implementation of the proposed action would remove most dead and down materials,
7 including snags. Although an effort would be made to retain large snags, safety at the
8 discretion of the operator, may preclude retention of snags.”); Forest Service Reyes Peak
9 Forest Health and Fuels Reduction Project Wildlife Biological Evaluation, September
10 28, 2021 (“Wildlife BE”) at 15 (“Although most dead and down materials would be
11 removed, an effort would be made to retain large snags.”) Bird species, including
12 California condors, California spotted owls, and northern goshawks, all rely on this
13 material for habitat needs, and thus will be adversely affected by the Project. For
14 example, the Wildlife BE states with respect to goshawks: “As a result [of removing
15 dead and down material], refugia and escape cover for prey species may be limited to
16 stands adjacent to the project area and individuals within the project area may be
17 displaced, injured, or killed.” *Id.*

18 97. Dead or dying trees and large trees are precisely the types of trees on which
19 condors depend for roosting and perching. LPFW, *et al.* Comments at 42-43.
20 Specifically, “Dead conifers are preferred to living trees. Dead trees have no foliage to
21 obstruct flight or visibility or to catch the wind and cause the branches to sway.” Koford,
22 C.B. 1953. *The California Condor*, Dover Publications, Inc. New York. The Forest
23 Service’s species account for the California condor highlights the importance of roosting
24 and perching habitat: “Condors often return to traditional sites for perching and resting.
25 Traditional roost sites include cliffs and large trees and snags (roost trees are often
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1 conifer snags 40-70 feet tall), often near feeding and nesting areas...” U.S. Forest
2 Service. 2005. Species account for the California condor.³

3 98. The Project will also involve thinning to reduce canopy cover and basal
4 area per acre. Opening up the canopy in or immediately adjacent to suitable condor
5 roosting trees will make the area more susceptible to wind, which can adversely impact
6 roosting. LPFW, *et al.* Comments at 43. In addition, condor roosting sites are
7 particularly susceptible to human disturbance, and even human presence.

8 99. The Project Area contains suitable habitat for the CSO, which is a Forest
9 Service sensitive species (and management indicator species) for Los Padres National
10 Forest. CSOs rely on large trees for nesting and roosting, and large trees also help ensure
11 the dense canopy cover in which CSO prefer to live. The Forest Service species account
12 for the CSO highlights their need for complex habitat including “A mature overstory
13 with average [diameter at breast height (“dbh”)] exceeding 24 inches. . .[and] A densely
14 stocked stand with basal areas averaging in excess of 190 ft², with none less than 160
15 ft².” Forest Service. 2005. Species Account—California Spotted Owl.

16 100. Current research indicates that fuel treatments may negatively impact
17 CSOs. A study in 2014 examining the effects of establishing a network of fuel breaks on

18 ³ A “Species Account” is a document the Forest Service prepares to evaluate the biology
19 and status of sensitive animal and plant species that occur in a national forest, and to
20 provide specific science-based guidance on how to reduce threats and conserve sensitive
21 species. The Species Accounts are expressly incorporated by reference into the Forest
22 Plan for Los Padres National Forest in Appendix H (“When planning projects or
23 managing ongoing activities in areas that contain habitat for species of concern
24 (including threatened, endangered, proposed, candidate, and sensitive species and other
25 species identified by biologists as being in danger of population decline or habitat loss)
26 use the information found in various types of species guidance documents to develop
27 project-specific design criteria. Species guidance documents include...species accounts
28 prepared for this planning effort or subsequent to it.”) and are referenced in specific plan
standards (*see, e.g.*, S28: “Avoid or minimize disturbance to breeding and roosting
California condors by prohibiting or restricting management activities and human uses
within 1.5 miles of active California condor nest sites and within 0.5 miles of active
roosts. Refer to California condor species account (or subsequent species guidance
document; see Appendix H) for additional guidance.”).

1 various species including the California spotted owl found, in response to fuel
2 treatments, “the number of California spotted owl territories declined. The effects on
3 owls could have been mitigated by increasing the spatial heterogeneity of fuel
4 treatments.” Stephens, S.L., S.W. Bigelow, R.D. Burnett, B.M. Collins, C.V. Gallagher,
5 et al. 2014. California spotted owl, songbird, and small mammal responses to landscape
6 fuel treatments. *BioScience*, 64(10): 893-906.

7 101. The Forest Service completed the *Conservation Strategy for the California*
8 *Spotted Owl* (*Strix occidentalis occidentalis*) on the National Forests of Southern
9 California in 2004, which includes guidelines for fuels management activities outside of
10 the WUI Defense or Threat Zones on national forest land characterized by pine and
11 mixed conifer forest. Forest Service. 2004. Conservation Strategy for the California
12 Spotted Owl (*Strix occidentalis occidentalis*) on the National Forests of Southern
13 California. The Project does not align with the CSO Conservation Strategy for several
14 reasons. First, trees greater than twenty-four inches dbh within CSO’s “Home Range
15 Cores” could be removed, contrary to the guidelines specifications that such trees be
16 retained unless they are at “unnaturally high densities.” *Id.* Additionally, the Decision
17 Memo indicates that ten to fifteen hard snags will be retained per five acres or about two
18 to three per acre on average—significantly less than the guidelines recommended four to
19 eight per acre. *Id.* Yet, as explained above, even that low amount would not be enforced
20 because of the safety exception allowing for unlimited removal of dead and downed
21 material. Moreover, the Project does not include any measures to retain woodrat nests in
22 the Project Area, contrary to the guidelines which specify to “retain all woodrat nests in
23 spotted owl habitat; avoid disturbing/destroying them.” *Id.*

24 102. Moreover, the Project would reduce the stands to between sixty and 100 ft²
25 basal area per acre—well below the basal area per acre needed by CSO (i.e. > 160 ft²
26 basal area per acre). LPFW, *et al.* Comments at 46.

1 103. Further, medium-sized trees that will be logged are important to spotted
2 owls because they help maintain the basal area, canopy cover and structural complexity
3 that the owls prefer. As the Forest Service acknowledges, the Project could have used a
4 diameter limit of twelve inches and still met its fire objectives because “[m]odeling
5 indicates that thinning treatments of trees at 12, 20, and 30 in. dbh could yield a similar
6 reduction of burn probability (Collins et al. 2011b), so removal of smaller trees, rather
7 than larger ones important to CSO habitat, should be prioritized.” Decision Memo at 9.

8 104. The Project may also impact the northern goshawk (*Accipiter gentilis*), a
9 Forest Service sensitive species and CDFW species of special concern. The species’
10 year-round range includes Pine Mountain and the surrounding area according to the
11 CDFW’s species account. Keane, J.J. 2008. Northern goshawk (*Accipiter gentilis*).
12 Shuford, W.D. and T. Gardali, eds. In “California Bird Species of Special Concern: A
13 ranked assessment of species, subspecies, and distinct populations of birds of immediate
14 conservation concern in California.” *Studies of Western Birds*, 1:156-162. Overall, there
15 are 225 acres of predicted suitable habitat for the northern goshawk within the Project
16 Area (or about 30%). LPFW, *et al.* Comments at 47. Goshawks exhibit a preference for
17 high canopy closure and a high density of larger trees, and large snags and downed logs
18 are also important components of goshawk habitat. *Id.* For example, according to the
19 Forest Service’s species account prepared with the 2005 Forest Plan, “Large snags and
20 downed logs are believed to be important components of northern goshawk foraging
21 habitat because such features increase the abundance of major prey species (Reynolds
22 and others 1992).” U.S. Forest Service. 2005. Species Account—Northern goshawk. The
23 northern goshawk will therefore be adversely affected by the unlimited removal of large
24 trees and dead or downed material, because they rely on these resources for habitat
25 needs.

26 105. Several bat species likely occur within the Project area and are likely to be
27 adversely affected, including the fringed myotis and pallid bat. Specifically, these bat
28

1 species roost during the day in large trees and snags. As CDFW explained in their
2 Comments: “Bats in southern California can be active year-round, however, all potential
3 breeding species are most active between March 15 and September 15. Each bat species
4 has unique habitat needs, such as specific gap size of cracks and seasonality. Direct
5 impacts via habitat removal, noise, percussive vibration, human disturbance, and direct
6 take would reasonably occur during the Project.” CDFW Comments at 13. The Wildlife
7 BE likewise provides: “Relative to taking no action, in which snags, hollows, crevices,
8 and exfoliating bark to roost may be created or enhanced by fire (Blakey et al. 2019),
9 these types of structures [for bats] would largely be removed from the 755-acre project
10 area.” Wildlife BE at 21. Therefore, bats will be adversely affected by the Project.

11 106. At least five sensitive plant species occur within or near the Project Area
12 according to records in the California Natural Diversity Database and the California
13 Consortium of Herbaria. These include: *Acanthoscyphus parishii* var *abramsii* (Abrams’
14 spineflower); *Monardella linoides* ssp. *oblonga* (Tehachapi or flax-like monardella);
15 *Sidotheca caryophylloides* (chickweed oxytheca); *Layia heterotricha* (pale yellow layia),
16 and *Delphinium parryi* ssp. *purpureum* (Mt. Pinos larkspur). LPFW’s comments
17 included a figure with observation locations for these species near the Project Area
18 (Figure 15). LPFW, *et al.* Comments at 48.

19 107. All of these species will be adversely affected by the Project. For example,
20 chickweed oxytheca may be the species most vulnerable to the Project’s impacts. The
21 agency’s species account states: “The primary threat to this species habitat is fuels and
22 vegetation management that will occur across most of this species habitat during the
23 Plan period.” U.S. Forest Service. 2012. Chickweed oxytheca. Species Account. The
24 agency has also provided that the Abrams’ spineflower “has the potential to be impacted
25 by chipping or placement of other organic material following fuel treatments.” U.S.
26 Forest Service. 2012. Abrams’ spineflower. Species Account.

4. Impacts to Sespe-Frazier IRA and Potential Wilderness Area

108. Prior to the Project being proposed, the U.S. House of Representatives approved two pieces of legislation that would designate approximately thirty-four percent of the Project area as additions to the Sespe Wilderness. This bill—introduced by local Congress members Salud Carbajal and Julia Brownley—is currently awaiting action in the Senate. Yet, the Forest Service failed to disclose that the Project area included a potential wilderness area. Decision Memo at 23. Logging is not permitted in Wilderness areas, yet the Forest Service nonetheless approved logging within this potential Wilderness.

109. Moreover, the area that may soon become Wilderness is currently part of the Sespe-Frazier IRA. The CEQ NEPA regulations specify that “[p]roposals that would substantially alter the undeveloped character of an inventoried roadless area” normally require the preparation of an EIS. 36 C.F.R. § 220.5(a)(2) (2008). Furthermore, the Roadless Rule prohibits logging in inventoried roadless areas unless the logging is limited to “generally small diameter trees.” 36 C.F.R. § 294.13(b)(1) (2001).

110. The Project alters 311 acres of the Sespe-Frazier IRA by removing a substantial portion of the trees and shrubs currently present. The Project also authorizes the logging of an unlimited number of large trees that contain dwarf mistletoe in this roadless area, up to sixty-four inches in diameter.

5. Wildfire Risk

111. The Project authorizes the mastication of hundreds of acres of chaparral. Plaintiffs’ comments discussed how this action can increase, rather than decrease, wildfire risk. Specifically, it can lead to an increase in non-native, invasive plant occurrence in the area, particularly *B. tectorum*, which creates a more ignition-prone landscape with an increased rate of fire spread.

112. Professor Carla M. D’Antonio, University of California, Santa Barbara, commented on this issue as well, stating: “The creation of fuel break is known to result

1 in non-native species invasions (Merriam et al. 2006, Potts and Stephens 2009)
2 especially by non-native annual grasses which can increase fire occurrence and
3 frequency (D’Antonio and Vitousek 1992, Fusco et al. 2019).” Carla M. D’Antonio,
4 University of California, Santa Barbara Environmental Studies Program, Comments on
5 Reyes Peak Project, August 14, 2020 (“D’Antonio Comments”).

6 113. This concern is not limited to chaparral-dominated areas. Keeley (2006)
7 states in regard to fuel reduction projects in forests: “There is growing evidence that
8 these fuel reduction projects alter ecosystem structure in ways that promote alien plant
9 invasion.... Restoration includes restoring not only natural processes such as fire but
10 also natural structure through mechanical thinning of forests, and these practices also
11 may enhance alien invasion. Extensive forest restoration is currently underway in many
12 western U.S. ponderosa pine forests. These treatments alone or in combination with
13 burning of slash increase both the diversity and abundance of alien plant species...”

14 **C. Inconsistencies with The Forest Plan**

15 114. Plaintiffs’ scoping comments explained that the loss of trees and shrubs in
16 the Project area would also violate the Forest Plan for Los Padres National Forest. For
17 example, much of the Project area is designated by the Forest Plan as “Back Country
18 Non-Motorized” zone. The Forest Plan states that “the management intent is to typically
19 retain the undeveloped character and natural appearance of [this] zone” and further states
20 that fuelbreaks are “not generally compatible” with this zone. Los Padres National
21 Forest Plan, Part 2, at 5, 8. Similarly, the Forest Plan requires that projects be designed
22 to “meet the [Plan’s] Scenic Integrity Objectives (SIOs).” Los Padres National Forest
23 Plan, Part 3, at Standards 9 and 10. The Reyes Peak Project would occur in an area
24 designated as “High Scenic Integrity,” which is defined as “conditions where human
25 activities are not visually evident” and the “landscape appears unaltered.” Los Padres
26 National Forest Plan, Part 3, at 98.

27 115. The Forest Plan also explains that “there are extensive areas within and
28

1 adjacent to the national forests of southern California meeting the definition of
2 Wildland/Urban Interface (WUI),” which is a distance “up to 1.5 miles from
3 communities at risk or as defined in individual community fire protection plans.” Los
4 Padres National Forest Plan, Part 3, at Standard 7. The Reyes Peak Project is located far
5 outside the WUI because the Project is much farther than 1.25 miles from the Defense
6 Zone of any community and is outside the Threat Zone as defined in the local Mt. Pinos
7 Community Wildfire Protection Plan.⁴

8 116. Vegetation removal on Pine Mountain ranks very low on the Forest
9 Service’s own priority list. Specifically, in a 2015 assessment, officials listed the Reyes
10 Peak project as priority number 118 out of 163 projects. The project received a “Values
11 at Risk” score of three out of a possible twenty-eight, and a wildland-urban interface
12 (WUI) score of zero.

13 117. Comments submitted by the California Department of Fish and Wildlife
14 (“CDFW”) also address this issue, explaining:

15 While fuel modifications in the form of defensible space have proven
16 to be an effective method to defend infrastructure (Keeley et al. 2019,
17 Syphard et al., 2014), the project is located in a remote area outside of
18 the urban wildlife interface approximately 3 miles from the nearest
19 community. . . . Additionally, these fire breaks provide vehicular and
20 human access into areas that may have been inaccessible to humans
21 prior to the fire break, thus creating secondary impacts such as
22 renegade trails, trash, illegal collecting of wildlife (e.g., amphibians,
23 reptiles, raptors), poaching, and degradation of areas that were
24 previously pristine wilderness.

25 CDFW Comments on Reyes Peak Project Scoping, August 14, 2020 (“CDFW
26 Comments”) at 4. CDFW’s comments encouraged “exploring project alternatives such
27

28 ⁴ Not only is the Project not part of the Mt. Pinos Community Wildfire Protection Plan
29 (“CWPP”), the Ventura County Fire Plan likewise does not include the Reyes Peak
30 Project. The Decision Memo states that the Project falls under the Ventura County Fire
31 Plan, but the Project was only added to the Ventura County Fire Plan after scoping for
32 the Project began, and the Project has since been removed from the Ventura County Fire
33 Plan.

1 as creation of defensible space or strategically placed fuel breaks within the urban
2 wildlife interface that may provide communities more protection and reduce the impacts
3 to high quality habitat in relatively undisturbed remote areas.” *Id.* at 5.

4 **D. Decision Memo and Project Approval**

5 118. Despite widespread opposition, on October 4, 2021, the Forest Service
6 issued its Decision Memo approving the Reyes Peak Project. The Memo states: “This
7 project is categorically excluded from documentation in an environmental impact
8 statement or an environmental assessment because it fits into the following categories: 1.
9 36 CFR 220.6(e)(6) timber stand and/or wildlife habitat improvement activities that do
10 not include the use of herbicides or do not require more than 1 mile of low standard road
11 construction. 2. Healthy Forest Restoration Act Section 602 (16 U.S.C. 6591c) and
12 Section 603 (16 U.S.C. 6591b). The Insect and Disease and Wildfire Resilience
13 categories of exclusion applies to all acres within condition Class II and III, which is
14 approximately 88 percent of the project (666 acres).” Decision Memo at 18.

15 119. The Decision Memo contains no explanation to justify the use of 36 C.F.R.
16 § 220.6(e)(6) (1992). The language and history of this CE show that it cannot be used for
17 commercial thinning, the logging of large trees that contain dwarf mistletoe, or the
18 removal of snags or downed wood. This CE only authorizes precommercial thinning,
19 which is a prescription for removing small trees under 6 to 8 inches dbh, whereas the
20 Project authorizes the unlimited logging of trees up to 64 inches in diameter.

21 120. The Decision Memo identifies several resource conditions that exist on the
22 Project site, but concludes that the Project does not present extraordinary circumstances.
23 Decision Memo at 19-27. The Forest Service, however, ignored important information
24 and used an improper standard (e.g., requiring “a loss of species viability” or “a trend
25 toward Federal listing” with respect to Project impacts to wildlife). Decision Memo at
26 20, 21; *see also, e.g.*, Wildlife BE at 15 (emphasis in original) (concluding the Project
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1 *“may impact individuals but is not likely to result in a loss of species viability in the*
2 *planning area, nor cause a trend toward federal listing* of northern goshawk”).

3 121. For example, the Memo asserts that “[b]ased on discussions with federally
4 recognized tribes and agency research and analysis, there are no Native American
5 religious or cultural sites within the project area.” Decision Memo at 27. No analysis or
6 information is presented, however, to substantiate this conclusion, and it contradicts the
7 comments submitted by local tribes, as well as the Forest Service’s own findings.

8 122. In addition, the Decision Memo ignores or inadequately addresses adverse
9 impacts to wildlife and plant species. Decision Memo at 19-23. For example, it fails to
10 address the potential for numerous large trees to be logged due to the Project’s
11 authorization, without limit, of logging of large trees with dwarf mistletoe. It also fails to
12 address the potentially unlimited removal of snags and dead or down material. These
13 actions will adversely impact federally-listed and Forest Service sensitive species
14 including California condors, the CSO, northern goshawk, and two bat species.

15 123. The Decision Memo also acknowledges that the Project “will result in
16 [California spotted owl] nesting habitat being changed over to foraging habitat,” which
17 is significant given the ongoing decline of the California spotted owl population, and the
18 importance of large trees and snags to the species. Decision Memo at 21.⁵

19 124. The Decision Memo concludes that federally-listed and Forest Service
20 sensitive plant species are not present in the Project Area based on surveys conducted in
21 2018 revealing no occurrence of such species. Decision Memo at 23. Accordingly, the
22 Decision Memo summarily concludes that there is no likely effect on any such plant
23 species. *Id.* However, the Botany Report on which the Decision Memo relies provides

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25 ⁵ The Decision Memo also states that “in November 2019, the U.S. Fish and Wildlife
26 Service issued a finding that it is not warranted at this time to list the California spotted
27 owl as endangered or threatened.” However, that November 2019 finding was
28 challenged in federal court, and the U.S. Fish and Wildlife Service settled the case,
agreeing to issue a new finding by February of 2023.

1 zero information regarding these surveys, other than that they were conducted
2 “throughout the project area in the summer of 2018,” making it impossible to evaluate
3 their methodological sufficiency, and even includes some information that calls the
4 surveys into question. Forest Service Reyes Peak Forest Health and Fuels Reduction
5 Project Botanical Biological Assessment, Biological Evaluation, and Non-Native
6 Invasive Species Risk Assessment (“Botany Report”) at 4.

7 125. For example, the Botany Report recognizes that “several occurrences” of at
8 least one plant species, the chickweed oxytheca (also known as chickweed starry
9 puncturebract), across the eastern portion of the Project Area, are in the Consortium of
10 California Herbaria Portal as recently as 2011. Botany Report at 4. This occurrence is
11 also cited in the LPFW, *et al.* comment letter. LPFW, *et al.* Comments at 49, 96 (Figure
12 15). The California Native Plant Society likewise commented that this species has been
13 documented within the Project boundary and several more are likely to occur. California
14 Native Plant Society, Reyes Peak Project Scoping Comments, August 14, 2020 (“CNPS
15 Comments”) at 2-3. The Botany Report also states that there will be additional surveys
16 conducted before project implementation because the species is very small and flowers
17 in late summer. Botany Report at 4. The need for additional surveys undermines the
18 validity of relying on existing surveys to conclusively determine there are no impacts.
19 Moreover, the same surveys were conducted for non-native species, and they failed to
20 include observations of a highly abundant species—cheatgrass (*Bromus tectorum*),
21 which calls into question the veracity of the survey methodology. Botany Report at 5.

22 126. Further, when addressing Project impacts to the Sespe-Frazier IRA, the
23 Decision Memo fails to acknowledge that logging, especially that of large trees, could
24 substantially alter the undeveloped character of the IRA. Decision Memo at 23-27. The
25 Decision Memo also fails to address that the impacted area is part of current legislation
26 that, if passed, would designate the area as Wilderness, and thus off-limits to logging. *Id.*
27 at 23.

1 127. The Decision Memo also includes contradictory statements regarding
2 impacts to large trees. For example, the Memo, at Table 7, states that zero trees over 24
3 inches in diameter would be removed by the Project, Decision Memo at 25, yet
4 elsewhere the Memo states that trees up to 64 inches in diameter can be removed if the
5 tree contains dwarf mistletoe. Decision Memo at 14. The Memo offers no information or
6 analysis at all regarding how many trees in the Project area contain dwarf mistletoe, or
7 how many of them will be removed. Based on Plaintiffs' visit to the Project area, many
8 large trees in the Project area contain dwarf mistletoe and thus might be removed.

9 **D. Endangered Species Act Consultation**

10 128. On May 27, 2021, the Forest Service issued a Biological Assessment
11 concluding that California condors are "not likely to be adversely affected" by the
12 Project, and the FWS concurred with that determination in a letter dated August 27,
13 2021.

14 129. The FWS concurrence, however, fails to acknowledge or address the
15 potential for numerous large trees to be logged due to the Project's authorization,
16 without limit, of logging of large trees with dwarf mistletoe, or the unlimited removal of
17 snags.

18 **CLAIMS FOR RELIEF**

19 **FIRST CAUSE OF ACTION**

20 **National Environmental Policy Act Violations: Failure to Scope the Reyes Peak
Project's Reliance on 36 C.F.R. § 220.6(e)(6)**

21 130. The allegations in each paragraph above are incorporated herein by
22 reference.

23 131. All Forest Service CEs, which are found at 36 C.F.R. § 220.6, require what
24 is called "scoping." 36 C.F.R. § 220.4(e) (2008) ("Scoping is required for all Forest
25 Service proposed actions, including those that would appear to be categorically excluded
26 from further analysis and documentation in an EA or an EIS (§ 220.6.>"). Scoping is
27 defined as the "early and open process for determining the scope of issues to be
28

1 addressed and for identifying the significant issues related to a proposed action.” 40
2 C.F.R. § 1501.7 (1978).

3 132. Here, on May 27, 2020, Los Padres National Forest initiated the scoping
4 process for the Reyes Peak project by issuing to the public a letter and associated project
5 proposal. The Forest Service scoping letter, however, nowhere stated that the agency
6 intended to rely upon the CE found at 36 C.F.R. § 220.6(e)(6) (1992), and instead the
7 letter stated that the agency intended to rely upon the CEs found at 16 U.S.C. § 6591b
8 and 16 U.S.C. § 6591d.

9 133. On October 4, 2021, the Forest Service issued its Decision Memo
10 approving the Reyes Peak Project. The Decision Memo is the first time the Forest
11 Service formally stated that it would be relying upon the CE found at 36 C.F.R.
12 § 220.6(e)(6) (1992) to justify the Project.

13 134. Because the Forest Service did not state in its scoping letter that the agency
14 intended to rely upon the CE found at 36 C.F.R. § 220.6(e)(6) (1992), the public was not
15 properly notified that the agency would be using that particular CE.

16 135. Because the Forest Service failed to scope its reliance on 36 C.F.R.
17 § 220.6(e)(6) (1992), the agency is in violation of its own regulations and cannot
18 proceed under 36 C.F.R. § 220.6(e)(6), and the Decision Memo is therefore arbitrary,
19 capricious, an abuse of discretion, or otherwise not in accordance with law under the
20 APA, 5 U.S.C. § 706(2)(A).

21 **SECOND CAUSE OF ACTION**

22 **National Environmental Policy Act Violations: Wrongful Reliance on 36**
23 **C.F.R. § 220.6(e)(6)**

24 136. The allegations in all previous paragraphs are incorporated herein by
25 reference.

26 137. The CE found at 36 C.F.R. § 220.6(e)(6) (1992) states that it can be used
27 for the following: “Timber stand and/or wildlife habitat improvement activities that do
28

1 not include the use of herbicides or do not require more than 1 mile of low standard road
2 construction. Examples include, but are not limited to: (i) Girdling trees to create snags;
3 (ii) Thinning or brush control to improve growth or to reduce fire hazard including the
4 opening of an existing road to a dense timber stand; (iii) Prescribed burning to control
5 understory hardwoods in stands of southern pine; and (iv) Prescribed burning to reduce
6 natural fuel build-up and improve plant vigor.”

7 138. The history and context of 36 C.F.R. § 220.6(e)(6) (1992) shows that it can
8 only be used for precommercial thinning, not commercial thinning.

9 139. Further, the language of this CE shows that it cannot be used to log large
10 trees with dwarf mistletoe, nor does it authorize the unlimited removal of dead or
11 downed material. Such activities do not constitute “Timber stand improvement.” 36
12 C.F.R. § 220.6(e)(6) (1992); Forest Service Manual (defining “timber stand
13 improvement” to include the following practices: “1. Release and weeding. 2.
14 Precommercial thinning. 3. Pruning. 4. Control of understory vegetation. 5. Fertilization.
15 6. Animal damage control”).

16 140. Because the Reyes Peak Project authorizes commercial thinning, as well as
17 the logging of large trees with dwarf mistletoe, it cannot rely on the CE at 36 C.F.R.
18 § 220.6(e)(6), and the Decision Memo is therefore arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law under the APA, 5 U.S.C.
20 § 706(2)(A).

21 **THIRD CAUSE OF ACTION**

22 **National Environmental Policy Act and HFRA Violations: Wrongful** 23 **Reliance on 16 U.S.C. §§ 6591b, 6591d**

24 141. The allegations in all previous paragraphs are incorporated herein by
25 reference.

26 142. In addition to 36 C.F.R. § 220.6(e)(6), the Decision Memo for the Reyes
27 Peak Project relies upon the statutory CEs found at 16 U.S.C. § 6591b and 16 U.S.C.
28

1 § 6591d.

2 143. In order for the Forest Service to utilize these statutory CEs, the agency
3 must maximize the retention of old-growth and large trees, consider the best available
4 scientific information, develop and implement the project at issue using a collaborative
5 process, and be consistent with the applicable Forest Plan. 16 U.S.C. §§ 6591b, 6591d.
6 Further, a project must either be “in the wildland-urban interface,” or “in Fire Regime
7 Groups I, II, or III, outside the wildland-urban interface.”

8 144. Further, NEPA requires that the Forest Service ensure scientific accuracy
9 and integrity in NEPA documents, and must clearly divulge its methodologies for key
10 findings, and present hard data upon which those findings are based.

11 145. Here, the Forest Service violated those requirements. The agency wrongly
12 authorized the logging of large/old-growth trees by allowing trees as large as twenty-
13 four inches in diameter to generally be logged, and allowing trees as large as sixty-four
14 inches in diameter to be cut if the trees contain any amount of dwarf mistletoe. The
15 agency likewise ignored the best available science with respect to maintaining the
16 integrity of the area’s forest and chaparral ecosystem. The best available science shows
17 that the logging of medium and large sized trees can be antithetical to making the forest
18 more resilient to wildfire. This is because medium and large sized trees are fire-resistant
19 and should therefore be maintained, not logged. Further, the best available science
20 shows that chaparral ecosystems, especially the old-growth, should not be masticated in
21 order to maintain the integrity of the ecosystem. In addition, the Forest Service failed to
22 collaborate with Plaintiffs when developing the Project. Not until the Project was scoped
23 were Plaintiffs asked to provide input, and the Forest Service failed to incorporate
24 Plaintiffs’ input into the project’s design standards and environmental impact analysis.
25 Finally, the project area is entirely outside of the wildland-urban interface and much of
26 the Project area is not within Fire Regime Group I, II, or III. Finally, the Project is not
27 consistent with the Los Padres Forest Plan, as described below in the Eighth Cause of
28

1 Action.

2 146. Plaintiffs also presented scientific evidence and analysis showing that the
3 Forest Service: (1) overstates current average timber stand densities; and (2) makes
4 erroneous comparisons between current and historic stand densities. If the Forest Service
5 decides to proceed with an action in the absence of an EA or EIS, it must adequately
6 explain its decision and must do so with scientific accuracy and integrity, clearly
7 divulging its methodologies, and presenting the data upon which the agency’s findings
8 are based. Here, Defendants failed to properly address the concerns raised by Plaintiffs
9 and failed to adequately explain its Decision.

10 147. Because the Forest Service violated the requirements of 16 U.S.C. § 6591b,
11 16 U.S.C. § 6591d, and NEPA when it approved the Reyes Peak Project, the Decision
12 Memo is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
13 with law under the APA, 5 U.S.C. § 706(2)(A).

14 **FOURTH CAUSE OF ACTION**

15 **Failure to Prepare an EA or EIS Despite the Presence of Extraordinary**
16 **Circumstances in Violation of NEPA**

17 148. The allegations in each paragraph above are incorporated herein by
18 reference.

19 149. NEPA requires federal agencies, including the Forest Service, to complete
20 an EA or an EIS, and to consider reasonable alternatives, before approving any major
21 proposed federal action, unless the proposed action falls under a CE. *See* 40 C.F.R.
22 § 1508.18, 1508.9, 1508.11, 1508.4 (1978). However, even when a Forest Service
23 project meets the definition of a particular CE, an EA or EIS is nonetheless still required
24 if “extraordinary circumstances” exist due to the project’s localized impacts. 36 C.F.R. §
25 220.6(b) (2008).

26 150. “Extraordinary circumstances” are determined based on the presence of,
27 and analysis of impacts to, the following “resource conditions” at issue in this case:
28

1 “(i) Federally listed threatened or endangered species or designated critical habitat,
2 species proposed for Federal listing or proposed critical habitat, or Forest Service
3 sensitive species;...(iv) Inventoried roadless area or potential wilderness
4 area;...(vi) American Indians and Alaska Native religious or cultural sites.” 36 C.F.R. §
5 220.6(b)(1) (2008).

6 151. It is “the existence of a cause-effect relationship between a proposed action
7 and the potential effect on these resource conditions, and if such a relationship exists, the
8 degree of the potential effect of a proposed action on these resource conditions that
9 determines whether extraordinary circumstances exist.” 36 C.F.R. § 220.6(b)(2) (2008).
10 If the agency determines that it is uncertain whether the proposed action may have a
11 significant effect on the environment, the agency must prepare an EA. 36 C.F.R. §
12 220.6(c) (2008); *see also* Forest Service Handbook 1909.15.31.2 (“If the degree of
13 potential effect raises uncertainty over its significance, then an extraordinary
14 circumstance exists, precluding use of a categorical exclusion.”).

15 152. The Forest Service Decision Memo does not provide a rational explanation
16 of why the Project’s potential impacts to resource conditions are insignificant. The
17 Project adversely affects several resource conditions such that extraordinary
18 circumstances exist and reliance on a categorical exclusion is improper.

19 153. Specifically, the Project will destroy or damage numerous cultural sites, yet
20 the Forest Service concluded there are no cultural sites in the Project area.

21 154. In addition, the Project will have significant adverse impacts on the
22 federally-listed California condor; Forest Service sensitive animal species, including the
23 CSO, northern goshawk, fringed myotis, and pallid bat; and Forest Service sensitive
24 plant species including Abrams’ spineflower, Tehachapi or flax-like monardella,
25 chickweed oxytheca, pale yellow layia, and Mt. Pinos larkspur.

26 155. Finally, the Project will scar the Sespe-Frazier IRA and a potential
27 wilderness area by removing numerous trees and shrubs. Moreover, Forest Service
28

1 regulations identify classes of actions that “normally” require preparation of an EIS, and
2 these include “[p]roposals that would substantially alter the undeveloped character of an
3 inventoried roadless area,” 36 C.F.R. § 220.5(a)(2) (2008), which is the case here
4 because logging and mastication unequivocally will degrade the Project area’s character.

5 156. For the above reasons, the proposed action’s effect on resource conditions
6 is such that extraordinary circumstances exist and the Forest Service’s assessment of
7 extraordinary circumstances, and its failure to complete an EA or an EIS before
8 approving the Reyes Peak Project, violates NEPA and was arbitrary, capricious, an
9 abuse of discretion, or otherwise not in accordance with law in violation of the APA, 5
10 U.S.C. § 706(2)(A).

11 **FIFTH CAUSE OF ACTION**

12 **Failure to Prepare an EIS in Violation of NEPA**

13 157. The allegations in each paragraph above are incorporated herein by
14 reference.

15 158. NEPA requires all federal agencies to prepare an EIS for all major federal
16 actions significantly affecting the quality of the human environment. 42 U.S.C. §
17 4332(C). The Forest Service violated NEPA in approving the Reyes Peak Project
18 without preparing an EIS because many of the factors requiring the preparation of an
19 EIS (40 C.F.R. § 1508.27 (1978)) are triggered by the Forest Service’s approval of the
20 Reyes Peak Project, including “[u]nique characteristics of the geographic area such as
21 proximity to park lands . . . wetlands . . . or ecologically critical areas,” “the degree to
22 which the effects on the quality of the human environment are likely to be highly
23 controversial,” “the degree to which the possible effects on the human environment are
24 highly uncertain or involve unique or unknown risks,” “[t]he degree to which the action
25 may establish a precedent for future actions with significant effects or represents a
26 decision in principle about a future consideration,” and “[w]hether the action is related to
27 other actions with individually insignificant but cumulatively significant impacts.” *Id.* §
28

1 1508.27(b). The presence of any one of these factors may be sufficient to require
2 preparation of an EIS. *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722,
3 731 (9th Cir. 2001); *Norton*, 311 F.3d at 1162.

4 159. Therefore, the Forest Service's approval of the Reyes Peak Project without
5 first preparing an EIS was arbitrary, capricious, an abuse of discretion, or otherwise not
6 in accordance with law under the APA, 5 U.S.C. § 706(2)(A).

7 **SIXTH CAUSE OF ACTION**

8 **Endangered Species Act Violation: Arbitrary and Capricious "Not Likely to
9 Adversely Affect" Determination**

10 160. The allegations in each paragraph above are incorporated herein by
11 reference.

12 161. On August 27, 2021, the FWS issued a letter to the Forest Service stating
13 that the agency concurred with the Forest Service's determination that the Project is "not
14 likely to adversely affect" the endangered California condor or their critical habitat.

15 162. Both the Forest Service and the FWS, in making their "not likely to
16 adversely affect" conclusions, appear to assume that only a very small number of large
17 trees will be logged in the Project area. The Project, as approved, however, authorizes an
18 unlimited number of large trees that contain any amount of dwarf mistletoe, as well as an
19 unlimited number of snags, to be logged. Nowhere does the Forest Service state the
20 number of large trees or snags within the Project area that could fall under this
21 authorization, and Plaintiffs have identified numerous such trees in the Project area.
22 Consequently, it was not possible for the FWS to reasonably conclude that such logging
23 would not adversely affect condors or their critical habitat in light of the best available
24 science showing the importance of large trees and snags to condors.

25 163. The FWS's "not likely to adversely affect" concurrence was not based on
26 the best scientific and commercial data available as required by the ESA, 16 U.S.C. §
27 1536(a)(2), and was arbitrary and capricious, an abuse of discretion, or otherwise not in
28

1 accordance with law under the APA. 5 U.S.C. § 706(2)(A).

2 **SEVENTH CAUSE OF ACTION**

3 **Roadless Area Conservation Rule Violation: Failure to Comply with**
4 **Requirement to Only Log “Generally Small Diameter Trees”**

5 164. The allegations in each paragraph above are incorporated herein by
6 reference.

7 165. The Roadless Area Conservation Rule generally prohibits road construction
8 and the cutting, sale, or removal of trees within identified “inventoried roadless areas.”
9 36 C.F.R. § 294.12(a) & 294.13(a), published in 66 Fed. Reg. 3244, 3272-73 (Jan. 12,
10 2001). However, the Forest Service may approve logging “infrequent[ly]” in inventoried
11 roadless areas if the agency determines that certain narrow circumstances exist,
12 including the following:

- 13 (1) The cutting, sale, or removal of generally small diameter timber is
14 needed for one of the following purposes and will maintain or
15 improve one or more of the roadless area characteristics as defined in
16 § 294.11.
17 (i) To improve threatened, endangered, proposed, or sensitive species
18 habitat; or
19 (ii) To maintain or restore the characteristics of ecosystem
20 composition and structure, such as to reduce the risk of
21 uncharacteristic wildfire effects, within the range of variability
22 that would be expected to occur under natural disturbance regimes
23 of the current climatic period.

24 36 C.F.R. § 294.13 (2001).

25 166. The Reyes Peak Project does not comply with the Roadless Rule’s
26 mandates with respect to logging in the Sespe-Frazier IRA. Small diameter trees are
27 normally ten inches or less in diameter in Los Padres National Forest,⁶ yet the Project

28 _____
⁶ For example, as explained in the LPFW *et al.* Comments: “The U.S. Forest Service developed a preferred alternative for the Frazier Mountain Project that would have limited timber harvest to 10” DBH or less. The project documentation noted:…Alternative 3 where the understory thinning would only remove smaller diameter trees (thin from below up to 10” [DBH]) and would leave the larger diameter (>10” [DBH]) trees. It should be noted that the Frazier Mountain Project did not include

1 Decision Memo authorizes the logging of trees up to twenty-four inches in diameter
2 generally, and up to sixty-four inches in diameter when the trees contain dwarf
3 mistletoe.

4 167. For the above reasons, the Forest Service violated the Roadless Area
5 Conservation Rule in approving the Reyes Peak Project and its Decision was arbitrary,
6 capricious, an abuse of discretion, or otherwise not in accordance with law under the
7 APA, 5 U.S.C. § 706(2)(A).

8 **EIGHTH CAUSE OF ACTION**

9 **National Forest Management Act and NEPA and HFRA Violations: Failure to**
10 **Comply with the Forest Plan**

11 168. The allegations in each paragraph above are incorporated herein by
12 reference.

13 169. NFMA requires the creation of Forest Plans and requires projects within the
14 Forest to follow the Forest Plan. Moreover, the statutory CEs under HFRA at issue in
15 this case explicitly state that “projects and activities carried out under this section shall
16 be consistent with the land and resource management plan.” 16 U.S.C. § 6591b, 16
17 U.S.C. § 6591d.

18 170. Much of the Project area is designated by the Forest Plan as part of the
19 “Back Country Non-Motorized” zone. The Forest Plan states that “the management
20 intent is to retain the natural character of [this] zone” and further states that fuelbreaks
21 are “not generally compatible” with this zone. The Reyes Peak Project violates this
22 aspect of the Forest Plan because the Forest Service has failed to adequately explain how
23 the Project is compatible with this zone or how the Project will retain the area’s
24 character despite the drastic reduction in trees and shrubs in the area.

25 171. The Forest Plan also requires that projects be designed to “meet the Scenic
26 Integrity Objectives (SIOs).” The Reyes Peak Project would occur in an area designated
27 _____
28 treatment within an IRA and was thus not limited by the Roadless Rule.” LPFW *et al.*
Comments at 59.

1 as “High Scenic Integrity,” which is defined as “conditions where human activities are
2 not visually evident” and the “landscape appears unaltered.” The Reyes Peak Project
3 violates this requirement because the Forest Service has failed to adequately explain how
4 the Project will ensure “High Scenic Integrity.”

5 172. The Forest Plan explains that “there are extensive areas within and adjacent
6 to the national forests of southern California meeting the definition of Wildland/Urban
7 Interface (WUI),” defined as a distance “up to 1.5 miles from communities at risk or as
8 defined in individual community fire protection plans.” The WUI consists of “a direct
9 protection buffer (WUI Defense Zone) and an indirect protection buffer (WUI Threat
10 Zone) that fall within the broader definition WUI.” “A WUI Defense Zone is the area
11 directly adjoining structures and evacuation routes,” and the “Threat Zone generally
12 extends approximately 1.25 miles out from the Defense Zone boundary.” The Reyes
13 Peak Project purports to be a community protection project, but it is located far outside
14 the WUI as defined in the Forest Plan (it is farther than 1.25 miles from the Defense
15 Zone of any community and is far outside the Threat Zone as described in the local Mt.
16 Pinos CWPP).

17 173. For the above reasons, the Project violates the Forest Plan, and the Forest
18 Service therefore violated NFMA, 16 U.S.C. § 6591b, and 16 U.S.C. § 6591d, and its
19 actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
20 with law under the APA, 5 U.S.C. § 706(2)(A).

21 **NINTH CAUSE OF ACTION**

22 **HFRA Violations: Failure to Prepare and Submit Annual Reports**

23 174. In order to ensure accountability, HFRA’s statutory CEs state that “The
24 Secretary shall prepare an annual report on the use of categorical exclusions under this
25 section that includes a description of all acres (or other appropriate unit) treated through
26 projects carried out under this section.” 16 U.S.C. § 6591b(g), and 16 U.S.C. § 6591d(g).

27 175. These reports must be submitted by the Secretary “to the Committee on
28

1 Agriculture, Nutrition, and Forestry of the Senate; the Committee on Environment and
2 Public Works of the Senate; the Committee on Agriculture of the House of
3 Representatives; the Committee on Natural Resources of the House of Representatives;
4 and the Government Accountability Office.” 16 U.S.C. § 6591b(g), and 16 U.S.C.
5 § 6591d(g).

6 176. As far as we are aware, not a single report has yet been prepared or
7 submitted. Under 16 U.S.C. § 6591b, these reports were to be submitted “[n]ot later than
8 1 year after February 7, 2014, and each year thereafter.” Under 16 U.S.C. § 6591d, these
9 reports were to be submitted “[n]ot later than 1 year after March 23, 2018, and each year
10 thereafter.”

11 177. For the above reasons, the Secretary of Agriculture and the Forest Service
12 have violated 16 U.S.C. § 6591b and 16 U.S.C. § 6591d, and have unlawfully withheld
13 or unreasonably delayed agency action under the APA, 5 U.S.C. § 706(1), and their
14 actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
15 with law or without observance of procedure required by law under the APA, 5 U.S.C.
16 § 706(2).

17 **PRAYER FOR RELIEF**

18 Plaintiffs respectfully request that this Court enter judgment in their favor and
19 against Defendants and provide the following relief:

- 20 1. Declare that Defendant the Forest Service violated NEPA, the Roadless
21 Rule, NFMA, HFRA, and the APA in approving the Reyes Peak Project;
- 22 2. Declare that Defendant the FWS violated the ESA and APA in concluding
23 that the Project is not likely to adversely affect California condors and/or their critical
24 habitat;
- 25 3. Declare that Defendants the Forest Service and Tom Vilsack, Secretary of
26 Agriculture, violated the HFRA and the APA in failing to issue annual reports pertaining
27 to the use of CEs as required by HFRA;

1 4. Declare unlawful, vacate, and set aside Defendant the Forest Service's
2 Decision approving the Reyes Peak Project, and use of CEs;

3 5. Declare unlawful, vacate, and set aside Defendant U.S. Fish and Wildlife
4 Service's decision that the Reyes Peak Project is not likely to adversely affect California
5 condors and/or their critical habitat;

6 6. Grant Plaintiffs such temporary restraining orders or preliminary or
7 permanent injunctions as they may request, including ordering Defendants to comply
8 with NEPA, the ESA, the Roadless Rule, NFMA, HFRA, and the APA;

9 7. Enjoin implementation of the Reyes Peak Project pending compliance with
10 NEPA, the ESA, the Roadless Rule, NFMA, HFRA, and the APA;

11 8. Award Plaintiffs costs and reasonable attorneys' fees as authorized by the
12 Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute;

13 9. Retain jurisdiction of this action to ensure compliance with its decree; and

14 10. Any other relief as the Court deems just and proper.

15 Respectfully submitted this 27th day of April, 2022,

16 /s/ Margaret Hall (Bar No. 293699)
17 /s/ Alicia Roessler (Bar No. 219623)
18 Environmental Defense Center

19 *Attorneys for Plaintiffs Los Padres ForestWatch, Keep Sespe*
20 *Wild Committee, American Alpine Club, and Earth Island*
21 *Institute*

22 /s/ Justin Augustine (Bar No. 235561)
23 Center for Biological Diversity

24 *Attorney for Plaintiffs Center for Biological Diversity,*
25 *Patagonia Works, and California Chaparral Institute*
26
27
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