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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Quincy Library Group, an association of citizens; and Plumas County, a California public agency, Petitioners, vs. United States Forest Service; Bradley Powell, Regional Forester, Region 5; Jack Blackwell, Regional Forester, Region 5; Dale Bosworth, Chief of the Forest Service; and Mark Rey, Under-Secretary of Agriculture for Natural Resources and the Environment, Respondents.	**CASE NO.** **PETITION FOR WRIT OF MANDATE AND FOR PRELIMINARY AND PERMANENT INJUNCTION**

Petitioners QUINCY LIBRARY GROUP and PLUMAS COUNTY, hereinafter jointly referred to as QLG, hereby petition this Court for writs of mandamus directed to the United States Forest Service, the Chief of the Forest Service, and the Regional Forester for Region 5 (California) (hereinafter collectively Forest Service), and by this verified Petition allege as follows:

INTRODUCTION

1. This action challenges the Forest Service's adoption and certification of the Final Environmental Impact Statement [FEIS] for the Sierra Nevada Forest Plan Amendment [SNFPA]. Petitioners seek a writ of mandate commanding the Forest Service to vacate its Record of Decision [ROD] signed on January 12, 2001 and to prepare a legally sufficient environmental impact statement using authorized regulatory procedures under the National Forest Management Act.

I.

PARTIES AND VENUE

2. Petitioner QUINCY LIBRARY GROUP is a voluntary association of individuals, government agencies, corporations and other business entities and is vitally interested in federal forest management, since the local economy and environment depend upon it. The QLG has approximately thirty members and has been active in environmental and federal management issues within the Northern Sierra for ten years. QLG members have a special connection by residence, employment, community, and lifestyle with the Sierra Nevada range in general and with the QLG area that is most impacted by the SNFPA in particular. Members representing QLG have attended many meetings concerning the SNFPA process and have provided extensive evidence in the administrative record. The members of QLG have done this because of their knowledge that the Sierra Nevada is a "unique" forest resource for California, the United States and the world. Members recreate in the Sierra Nevada year-round and take part in the extensive planning activities that determine federal land management in the range.

3. The QLG has been attempting to resolve the question of appropriate federal forest management by working for balanced harmony in the face of contentious debate about the appropriate spotted owl/fire/logging balance in the range. QLG proposed a program of local

management to the executive and legislative branches of government. That proposal resulted in the Herger-Feinstein Quincy Library Group Forest Recovery Act of 1998 (hereinafter HFQLG). QLG members took part in the EIS process for the HFQLG Pilot Project directed by the Act, and administratively appealed the decision to alter the implementation of the Act. QLG members took part in the EIS process for the SNFPA and administratively appealed the decision in the ROD. Individual members of the QLG can be found in the Sierra Nevada year-round, watching birds, canoeing the rivers, fishing the waters, guiding scientific groups, working, hunting, and recreating with their families in this natural setting.

4. Petitioner PLUMAS COUNTY is a political sub-division of California state government and is the governing board of the local public agency that has the principal responsibility under California law for preserving and promoting the general health, safety, and welfare of the citizens of Plumas County. Since Plumas County is 74% owned by the federal government, and the management of that land has a substantial effect on the economy and the environment of Plumas County, the County Board of Supervisors has long been engaged in federal processes that attempt to balance federal management between local and national purposes and needs.

5. Respondent UNITED STATES FOREST SERVICE is a federal agency in the Department of Agriculture that has ownership and management authority over the eleven Sierra Nevada national forests that make up the area covered in both the HFQLG Act and the Sierra Nevada Forest Plan Amendment.

6. Respondent BRAD POWELL was Regional Forester for Region Five (California) at the time the Sierra Nevada Forest Plan Amendment (hereinafter SNFPA) was prepared and approved. He was the deciding officer who approved the SNFPA Final Environmental Impact Statement [FEIS] and Record of Decision [ROD].

7. Respondent JACK BLACKWELL is currently Regional Forester for Region Five (California). He also signed the approval of the SNFPA Final Environmental Impact Statement and Record of Decision.

8. Respondent DALE BOSWORTH is Chief of the United States Forest Service and was the reviewing officer required by federal administrative law and regulation to decide the appeal of the QLG of the approval by the Regional Forester of the SNFPA.

9. Respondent MARK REY is the Undersecretary of Agriculture for Natural Resources and the Environment, who was assigned by the Secretary of Agriculture to review the decision of the Chief of the Forest Service on the QLG appeal of the SNFPA FEIS and ROD. His decision was the final administrative action possible under federal law and regulation.

10. This court has jurisdiction over this action under 28 U.S.C. sections 1331, 1346 (b), 1361, under 5 U.S.C. section 702, pursuant to the Herger-Feinstein Quincy Library Group Forest Recovery Act (hereinafter, the HFQLG Act), the Organic Act of 1987, the Multiple Use Sustained Yield Act of 1960, the National Environmental Policy Act of 1969 (hereinafter NEPA), and the National Forest Management Act of 1976 (hereinafter NFMA). Venue is proper in the Eastern District of California, Sacramento Division, under 28 U.S.C. section 1391 (b), and local Rule 3-120 (b).

II.

PROCEDURAL BACKGROUND

11. In November 1997 the Chief of the Forest Service directed the Pacific Southwest Region Five to "develop a strategy to ensure ecological sustainability." In January 1998, Framework Core Staff and Intergovernmental meetings began. Ecological sustainability is a concept that is not found in any of the statutes listed above, but was a concept contained in a set of proposed planning regulations later withdrawn by the Bush administration. In spite of the

request by the QLG for the Forest Service to use the existing planning regulations (36 CFR 219 et. seq.) for the forest plan amendments, the SNFPA planning process discarded the regulations and measured all forest activities against the proposed regulations and their goal of ecological sustainability as if they had been approved.

12. In that month, Region Five of the U.S. Forest Service embarked upon a national forest planning process that it claimed would be state-of-the-art in terms of ecosystem management, public collaboration, and application of science. The Sierra Nevada Framework for Collaboration and Conservation (the Framework, or SNCF) attempted to be a cross-jurisdictional, multi-governmental land use and resource planning concept, intended originally to be much more than the multiple-forest plan amendment process finally included within the SNFPA. This effort also represented the third major attempt by the Forest Service to produce a planning decision that would replace the California Spotted Owl [CASPO] Interim Guidelines issued in January 1993. The forest plan amendment effort in the two failed efforts were previously characterized as a less far-reaching regional guide amendment to hold the individual forest plans over until each forest could make its own subsequent revisions as required by NFMA.

13. A core staff group was formed, which included representatives of the Regional Forester and the Pacific Southwest Research Station. The early 1998 SNCF Core Staff meeting notes show Chapel et al. (Millar, Alexander, Stine) hearing other agencies and public observers saying, “study and learn from existing collaborations!” and “not another regional planning effort!” etc, but going ahead anyway with yet another one.

14. On April 22, 1998, twenty-five government employees, all but one from the U.S. Forest Service [USFS], met in Sonora, California as the Sierran Province Assessment and Monitoring [SPAM] Team. They were working on pieces of their “Ecosystem Conceptual

Model," a theoretical construct of how literally all the pieces fit together and interact to form the entire Sierra Nevada ecosystem, from geological processes of soil formation from bedrock and the effect of climate change on photosynthetic capture of solar energy, right down to the effects of roads and landings on the capture of solar energy.

15. This model of ecosystem function developed by the SPAM team became the philosophical and theoretical basis of the management concept embodied in the Framework and SNFPA EIS. The essence of that concept was this: (1) The pre-European-settlement forests were shaped largely by fire -- both lightning- and Indian-ignited fire -- that were frequent, widespread, and generally of low intensity; (2) Settlers wiped out Indian-ignited fire, and later residents logged, built roads, and suppressed most of the lightning- and human-ignited fires; (3) Modern forests are thus highly unnatural, but pre-settlement "natural" forests will be restored if we just stop logging, close roads, and re-introduce frequent low-intensity fire -- prescribed fire. In other words, it will fix itself if we just stop doing the wrong things.

16. That concept is appealing to well-meaning idealists, and the Forest Service would find it relatively easy to implement. Unfortunately, that concept is also badly mistaken. The awkward facts are that: (1) modern forests have structures and compositions radically different from historic natural forests; (2) large human populations now occupy forests and/or depend on them for essential commodities and functions, ranging from timber and water to recreation and safety; and (3) both law and regulation provide for human uses that did not exist in the pre-settlement forests. In order to accommodate these awkward facts, the Forest Service must be pro-active in restoring our forests to structures and compositions that are both natural and sustainable, with full regard for both ecological and human necessities.

17. Unfortunately, the SNFPA administrative record is replete with avoidance of the hard questions, neglect of the re-structuring requirement, wishful thinking regarding the

effectiveness and acceptability of prescribed fire, misinterpretation of technical and scientific information, and complete disregard of the legal requirement for timber production and other human benefit objectives. The result is largely a management plan of overlapping vetoes, not a program capable of restoring and sustaining the Sierra Nevada national forests. What follows is a chronology of examples from the SNFPA administrative record that will illustrate the difference between what the Forest Service said it was doing and what it actually did, and how those differences amount to violations of law and regulation under NEPA, NFMA, and the Administrative Procedures Act (APA).

18. By April 28, 1998 the Regional Forester had determined to proceed with a Sierra Nevada Forest Plan Amendment regardless of what other agencies did or did not do, and announced to them at an Interagency Team meeting that it had commissioned a Sierra Nevada Science Review. Several days later, the Regional Forester announced his launching of the Sierra Nevada Conservation Framework with a letter directing that four tasks be accomplished, one of which was the amendment of forest plans.

19. An update on the Framework was given to the SPAM Team at a meeting on June 15, 1998, in which it was reported to the team members that:

> "Hal [Salwasser, then director of the Pacific Southwest Research Station] and Lynn [Sprague, then the Regional Forester] are still heading up an effort trying to figure out how to deal with new information. The environmental groups are pushing the Forest Service to get on with producing an EIS and have filed an intent to sue if the Forest Service does not act soon."

There was also discussion of a need for an owl workshop "needed to organize on-going monitoring efforts and coordinate the owl specialists."

20. In June 1998 the Regional Office announced the activation of the management overview team. On July 2, 1998, the Forest Service announced a new National Environmental Policy Act [NEPA] process for plan amendments, and on July 10, 1998 published a Federal

Register notice of the new planning process.

21. The Sierra Nevada Science Review (July 24, 1998) was a "report of the Science Review Team charged to synthesize new information of range-wide urgency to the national forests of the Sierra Nevada." Seven scientists from the Pacific Southwest Research Station were formally chartered on June 12, 1998, to provide the Pacific Southwest Region with a synthesis of current scientific information with attention to issues of urgent priority at range-wide scales in the Sierra Nevada. The review began in early June 1998 and was completed in mid-July. Information from the Sierra Nevada Science Review [SNSR] was to be "combined with input from collaborative public discussions" to "help the Regional Forester decide on a strategy for updating the Sierra Nevada national forest plans."

22. Seven conservation issues were identified by the Science Review team and by internal draft reviewers as issues that were "of highest priority for national forest management in the Sierra Nevada. Each [was] considered to be of urgent concern at broad geographic scales and requires a common conception and coordinated approach to problem analysis and evaluation, planning, and monitoring." Elsewhere in the SNSR it was reported that "issues were selected where conditions are changing quickly enough that immediate action is needed, i.e., where conditions would degrade rapidly without renewed attention, and where practical national forest actions could have significant effects on improving conditions." Details and documentation of the conditions found to be rapidly degrading were not provided, however, to justify decisions and actions being taken outside the normal forest planning processes

23. Hal Salwasser wrote in the Science Review's preface,

> "Periodically, people and institutions of governance make decisions about how they want lands and resources allocated and managed. In the near future, such decisions will be made regarding the national forests of the Sierra Nevada."
>
> "This Sierra Nevada Science Review is a disclosure of what the recent body of science tells us about what a particular group of scientists considers to be some of the

significant conditions of ecosystems, human communities, and natural resources in the Sierra. ... Because this review document was produced within a very short period, it is not an authoritative compendium of all science on the Sierra. ... [T]he substance of the review tells us about conditions of some Sierra Nevada ecosystems and social institutions that warrant consideration in conservation planning and management, especially those affected by what happens on national forests. It also tells us that more scientific thinking and analysis are needed before we can make well-informed decisions on some of these conditions."

24. The Science Review team identified the effects of California Spotted Owl interim management (CASPO interim guidelines) as an issue for special consideration related to national forest management:

> "CASPO guidelines were put in effect to benefit spotted owl habitat and population trends. Because they were intended to be in effect only two years, but have actually remained for five, there is considerable anecdotal discussion about the effects of CASPO interim management on ecological and socio-economic conditions of Sierra Nevada national forests and communities. No regional or range-wide evaluation has been made, and little information is available to provide a serious review at any scale."

> "To assess the impacts of CASPO interim guidelines requires a dedicated study assessing the extent of projects implemented under CASPO, evaluation of compliance in implementing policy, plot-based monitoring of effects on ecological conditions (spotted owls and others), and review and compilation of socioeconomic effects related to timber harvest, wildfire, road projects, etc."

25. When the QLG members began to understand that the Forest Service intended to prepare forest plan amendments by following procedures developed especially for the Framework, the QLG sent a letter to the newly named project leader, former Lassen National Forest Supervisor Kent Connaughton, on August 10, 1998. In addition to suggesting that the QLG pilot project be considered an adaptive management area under the Framework, the QLG asked that water resource issues be given greater attention:

> "We are struck by the absence of water as a major issue of concern in the SNSR list. It is not adequate to consider water just for its effect on vegetation and wildlife in the forests. In our area (and we believe in several other Sierra Nevada national forests) there is an urgent need to consider management effects on the quality, quantity, and timing of water runoff."

> "As the SNSR says, the yield of highest monetary value coming off these forests is water. But it isn't enough just to state the fact. You should give very high priority to analyzing that economic value as a potential source of re-investment in the health of upland watersheds and riparian areas."

26. The Quincy Library Group also asked that the forest plan amendment process conform to the National Forest System planning regulations at 36 CFR Part 219:

> "We continue to be concerned about the rules and procedures, or more precisely the lack thereof, governing the upcoming forest planning processes. It appears to us that the timetable for the near-term Regional Guide and Sierran Forest Plan changes precludes waiting for the National Forest System planning regulations (36 CFR Part 219) to be revised; thus the existing regulations must be followed or the Forest Service will be legally vulnerable on procedural grounds. But from all sides, we are hearing that new processes and "frameworks" will be constructed... if only someone could articulate a vision of what they should be."

> "We urge you to communicate with the Regional Forester, the Washington Office, and the Council on Environmental Quality about the need for formally proposing and then adopting the planning procedure regulations to be used, and publishing notice of same in the Federal Register, so that procedurally the Sierra Nevada Conservation Framework will have some clarity and certainty for all involved."

27. On October 3, 1998 seven members of the Quincy Library Group attended the Forest Service's "pre-NEPA" public meeting in Davis, California. The group sent a comment letter immediately after that meeting. In that communication with the Framework staff, the QLG discussed the possibility that the QLG pilot project legislation would pass later that month (as it did, as the Herger-Feinstein Quincy Library Group Forest Recovery Act of 1998), and why the QLG pilot project would make a good landscape-scaled adaptive management demonstration:

> "To our knowledge there are no bighorn sheep in the QLG area, and our urban interfaces are generally not so extensive or dangerous as on the mid-Sierran national forests, but every other issue that was (or should have been) included in the SNSR is also present in the QLG area. Many of the major issues — e.g., old-growth forest, spotted owl, aquatic and riparian resources, and fire and fuels issues — have been addressed in an integrated, interdisciplinary manner that also encourages scientifically valid adaptive management. Because of the extensive contributions from the scientific community to the substance of our solutions, we believe the QLG proposal represents one locally appropriate resolution of the high priority conservation issues. Thus it is our belief that implementation of the QLG bill can serve not only as the pilot project originally envisioned by QLG and the Congress, but also as a full-scale demonstration of SNCF implementation. Even if

> the legislation fails to pass in this session of Congress, we would request that the Quincy Library Group forest management proposal be analyzed as an alternative in the SNCF EIS."

28. On January 19, 1999, Quincy Library Group submitted extensive scoping comments to the Framework staff for consideration in the SNFPA EIS. Several weeks after the end of the public scoping period, three QLG members traveled to Sacramento and visited the Framework offices to inspect the public comment files and see how the Forest Service's Content Analysis Enterprise Team [CAET] was characterizing the comments received. On March 4, 1999, QLG sent another letter to Project Manager Kent Connaughton to express the group's concerns that its comments were being misinterpreted in some cases and ignored in others by the CAET. "How could QLG comment possibly be considered not to have enough 'content' to warrant analysis in a section headed 'Herger-Feinstein Quincy Library Group Forest Recovery Act Project?'" was the group's response to seeing that the CAET's preliminary content analysis recognized anti-QLG scoping comments, but failed to acknowledge the comments submitted by QLG itself.

29. Before they even got the analysis of public comments from the public process, less than a week after the comment period closed the Interdisciplinary Team trotted out its range of alternatives. One pattern in all of them was that the "conservation strategies" were not focused on providing habitat, but rather on limiting logging. In spite of the passage of the HFQLG Act, the HFQLG pilot project was not one of the alternatives considered for long-term management in the Northern Sierra Nevada mountain range.

30. On February 2, 1999 three members of the SPAM Team (John Keane, Amy Lind, and Joseph Furnish) met with the US Fish and Wildlife Service to discuss "associated species" that would be analyzed in the EIS.

31. On February 17, 1999 there was a Forest Supervisor Coordination meeting held to

explain the SNFPA EIS process to forest supervisors. At that meeting, forest supervisors were told that the task of the Framework Science Team was mostly to review and approve parts of the EIS as they are drafted. The notes from that meeting indicate that there were written Washington Office advice memoranda to Region Five on how to handle the HFQLG EIS analysis and implementation. Forest supervisors were told, "We will do viability analysis for QLG within the Framework." EIS alternatives were presented, with the goals of each alternative being one point of comparison. Forest supervisors felt there wasn't enough information to know if the range of alternatives was sufficient.

32. The Forest Service seemed to be aware of both the comments and the lack of information necessary to develop a reasonable range of alternatives. Notes of a meeting on March 24, 1999 record that Leonidas (Lon) Payne of the Environmental Protection Agency [EPA] stated that if the Preferred Alternative in the final [EIS] is vastly different from the draft, then the public comments period should be reopened. Danny Lee, the Framework Science Team leader, replied that FWS and EPA would be part of choosing the Preferred Alternative.

33. A major meeting between two EIS teams was held at the end of March 1999. The Interdisciplinary [ID] Team and the Science Team met on March 31 and discussed the details of Alternatives 1 through 8, including land allocations and standards and guidelines. There is no indication, however, that any of the analyses normally considered precursors to plans — e.g., a description and assessment of current conditions, identification of public issues, land suitability determinations, long-term sustained timber yield, allowable sale quantity [ASQ] and associated calculations required by NFMA — had been conducted. But there had been "a tremendous amount of outside consulting" regarding spotted owls mentioned, though the results of the consulting were not disclosed.

34. The Science and ID Teams made a long list of action items and assignments, mostly

about coordinating owl standards with those for goshawks and carnivores, and about identifying data needs for viability analyses. The assembled group could not decide whether to add a "social use" layer to their analyses, nor even whether they knew enough about economic analyses to be able to add such a layer.

35. Region Five convened dozens of teams, task forces, steering committees, etc., and pushed, prodded, and cajoled all into accepting sub-par and shoddy analyses and conclusions in order to meet short deadlines that were arbitrary from the outset. Four teams were given major roles in the SNFPA process: the Interagency Team, the Interdisciplinary Team, the Science Team, and the SPAM Team. Region Five convened panel after panel for evaluations that could pass as species viability analyses, but never did produce anything more definite than "vulnerability assessments" and were, in fact, still trying to develop a spotted owl conservation strategy after the FEIS was sent to the printer.

36. There was a multi-day Science Team/ID Team meeting in mid-April 1999. Dr. Danny Lee reported that they decided on analysis models for Draft Environmental Impact Statement [DEIS] alternatives. Steve Clausen, ID Team Leader, replied, "We need to move forward and can't wait for the Science Team's diagrams."

37. In early April the Forest Service had a series of field trips in the local planning areas and on April 22, 1999 met to discuss these Forest Coordination Field Trips. It was reported that local Forests were telling the ID Team that the proposed standards and guidelines were unworkable. Quotes from the record include:

> John Phipps, Eldorado NF supervisor: "I keep hearing, 'Politically, we're going to have to do it this way.' Well, it's not the ID team's job to think with political filters on."
>
> "The Sequoia is like the Stanislaus — we've lost 1/8th (5 of 40) SOHAs (Spotted Owl Habitat Areas) through fire and disease in the last 10 years."
>
> Danny Lee: "Viability Assessment — Need to clarify the 'V' word. To start

with, no viability analysis has been done, no decision has been made, what you have seen is a lot of people making assumptions."

The ID Team discussed and admitted that there was not much difference between alternatives: "The mapping of owl habitat still needs more critical peer review; this is an example of work still needed prior to identification of a preferred alternative."

38. As early as April 1999 but probably earlier from the context, the Forest Service had decided that basic inventorying of various resources was not part of pre-planning but rather of "status and change" monitoring. The consequence of this determination was a distinct, significant, intentional, and premeditated lack of accurate baseline information for use in the modeling and analysis of the affected environment and alternatives in the EIS. The SPAM Team had been given responsibility for the contents of the monitoring chapter of the EIS, but "what stays in and what goes out will be a political decision."

39. During May and June 1999 the Forest Service's Interagency Team meetings were focused on providing comments on the DEIS, but there was one problem: none of the DEIS chapters were ready. Kent Connaughton told the IA Team that the DEIS would be sent to the printer within 4-6 weeks, and that "[t]he scope of the EIS will not be subject to change and should not be a focus of comments."

40. The SPAM Team sponsored a "Monitoring Strategy Statistical Workshop" June 15-17, 1999. This was a Lake Tahoe multi-day affair involving statisticians from the Forest Service and other agencies across the United States, who explored possibilities of future working relationships. John Keane from the Forest Service Science Branch was on the agenda for "Review of Special Projects" to present "Focal Species Analysis." Notes from the meeting state that the USFS wanted the monitoring to occur at a regional scale. In the full meeting, there was not one word recorded regarding uncertainty about spotted owl management, HFQLG, or any specific administrative study. The notes reflect that the SPAM Team decided

to model its implementation monitoring plan after the one in the Northwest Forest Plan -- then had to find out what that plan was.

41. On June 21-23, 1999, the Forest Service had a Spotted Owl science meeting in Sacramento and followed it up with a June 24, 1999 Furbearer meeting. The US Fish and Wildlife Service participated in California spotted owl and furbearer meetings during development of the DEIS and FEIS, including discussions where the ID Team decided that the SNFPA would essentially be recovery plans for non-listed and non-proposed species such as California spotted owls, northern goshawks, and Pacific fisher. A Forest Service meeting note states, "We want to stand with the US Fish and Wildlife Service that the Record of Decision would meet the viability and recovery issue." The ID Team decided at this meeting that recovery management for the fisher would cause big changes in the Framework.

42. The meeting notes from July 2, l999 indicate that, "Kent Connaughton handed out the final report from the 'Committee of Scientists.' Connaughton explained that this report provides much of the guidance for the current EIS project."

43. At that meeting, Science Team Leader "Danny Lee summarized meetings of spotted owl specialists in Sacramento last week. The members of the CASPO Technical Team and several other experts met for three days at the SNFP Office. The objectives were to review new information, discuss modeling approaches for owls, and evaluate methods for tracking consequences of DEIS alternatives. The discussions focused on three questions:

1. What is suitable owl habitat?

2. How much suitable habitat do owls need?

3. How many territories are needed across the landscape?"

44. The results of that meeting were that "The owl experts agreed that there is insufficient information available to answer the key questions about owls and owl habitat.

However, research is under way that will provide better information in 3-5 years. Given this condition, the team will develop some working hypotheses about owl habitat relationships that can be used as experiments under an adaptive management framework during implementation of the EIS."

45. On September 1, 1999 the Framework staff held one of its regular "public information meetings" at the staff offices in downtown Sacramento. Four important points came out in the meeting discussions as documented by the Forest Service's meeting notes: First, that the Forest Service was getting legal advice that the "no action" alternative should look at CASPO, not the individual forest plans, to describe current management. Second, that these public meetings were for the purpose of not surprising the public at the end of the NEPA process. Third, the Forest Service stated publicly, "We don't expect that the Framework EIS will end the HF-QLG pilot." Finally, "We do expect a regional California spotted owl strategy to come out of the Framework EIS. If it does not, then the spotted owl may be listed."

46. Another public information meeting was held in the Framework office on October 6, 1999. Meeting notes indicate that during the Q&A session, the question was asked but not answered: "How do alternatives 2, 3, 5 & 8 meet the Organic Act to provide commercial wood products?"

47. On October 4-7, 1999, another major, multi-team meeting was held to discuss the "Scientific Information Needs Strategy." Items from the meeting notes — as far as we know, the only record of the agency's planning process — reveal the cart-before-the-horse implementation of this EIS process and its fundamental planning failures. Excerpts from the 21 pages of meeting notes:

> Pat Manley: "Inventory - doesn't sit on anyone's plate" (p.1)
>
> Connaughton: "in contrast to Forest Plans and multi-use and outputs" (p.2)

"Information needs surfaced in development of alternatives"

Diane MacFarlane: "Philosophic viewpoint of how we are designing EIS is based on lack of information, such as OHV effects on carnivores. Where we don't have information on effects that are detrimental, we don't allow those activities to go forward; however, we need to show these activities are detrimental with some data to show that conservation efforts are critical." (p.5)

"JV - Biggest hurdle is the line officers."

"JV - Need to start getting logging and fire history now from forests."

"KP - In EIS there is implied inventory; it isn't there," and, most tellingly,

"Purge any draft documents from your files (electronic too). (You'll be glad you did this later.)" (p.16)

48. Sierra Nevada Framework Project "DEIS deliverables" are listed in the 1999 annual report as including the following critical elements of the overall EIS: (a) completion of the Ecosystem Process Conceptual Model [EPC]; (b) development of "a scientific approach to prioritize terrestrial vertebrates for conservation and monitoring" -- which resulted in the invention of the "vulnerability status assessments" for more than 400 species of animals ; (c) Sierran All Species Database; and (4) draft "prospectuses" for ecosystem processes associated with the DEIS topic areas. "The use of the Ecosystem Process Conceptual Model was to identify linkages between ecosystem processes and the EIS 'Problem Areas.'" "The SPAM Team assisted the EIS team in using the EPC Model to identify attributes used to address issues, and to illustrate the relevance and scientific basis for the attributes in an ecosystem context."

49. So what were the ecological connections between attributes and issues, and the scientific underpinnings for those connections? Though "the SPAM Team developed 'prospectuses' for each key process in the EPC model," there were no study plans dealing with forest stand dynamics, succession, fire, spotted owls or owl prey ecology, west-side hardwoods, non-native species invasions, etc. The EPC is strangely disconnected from either the

identification or evaluation of the Framework's "problem areas." Nothing in any of the SPAM team's work focused on spotted owls, furbearers, etc., even though the progress report states, "The SPAM Team is continuing to identify high priority attributes to be monitored in association with each of the problem areas." "The results of our analysis provide an objective basis for identifying priority species, and associated priority environments." In fact, the SPAM Team's vulnerability assessments found spotted owls to have only a "moderate vulnerability", along with 167 other species. The 1999 SPAM report states:

> "For the Sierra Nevada, we needed an objective, defensible approach to prioritizing terrestrial vertebrates for conservation and monitoring. We assessed the vulnerability status of 427 native species based on estimates of population size, population trend, and change in distribution between pre-European and current time periods using both summary scores to produce a linear ranking and cluster analysis and decision tree-based models to determine the components of vulnerability status groups — high, moderate, and low vulnerability. Forty-two species were classified as highly venerable [sic] and were characterized by declining population trends and ≥50% range contractions. The Moderate vulnerability group was comprised of 168 species characterized by declining population trends and <49% range contraction to stable ranges. The remaining 217 species with stable or increasing population trends and ranges were classified in the Low vulnerability group. The High vulnerability species were unevenly distributed among the high priority environments identified as problem areas in the Draft EIS. Only one of the 42 species was hypothesized to be dependent on late-seral/old-growth forests, 10 species were dependent on western foothills, and 21 species were dependent on riparian/meadow environments. The results of our analysis provide an objective basis for identifying priority species, and associated priority environments, for conservation that can serve to focus funding for research and monitoring on those species at greatest risk of extinction or extirpation from the Sierra Nevada Bioregion."

50. The FY99 SPAM Progress Report also lays out "Next Steps" and "Special Projects" for the FY2000 work. HFQLG was not a case study or subject; spotted owl research not an urgent topic; and there was no mention of the need for administrative studies. The state of the subject list and the status of work as of 11/30/99 is remarkable for what is not considered there: fire, owls, furbearers, old growth.

51. By December 14, 1999 the SPAM Team report says that decision had been made to

essentially release the DEIS and save the recommended Washington Office changes for the FEIS. On May 5, 2000, the DEIS was released for public review. Only a few of the QLG issues were addressed by the Forest Service and very few of the Washington Office recommendations for improvement were resolved by the ID Team.

52. The Interagency Team meeting of June 14, 2000, was a major one. Kent Connaughton asked the interagency group to recommend "decisions that should be made in the Record of Decision." Team was asked to suggest alternatives they could support and recommend to the USFS. On p.3 of the meeting notes, Lon Payne of EPA lists "refinements" necessary for EPA to support either Alternative 6 or Alternative 8. Number five on the list was to revise the HFQLG ROD: "The basic idea is that the Quincy Plan should be superseded where the Framework is more specific or more protective." Number six on the EPA list was, "Any other changes necessary to avoid a jeopardy opinion from FWS."

53. On July 6, 2000 Kent Connaughton named "several unresolved issues with the DEIS." Included in those issues were the following: (1) Should there be specified timber harvest levels in the EIS; (2) Should EIS consider maintaining a viable timber industry; and (3) How should sensitive wildlife habitats be managed?" The Forest Service was identifying these issues after the DEIS had been printed and released for public comment. This demonstrates that Framework officials knew at the time they released it that the DEIS was woefully inadequate. According to the July 6, 2000 meeting notes, Catherine Hibbard said a "new study from Verner may narrow the uncertainty gap before final." There was discussion at the July 6 meeting about the infeasibility and undesirability of the effects of the proposed standards and guidelines, and that the Framework's goals could not be realized under those standards and guidelines.

54. In July 2000 the Forest Service's Washington Office sent a "National Review Team"

to Sacramento to work on EIS and viability analysis issues which the Team characterized as improvements, not wholesale changes.

55. By August 7, 2000 the "National Review Team" from the USFS Washington Office was expected to finish up EIS review momentarily. There was still no hint anywhere in the record of a need for a new alternative. At this point in the timeline, the Forest Service ID Team was telling the public that it was reviewing and suggesting "refinements to the Standards & Guidelines." On August 11, 2000, the public comment period on the DEIS ended and the QLG filed extensive comments on the DEIS, pointing out many substantive and procedural flaws with the document.

56. In early August 2000 the SNFPA monitoring and adaptive management plan was produced by the SPAM Team. "Vulnerability ratings" were substituted for viability assessments for most species in the Sierra Nevada's national forests. The California spotted owl was not found to be a "high vulnerability" species. The evaluation did not show the HFQLG Pilot Project to be a threat to either the continued existence or the viability of spotted owls or any other species, listed or not.

57. The Forest Service prepared a Biological Assessment (BA) for the DEIS and submitted it to the US Fish and Wildlife Service in August of 2000. The BA did not cover the California Spotted Owl, great gray owl, or furbearers since they were not listed species under the jurisdiction of the U. S. Fish and Wildlife Service.

58. From August 18, 2000 until the ROD was approved by Brad Powell in January of 2001, the Interagency Team negotiated internally about adaptive management, "flexibility" (variance procedures for standards and guidelines but not a NEPA decision process), and possibly viability determinations. Lon Payne (EPA), Louis Blumberg (California Department of Forestry) [CDF], Mike Chapel, Kent Connaughton, and Maria Boroja (U.S. Fish and

Wildlife Service) [USFWS] all took part in these negotiations.

59. On August 30, 2000 the Forest Service signed a Memorandum of Agreement that authorized USFWS to issue a biological opinion on the California spotted owl because an environmental group had filed another petition to list it as threatened or endangered.

60. Notes from the September 6, 2000 Interagency Team meeting reflect just how fundamentally incomplete the DEIS was when it was being reviewed by the public: page 5 of the meeting notes contains the following items: "Need to complete spatial analysis for fuels management options for species viability assessments" and "The Forest Service should work with the FWS to find ways for completing credible viability assessments."

61. The Forest Service recognized that external DEIS comments called for local flexibility to apply standards and guidelines and that internal USFS comments were proposing changes in the standards and guidelines, but whatever the proposed changes were has not been retained in the planning record. By September 2000, various IDT and SPAM meeting records indicate that Forest Service was discussing proposed changes in the standards and guidelines of the FEIS.

62. On September 13, Project Manager Kent Connaughton told forest supervisors and regional directors for Region Five that the FEIS and ROD timeline update included modeling to be completed by September 30, 2000; with effects analysis by October 31, 2000; and the FEIS and ROD by November 30, 2000.

63. The September 27, 2000 SPAM Team meeting notes recorded an update on "Forest Service Operations" that said, "commitment to adaptive management is out, and mechanical treatments limited and deemed more of a research question." Later on the meeting notes hint at the fluidity and confusion surrounding the rush to the FEIS and ROD: regarding "species/community monitoring, we have some discussion required for this that I will bring

some of you in on," and "new standards and guidelines [are] due out the first week of October."

64. But the SPAM Team was still debating what to monitor, how to monitor, and what to write for the FEIS at the end of September 2000. The team had not made any geographic or species-specific adaptive management or monitoring decisions. In particular, nothing in the SPAM Team's work or notes identifies the HFQLG Pilot area as a place to focus monitoring or adaptive management programs. Instead, the SPAM Team discussed California spotted owl and northern goshawk monitoring on a range-wide scale, not HFQLG-centered. No planning documents made any record of the team considering or recommending any sort of experimental or administrative study program in the northern Sierra forests.

65. Even as late as the September 28, 2000 SPAM Team meeting, there was no discussion recorded of the five urgent SNFPA issues within the lists of task assignments handed out to SPAM Team members (which included "Matt and Michelle will do library work to identify candidates of focal species," "work with Cathy so aquatic species not overlooked," and "need to propose what habitat features will be monitored." The meeting notes record that Tom Dell was "to pick up where Jo Ann Fites and Jim Boulding left off with analysis of adequacy of existing FIA [Forest Inventory Analysis] grid to detect changes in structure and condition over time [at stand scale], determination of appropriate habitat attributes." The multiple-species monitoring plan had not yet been written, but the team recognized a "need to develop a rationale that inextricably ties this to Focal Species monitoring, or 'we'll get killed.'"

66. The October 2, 2000 Weekly Report states: "Framework Science Integration and Interdisciplinary teams will meet on October 2, the official start of effects analysis based on updated modeling and standards and guidelines."

67. The October 9, 2000 Weekly Report states: "Framework Science Integration and Interdisciplinary teams met to begin the effects analysis based on updated modeling, standards

and guidelines and updates to alternatives."

68. On October 11, 2000 a 12-page narrative document entitled "Description and interpretation of modeling results in projection of future conditions" was put into the planning record. Metric by metric, the narrative gave comparative descriptions of the alternatives' projected achievements through the planning horizon. Most significant about this was the finding that the supposedly critical habitat elements – old forest, owl nesting habitat, and large old trees – were met in the current conditions and by all action alternatives. On a forest-by-forest basis, the Forest Service discussed the fact that Plumas, Tahoe, and sometimes Lassen Forests had already met desired condition metrics or would within 10-30 years under all scenarios.

69. The October 16, 2000 Weekly Report states: "Framework representatives are working with US Fish and Wildlife representatives in developing a conservation strategy for several species, including the California spotted owl." It further states: "At the request of Science Integration Team Leader Peter Stine, owl biology experts will convene on November 2 to discuss the technical aspects of owl conservation."

70. In October 2000 the Sierra Nevada Framework Overview (for public consumption) reported the recent activities in the following fashion: "What are we doing about protecting wildlife . . . Both the Forest Service and Fish and Wildlife Service feel that immediate steps must be taken and are working closely on developing strategies for conserving habitat for these species."

71. On November 2, 2000 there was a California Spotted Owl Conservation Strategy Discussion meeting in Sacramento. This meeting was described elsewhere as a meeting of owl scientists regarding the "technical aspects of owl conservation." Excerpts:

"Petition accepted by USFWS. There have been ongoing discussions between R5 Regional Forester Brad Powell and USFWS California/Nevada Operations

Manager Mike Spear."

"Steve Clausen: We used to have a timber program. Based on past perception. No ASQ in this effort. This is different. You can't design a plan for dinosaurs, need plan for the future."

"Phil Detrich: Nothing in this plan assesses timber program outside of treatments. Would need to do separately. Maria Boroja: The amendments to LRMPs will override current timber program? Steve Clausen: Yes."

The November 6, 2000 Weekly Report states: "Members of the Interdisciplinary Team continued to meet with US Fish and Wildlife Service to discuss California spotted owl and carnivore strategies." Also: "California spotted owl scientists met with some of the ID Team members, California Department of Fish and Game, and US Fish and Wildlife Service to discuss technical elements of the draft conservation strategy."

The notes from the November 7, 2000 SPAM Team conference call indicate: "We decided to cancel November 13 meeting due to lack of interest." and "QLG — monitoring effort is starting to move on design and data collection this spring. Rema volunteered to review QLG to identify overlap between our plan and the QLG plan. We'll meet and discuss how the two efforts can collaborate."

72. In mid-November the Science Consistency Review Team was convened after having been sent incomplete drafts of the FEIS.

73. Three consecutive Weekly Reports (November 20, 27, and December 4, 2000) contain identical statements about the status of the most critical parts of the EIS: "Framework Interdisciplinary and Science Team members continue to meet with US Fish and Wildlife Service representatives to develop strategies for conserving wildlife habitat." There was still no mention of a new alternative in the Weekly Reports.

74. The November 27, 2000 Weekly Report also states, "Framework staff and representatives from the HFQLG Pilot Project forests continue to review the relationships and coordination between Pilot and various alternatives. The team is developing an analysis of effects of Framework alternatives on HFQLG Pilot Project for consideration by the Regional Forester."

75. The Sierra Nevada Conservation Framework Overview for December 2000 hinted at

FEIS changes and updated analyses, but there is still no mention of a new alternative having been created, let alone that it was about to be adopted without any further disclosure to or review by the public. Similarly, the December 2, 2000 "In Brief" press release by the USFS Regional Office gave "Selected Projected Statistics (DEIS)" but did not intimate the existence of the new alternative.

76. The actions taken to rewrite and complete the EIS from August through December 2000 are not entirely documented in the planning records. Public information releases said one thing; internal agency updates said quite another. One was "continuing to develop an owl conservation strategy" while the other line was "continuing to improve" the EIS. But in an internal e-mail dated December 1, 2000, Catherine Phillips wrote to Julie Lydick, "As you probably know, we are putting the last touches on the preferred alternative."

77. On December 9, 2000 Chris Iverson, a USFS biologist assigned as part of the "WO [Washington Office] Review Team," completed the draft of the owl conservation strategy that appeared in the ROD.

78. On December 11, 2000 the Weekly Report noted: "Framework and US Fish and Wildlife Service representatives continue to work on strategies for conserving wildlife habitat."

79. The December 13, 2000 status report said, "clarifications and refinements to the analyses in the DEIS" would be reflected in the FEIS and ROD.

80. Framework Project Manager Kent Connaughton had sent a formal request to the USFWS on August 10, 2000 to initiate an Endangered Species Act section 7(a) consultation on the Biological Assessment for the SNFPA DEIS. The Biological Assessment evaluated the effects of Preferred Alternatives 6 and 8 from the DEIS on the two dozen species that were identified by the USFWS as being either listed or proposed for listing as threatened or endangered. Six species of fish, one frog species, and the Southwestern flycatcher (a bird that

nests in wet meadows) were the only species found to be potentially adversely affected in the Biological Assessment. The California spotted owl, not being listed or proposed, was not addressed.

81. In the closing of his letter, the project manager stated, "Members of your staff, Maria Boroja and Catherine Hibbard, have been involved in the Sierra Nevada Framework Project over the last 1-1/2 years. ... We will work closely with Maria and Catherine over the next few months to meet the desired Record of Decision signature date."

82. The reply from the USFWS came several weeks later. In a letter dated September 15, 2000 the Chief of the Endangered Species Division, USFWS Sacramento Fish and Wildlife Office, had two reasons for declining to begin a formal consultation process:

> "The Service has not received all of the information necessary to initiate formal consultation on this project as outlined in the regulations governing interagency consultations (50 CFR §402.14). To complete the initiation package, we require a BA or equivalent information that includes the analyses of the specific manner in which the proposed action may affect any listed species of critical habitat and any cumulative effects. Although the BA you submitted analyzes the effects of implementing the two Preferred Alternatives, through my staff's involvement with the project (acknowledged in your letter), we are aware that since the publication of the DEIS many changes to the project description have been or are in the process of being made. These changes render obsolete the analyses in the BA submitted to us for consultation."

83. The ultimate Biological Assessment, which evaluated the new Alternative Modified 8 as the preferred alternative of the SNFPA FEIS, was dated December 2000 and contained the following summary of ESA-related interactions between the Framework project and the USFWS:

> "Informal consultation to date includes a written request to U.S. Fish and Wildlife Service (USFWS), as required in 50 CFR 402.12(c), for species known or likely to occur in the analysis area. A list of endangered, threatened, proposed, and candidate species was requested from the USFWS and received on September 27, 1999. Updated USFWS species lists were issued on January 6, 2000 (reference 1-1-00-SP-568) and May 2, 2000 (reference 1-1-00-SP-1652). An additional request for an updated species list was made August 2000. No new species list was issued. In addition, on January 19, 1999 the Project leader received a letter identifying a list of

> species including those species which the USFWS had a high level of concern. A negotiated list including Federally listed Endangered, Threatened, Proposed, candidate, Forest Service Sensitive and the species having a moderate to high vulnerability rating was developed and agreed upon."
>
> "Representatives from the USFWS were assigned as part of the Project design team. Numerous planning and briefing meetings have been attended by the USFWS. Additionally, the Sacramento Field Office assigned personnel to service as part of the core Interdisciplinary Team (IDT). Representatives from both the USFWS and FS discussed an incremental consultation (50 CFR 402(k)) strategy for species in the Sierra Nevada National Forest System lands."

84. A biological assessment entitled: *Biological Assessment for the Implementation of the Preferred Alternatives for the Sierra Nevada Forest Plan Amendment Draft Environmental Impact Statement* was submitted to the Sacramento Field Office on August 10, 2000. A letter from the Sacramento Field Office rendering the above-mentioned BA obsolete was subsequently received by the Sierra Nevada Framework team.

85. Members of the Sacramento Field Office were further engaged with Sierra Nevada Framework team members to assist in the development of standards and guidelines for the Final Environmental Impact Statement.

86. The December 2000 Biological Assessment described the new Modified Alternative 8 as providing more spatially explicit California spotted owl and Pacific fisher conservation strategies than Alternative 8, one of the earlier Preferred Alternatives. The new alternative contained more Protected Activity Center designations for more non-listed species than the eight alternatives analyzed in the DEIS in May 2000: not only California spotted owls, but also goshawks, great gray owls, Pacific fisher, and American marten were allocated set asides and limitations on logging operating periods.

87. The Biological Assessment stated, "No site-specific activities will result from the decision. The exceptions to this are the riparian management zones, old forest reserves, and standards and guidelines for future management in the preferred alternative."

88. The U.S. Fish and Wildlife Service issued its Biological Opinion on the SNFPA FEIS on January 11, 2001. The FWS cited the Memorandum of Agreement dated August 30, 2000 as the authority under which FWS rendered Biological Opinions on species that are candidates or petitioned for listing pursuant to ESA before it proceeded to issue findings and management recommendations covering the California spotted owl, northern goshawk, and other species which are neither listed nor, in some cases, officially proposed for ESA listing. The January 11 document also referenced receipt by the FWS on December 20, 2000 of a Revised Biological Assessment for the SNFPA EIS, which included modified alternative 8. The January 11 document specifically stated that the FWS was basing its Biological Opinion on the assumption that the USFS information was all correct and accurate. The Biological Opinion made no findings of jeopardy for any species.

89. Section 7(a)(4) of ESA requires federal agencies to confer informally with the USFWS on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. However, measures contained in a conference opinion are advisory only. 67 Fed. Reg. 127, p.44390-1]

90. On January 12, 2001 the FEIS and the ROD were approved by Regional Forester Brad Powell. On April 17, 2001 the QLG and Plumas County filed their administrative appeal. In May of 2001, the Regional Office of the Forest Service ordered the LNF, PNF, and TNF supervisors to get going on the administrative study newly authorized in the ROD. In December of 2001 the QLG appeal was denied, but the Regional Forester was ordered by the Chief of the Forest Service to review some of the appeal issues. In late January and early February of 2002 the Review team was formed by order of the Regional Forester. In June 2002 the owl experts were brought back in; they denied support for SNFPA owl conservation strategy insofar as it prescribes diameter limits.

III.

FACTUAL BACKGROUND

Introduction

91. The SNFPA Final Environmental Impact Statement [FEIS] and Record of Decision [ROD] violate the Organic Act of 1897, the Multiple-Use Sustained-Yield Act of 1960, the Resources Planning Act of 1974, the National Forest Management Act of 1976, the National Environmental Policy Act of 1969, and their implementing regulations. Individual violations of these laws and regulations comprise numerous separate and cumulative violations of the Administrative Procedures Act. The FEIS and ROD also violate the Herger-Feinstein Quincy Library Group Forest Recovery Act of 1998 by interfering on specious grounds with implementation of the HFQLG Pilot Project that Congress required to be completed at a specified scale and pace.

92. Forestry policy has long been a contentious issue in the United States, pitting the culture and livelihoods of many Americans against the conservation values of others. This inherent tension escalated quickly in the late 1980's when the Forest Service released its proposed management guidelines on the northern spotted owl (a listed species under the Endangered Species Act [ESA] of 1973) in 1986. Logging mills began to close in the Pacific Northwest (Washington, Oregon, and northwestern California) as a result of ESA-related procedures and decisions.

93. The California spotted owl (a species not listed under the ESA) ranges in the forests surrounding Quincy and, consequently, community members and timber companies in northern California were fearful of a shutdown similar to the one occurring in the Pacific Northwest. Meanwhile, United States Forest Service timber sales all over northern California were on the

decline. On the Plumas National Forest, the cut decreased from 205 million board feet [mmbf] in 1987 to 120 mmbf in 1991, and it has continued to decline to 17 mmbf in 2002.

94. Quincy, Susanville, and Downieville (the county seats of Plumas, Lassen, and Sierra Counties) are surrounded by three national forests: the Plumas, the Lassen, and the Tahoe. The federal government owns 74 percent, 54 percent, and 59 percent, respectively, of the land in these counties, and each county's economy is significantly dependent on the timber and biomass industries. Forest Reserve Revenues, which are derived from timber receipts, have historically represented a significant portion of their school and road budgets, and these revenues fell in proportion to declining national forest timber sales.

Sierra Nevada Forest Conditions

95. Fire has been an integral component of Sierra Nevada coniferous forests for millennia. Prior to Euro-American settlement, frequent fires played a significant role by reducing accumulated surface fuels and maintaining open under-stories relatively free of fuel ladders, which carry fire into the forest canopy. Fire was also a major factor in maintaining the ecological balance of tree species in these forests. Frequent fires reduced the density of shade-tolerant species such as white fir and incense cedar and favored the more fire-resistant pines.

96. Exclusion of these widespread, low severity natural fires during the past one hundred years, combined with logging of large fire-resistant old growth trees, has resulted in forests with dense under-stories and fire ladders of shade-tolerant, fire-prone conifers and fewer pines. Under these conditions, fires tend to be larger, more severe, and increasingly difficult and dangerous to control. Sierra Nevada Ecosystem Project scientists inform us that, "High severity wildfires are considered by many to be the single greatest threat to the integrity and sustainability of Sierra Nevada forests." [SNEP p. 1471]

97. The QLG area includes three major vegetation types where these unnatural conditions are prevalent. The west side ponderosa pine forest and the mid-elevation mixed conifer forests have lost much of their original dominance by ponderosa pine, and under-stories are now composed largely of white fir, incense cedar, and Douglas fir. The east-side ponderosa and Jeffrey pine forests show significant encroachment by white fir, which is not well adapted to the drier conditions there.

98. The age distribution of trees and the structures of these forests at low and middle elevations have changed, from the original stands dominated by relatively few trees of relatively large size to today's stands which have fewer large trees, an over-representation of middle-size trees, and hundreds of very small trees per acre.

99. The proliferation and encroachment of white fir degrades forest health and contributes to an extreme fire hazard. There are two main reasons for this: (1) The hundreds (sometimes thousands) of small trees per acre make a highly combustible fuel bed and form a fire ladder to carry ground fire into the crowns of the larger trees, and (2) where white fir is overcrowded or has invaded the drier pine stands, it creates a moisture stress for all the trees, and entire stands become overly susceptible to forest insects (primarily bark beetles), diseases and drought, spreading infection and infestation. The dead trees then exacerbate the fire hazard.

The California Spotted Owl and the CASPO Report.

100. In 1992, Region 5 of the USFS issued *The California Spotted Owl: A Technical Assessment of Its Current Status,* PSW-GTR-133 (the CASPO Report), Verner et al, 1992. The CASPO Report reviewed the spotted owl literature and science, and made findings and recommendations for spotted owl management. It evaluated the northern spotted owl management prescriptions (large bloc exclusion of management) and found it likely to fail in

the Sierra Nevada because of the higher likelihood of catastrophic wildfire in the fire-adapted ecosystems of the Sierra.

101. The report found that the hotter and drier climate of California made it unlikely that the owl habitat could survive over time in present conditions. Thus the Technical Report recommended an active management prescription that became known as the "CASPO prescription." This prescription was designed to protect owl habitat from inappropriate old-growth logging and yet required active vegetation management (logging and biomass removal) to remove the threat to owls and humans from catastrophic fire.

102. The authors recommended instituting "interim guidelines" for timber management in Sierran national forests that would retain forest structures known to be important to California spotted owls, and aggressively reduce forest fuels to protect the existing old growth and owl habitat from loss to severe wildfire. The California spotted owl Sierran Province Interim Guidelines (the CASPO guidelines) were promulgated in 1993, and remained the legally binding management direction for these national forests until the signing of the Sierra Nevada Forest Plan Amendment (SNFPA) Record of Decision.

The Quincy Library Group.

103. The Quincy Library Group (QLG) is a loosely organized coalition of northeastern California residents who represent a broad range of local interests, from environmentalists to loggers, with all manner of other local government, business, industrial, and plain citizen interests in between. QLG grew out of informal exploratory conversations among a timber company manager, an environmental lawyer, and a Plumas County Supervisor, who were attempting to find common ground for de-escalation of the "timber wars" that resulted from the Northern Spotted Owl controversy and other related changes in management of local national forests. During early 1993 these talks expanded, went public, usually took place at the library

meeting room (hence the name), and produced the Quincy Library Group Community Stability Proposal [CSP] signed in July of 1993.

104. While debating and trying to reconcile the wide variety of viewpoints represented, community members involved in QLG learned that federal law (the Organic Act) dictated that the first purpose of national forests was to protect watersheds, a policy adopted in response to growing demands from farmers for reliable sources of irrigation water. The second purpose for the federal land was to "furnish a continuous supply of timber for the use and necessities of the citizens of the United States." These dual functions marked the beginning of the Forest Service's long history of attempting to balance multiple and sometimes competing interests.

105. The Multiple Use, Sustained Yield Act added secondary purposes to the law that included recreation, fish and wildlife, wilderness and other uses which complicated resource management but did not alter the forests' original purposes of watershed and sustainable timber production. Members learned that the philosophy of the original Forest Service laws was as expressed by Gifford Pinchot, the first Forest Service chief, that "all the resources of forest reserves are for use," and that view of law and policy was relatively unchallenged until approximately 1990, when the northern spotted owl listing changed the use ethic *de facto*, if not *de jure*.

106. QLG members learned that, in response to changing knowledge in the sciences relating to natural resources, Congress passed the National Environmental Policy Act [NEPA] in 1969 and the National Forest Management Act [NFMA] in 1976. The National Forest Management Act heralded a new era in forest management, one that called for regulation of timber extraction and the protection of non-timber forest values. The act mandates that timber cuts be performed in a way that allows for the protection of streams and soils, and it requires the Forest Service to provide for "diversity of plant and animal communities."

107. NFMA also created new planning procedures, including requirements for extensive public input, increased scientific research, consideration of all resources (not just timber production), and interdisciplinary decision-making teams (rather than those made up exclusively of foresters). The planning process mandated by NFMA directs the Forest Service to develop a Land and Resource Management Plan [LRMP] for each national forest and to revise it every ten to fifteen years. Regulations require that an EIS, subject to public comment, be developed. The present Land Management Plans for the HFQLG Pilot Project forests were developed using the 1982 NFMA planning regulations (36 CFR Part 219), and those plans call for management activities that are substantially different from present actual management. The SNFPA did not follow the current regulations; it followed draft Clinton administration regulations that were later withdrawn. Following the process authorized in the draft regulations resulted in the sacrifice of timber management and the resulting economic benefits to the local community.

108. The National Environmental Policy Act calls for a "productive harmony" between the economy and the environment. Past on-the-ground experience has convinced QLG members that the implementation of the HFQLG Act and the adoption of the SNFPA failed to provide such harmony. The Forest Service, by refusing to consider the QLG Act as an alternative in the SNFPA or to fully consider the adverse economic effects of the hastily drafted Mod-8 Alternative chosen in the ROD, is responsible for severe economic and environmental consequences to the local communities in the Sierra Nevada.

109. QLG members also learned that the best available scientific information on California spotted owls was "The California Spotted Owl: A Technical Assessment of its Current Status," PSW- GTR-133, July 1992, (the CASPO Report). That report recognized that fire is a major hazard to owl populations, that fuel reduction was needed in response to the fire

hazard, that active management of habitat and long term forest restructuring were needed, not just untouched reserves, and that:

> "One kind of structure that may have promise for production and long-term maintenance of owl habitat is a multi-aged mosaic of small, even-aged groups or aggregations. Groups would generally range from about 2 acres down to a quarter-acre, or possibly less. Probably this type of structure best approximates pre-settlement stand structures... Openings would be sufficiently large to permit regeneration of shade-intolerant trees... Multiple size classes in general would be separated horizontally rather than vertically, but in sufficient proximity to satisfy this attribute of suitable owl habitat. The horizontal separation of size classes also would confer some degree of resistance to crown fires." (CASPO Report, p. 271)

110. The above is a good description of group selection silviculture, which was adopted, along with other recommendations of the CASPO Report, into the QLG Community Stability Proposal. The purpose of the QLG Community Stability Proposal is "...to promote forest health, ecological integrity, adequate timber supply and local economic stability... [allowing] local communities to survive while long-term plans are developed, yet afford adequate environmental protection during this interim period." It recommended deferring management on certain large sensitive areas ("off-base" and "deferred") while long-term plans were developed, and three management strategies to be implemented simultaneously in the remaining "on-base" areas: (1) group selection silviculture; (2) the fuels management objectives recommended in the CASPO Report; and (3) protections for riparian areas and a program of watershed restoration.

111. The Proposal was drafted, approved and signed by 27 members of the QLG Steering Committee, and over half of those original members are still active. Those who no longer participate for various reasons have been replaced by other active members of similarly broad interests, resulting in a near steady Steering Committee membership of about 30 people.

112. Early in 1994 QLG members went to Washington, DC, to inform Congress of the QLG Community Stability Proposal, and to ask the Forest Service and the Clinton

administration to implement it. Initially the USFS and the Clinton administration were highly supportive of the proposal, and directed the Region and the local forests to implement its principles as much as possible where consistent with LRMP direction and available resources. Some additional funding was provided to local forests in 1994 and 1995, and in 1996 Secretary of Agriculture Dan Glickman announced a $20 million commitment to carry out "activities consistent" with the QLG proposal. In response, industry and the community made substantial financial investments preparing to do restorative forestry, and members of the QLG spent numerous volunteer hours around the country talking about common sense solutions to forest management problems.

113. Unfortunately, very little QLG-consistent management was actually accomplished on the ground, since most of the $20 million was allocated to business-as-usual activities, not implementation of the QLG Proposal. Meanwhile, the 44,000 acre Cottonwood Fire that threatened the town of Loyalton in 1994 renewed local concerns about wildfire and the need for thinning and fuel reduction at a pace commensurate with the scale of the fire hazard.

114. Local experience, Native American lore, diaries and letters of early settlers, fire history studies in the area, and scientific evaluations in the CASPO Report and the Sierra Nevada Ecosystem Project (SNEP) report all agreed that the current hazard of catastrophic high intensity fires was now unnaturally large and growing. It was clearly evident that the current pace of fuels reduction could not keep up with, much less get ahead of, the continuing accumulation of new fuel, and that restructuring the forest to re-establish it historic species composition and fire resilience was not occurring at all.

115. Seeing the local forest-based industry entering a death spiral, and beginning to appreciate the futility of trying to persuade the Forest Service to implement its Proposal in any meaningful way, in 1996 the QLG decided to take a different approach: it asked Congress to

pass legislation requiring the Forest Service to implement the Community Stability Proposal. In July 1997 the House version of the Quincy Library Group bill, H.R. 858, passed by a vote of 429 to 1. In 1998 the Senate passed the QLG bill as a rider to the Appropriations Bill. President Clinton signed the bill on October 21, 1998, and the Herger-Feinstein Quincy Library Group Forest Recovery Act became law.

The HFQLG Pilot Project

116. The HFQLG Act directs the Secretary of Agriculture to implement a Pilot Project on the Plumas, Lassen, and Tahoe National Forests. It specifies three management activities: (1) Construction of not less than 40,000 nor more than 60,000 acres per year of Defensible Fuel Profile Zones (shaded fuelbreaks); (2) Group selection harvest on an area the Forest Service computed to be 8,700 acres per year (individual tree selection is also permitted); and (3) Riparian protection and watershed restoration. The Act further specifies that while implementing these activities the Forest Service shall use the most cost-effective means available, and shall abide by the California spotted owl Sierran Province Interim Guidelines (CASPO guidelines) for management of spotted owl habitat.

117. The Act also designated "off-base" areas (about 320,000 acres) that exclude the management activities from road-less areas and other sensitive lands, and "deferred" areas (about 147,000 acres) where the specified management will not take place during the term of the Pilot project. In addition, spotted owl protected activity centers (PACs) and certain other non-forested lands are excluded, leaving about 1.5 million acres of "on-base" area available for Pilot Project implementation.

118. In August 1999 the Forest Service completed the HFQLG Pilot Project Final EIS [FEIS] and Record of Decision [ROD] adopting Alternative 2, a faithful implementation of the HFQLG Act. The FEIS and Record of Decision found that the HFQLG pilot program was

environmentally beneficial except for a "potential" to perhaps cause a trend toward listing for the California spotted owl. However, at the last minute, without any foundation in the EIS, the ROD over-rode the CASPO guidelines with a so-called "mitigation," which in effect gutted the Pilot Project by prohibiting the intended DFPZ construction or group selection on any lands deemed to be actually or potentially suitable for owl habitat.

119. Since that excluded management on virtually all of the "available" land of the west side, and most of it in the transition zone, where the forests are thickest and most in need of thinning, the "mitigation" effectively crippled the Pilot Project. The only DFPZ construction and group selection harvests permitted would be in areas where costs would be high, effectiveness of the treatments in reducing the fire hazard relatively low, economic benefits to the communities much reduced, and federal revenue almost non-existent. The HFQLG EIS had projected that the Pilot Project would return about three dollars to the Treasury for every Forest Service dollar spent. Instead, under the mitigation and subsequent decisions it has returned only a few cents for each dollar spent.

120. QLG appealed the decision to impose the ill-founded and unjustified "mitigation" on the Pilot Project, but that appeal was rejected. The ROD ordered that reconsideration of all spotted owl issues would be handled in a Sierra Nevada Conservation Framework then being developed at the Regional level. Increasingly desperate workers, contractors, mills, and the forest-dependent local economies had to wait for that process to grind out a solution. Meanwhile we, the citizens and businesses of the eight-county QLG area, would have to accept the growing risks of wildfire and continued loss of the forest-related industrial infrastructure that would be needed to implement an effective fuel reduction and forest restoration strategy if any such strategy were finally adopted.

The Forest Service attempts to write new Owl Guidelines.

121. The 1992 CASPO Report recommended guidelines that were substantially different from the conservation strategies recommended by many of the same scientists for the northern spotted owl, a related subspecies that inhabits old-growth forests of the Pacific Northwest and northern coastal California. Inasmuch as the SNFPA FEIS and ROD represent something of a return to the notion of managing California spotted owl habitat just like that of its northern cousin, it is useful to review five important ways in which the situations of these two subspecies differ:

(1) There is no evidence to suggest that California spotted owls have suffered the dramatic decline in numbers and distribution that northern spotted owls have suffered;

(2) The forests inhabited by California spotted owls have, for the most part, been selectively harvested and do not "fall apart" the way Pacific Northwest forests apparently do when partially harvested.

(3) California spotted owls have not been affected by Sierra Nevada forest management in the same way that northern spotted owls were affected by Pacific Northwest forest management, which makes it difficult to give a precise definition of "suitable California spotted owl habitat" and identify it accurately. "We have no studies to show what sorts of forest stands can support self-sustaining populations of California spotted owls," wrote the authors of the CASPO Report, Chapter 1, page 18.

(4) Fire is a major threat to California spotted owl habitat, unlike most of the northern spotted owl habitat, and fire's inevitability in the Sierra Nevada precludes "protecting" owl habitat by merely excluding timber harvest.

(5) A habitat set-aside approach for the California spotted owl in the Sierra Nevada could not protect a large enough population of California spotted owls to buffer it against

catastrophic events, such as stand-replacing fires.

122. These considerations, among others, led the CASPO scientists to conclude: "Because fire events and subsequent impacts on owl numbers are inevitable, we must maintain a balance between the rate of habitat loss to fires and the rate of habitat recovery from fires," and that:

> "Given these circumstances, we do not find a case sufficiently compelling at this time to recommend setting aside large blocks of Sierran forests as HCAs [Habitat Conservation Areas], a form of reserve] for the California spotted owl. Instead, we believe the situation calls for several steps needed during an interim period to preserve for the future significant management options for owls in the Sierra Nevada. These are aimed primarily at saving the older forest elements that the owls appear to need for nesting and roosting, and at reducing the excessive build-up of surface and ladder fuels"

123. Changing timber management from even-aged forest management to all-age management was a relatively easy decision to make. The CASPO Interim Guidelines Decision Notice accomplished that in early 1993, and the starting premise of the Quincy Library Group was that the fuel reduction and forest restructuring permitted under the CASPO prescriptions would be a good start on assuring long-term forest health, improved watershed function, and sufficient economic support to our timber-dependent communities.

124. The first Forest Service attempt to devise permanent owl guidelines foundered, in part because its conclusions were not consistent with the Sierra Nevada Ecosystem Project (SNEP) Report of 1997. At the end of the SNEP process, the team of scientists modeled alternative management strategies and, based on the ecosystem analysis, had suggested five goals for national forest management:

(1) To rebuild late-successional forests;

(2) To reduce the potential for severe (stand-replacing) fires;

(3) To restore riparian areas and watersheds;

(4) To reintroduce historical ecosystem processes; and

(5) To produce a sustainable supply of timber in a cost-effective manner.

125. Largely because the previous Draft EIS failed to deal adequately with the SNEP Report and its recommendations, the Forest Service prepared a Revised Draft EIS on spotted owl guidelines. However, the RDEIS was withdrawn before official publication, and an evaluation by a Committee of Scientists was ordered. Their report essentially affirmed the SNEP findings and led directly to initiation of the Sierra Nevada Framework for Conservation and Collaboration

The Sierra Nevada Ecosystem Project (SNEP) Report.

126. While QLG was developing the HFQLG bill and securing its passage, more than 100 scientists were engaged in a comprehensive, Congressionally mandated study of the Sierra Nevada ecosystem that resulted in the SNEP Report of 1997. In four volumes with 109 chapters the report detailed the Sierra Nevada ecosystem in sections on past landscapes, human components, biological and physical elements, agents of change, case studies, strategies for the future, and special individual studies on particular ecosystem components and processes.

127. The SNEP Report gave strong support to key elements of the QLG Proposal and the HFQLG Act. For example:

Regarding fire and fuels:

128. Volume II, Chapter 37, *An Overview of Fire in the Sierra Nevada,* by Kevin S. McKelvey and seven other prominent fire scientists, said this in its Abstract:

> "We suggest extensive modification of forest structure will be necessary to minimize severe fires in the future. In high-risk areas, landscapes should be modified both to reduce fire severity and to increase suppression effectiveness. We recommend thinning and under-burning to reduce fire-related tree mortality coupled with strategically placed defensible fuel profile zones (DFPZs)."

129. Volume II, Chapter 56, *Landscape-Level Strategies for Forest Fuel Management,* by Phil Weatherspoon and Carl Skinner, established three goals and centered the discussion of

strategies on DFPZs. Regarding the first goal, Weatherspoon and Skinner said:

a) Goal 1: Reduce Substantially the Area and Average Size Burned by Large, High-Severity Wildfires. ...

> b) "Given the massive scope of the problem that goal 1 is intended to address, a carefully considered strategy is required for prioritizing fuel treatments. Such a strategy should permit managers to multiply the benefits of treatments in order to make the most rapid and most efficient progress toward achieving goal 1. We focus our discussion in this section on DFPZ networks. Multiple benefits of DFPZs may include (1) reducing severity of wildfires within treated areas (as with any fuel-management treatment), (2) providing broad zones within which firefighters can conduct suppression operations more safely and more efficiently, (3) effectively breaking up the continuity of hazardous fuels across a landscape, (4) providing "anchor" lines to facilitate subsequent area wide fuel treatments, and (5) providing various non fire benefits. **We are aware of no other strategy with as great a potential in the short term to progress reasonably rapidly toward achieving goal 1."** (emphasis added)

130. The other goals recognized in SNEP are to (2) restore more of the ecosystem functions of frequent low- to moderate-severity fire, and (3) improve the health, integrity, and sustainability of Sierra Nevada ecosystems. In their extended discussion, scientists Weatherspoon and Skinner make clear that attaining goal 1 is a precondition of achieving goals 2 and 3, and they detail the HFQLG DFPZ network as a good example of the strategy they recommend.

Regarding forest restructuring:

131. In addition to the quote above from Chapter 37, McKelvey et al, forest restructuring is prominent in SNEP Volume II, Chapter 21, Assessment of Late-Successional Forests in the Sierra Nevada, by Jerry Franklin and JoAnn Fites-Kaufmann:

> "Two silvicultural prescriptions have been proposed for the Sierra Nevada which will maintain or restore higher levels of late-successional forest structures. Group selection is one of these approaches. The scale of selected group that is often proposed—1 to 2 acres—is larger than the scale of mosaic of structural patches found in many natural mixed-conifer and yellow pine stands, however. Moreover, some structural retention within the groups selected for harvest may be desirable to maintain certain features (such as very large decadent trees and snags, for example) that could not be created in adequate numbers within the selected rotation period.

Another approach would be to permanently reserve some groups or a portion of the matrix from harvest in order to maintain those structural features (Franklin et al. in press)."

"Silvicultural prescriptions which maintain or restore specific levels of structures—such as large diameter trees, snags, and logs—have not yet been extensively developed and applied. The interim CASPO guidelines (Verner et al., 1992) are a significant step toward demonstrating the practicality of prescriptions which maintain a high level of late-successional forest function while providing for significant timber harvest. Simple diameter-limit guidelines are not adequate to achieve long-term objectives, however; goals identifying the desired density, size, species composition, and distribution of large trees are needed along with multiple-entry prescriptions which systematically provide for replacements and insure that the large snags and logs derived from these trees are retained on site."

132. Since Franklin and Fites-Kaufmann are well known advocates of retaining and developing "old growth" (i.e. late-successional) components of Sierra Nevada forests, it is particularly interesting to note their approval of the CASPO interim guidelines as providing for both old growth and timber harvest, and their disapproval of long-term diameter-limit guidelines.

The GAO Report, the Cohesive Strategy and the National Fire Plan.

133. Meanwhile, in response to western states and national concern about the growing hazard and cost of catastrophic wildfires, in 1999 the General Accounting Office issued its report, *"Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats."* The GAO report found that: "...The most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation." (GAO/RCED-99-65)

134. In April of 2000 the Forest Service issued its response to the GAO Report, *"Protecting People and Sustaining Ecosystems -- A Cohesive Strategy."* The Forest Service's Cohesive Strategy was based on its finding that:

"Because of the high proportion of total area classified as high-risk, combined with the fact that without treatment more vegetation will "grow" into these high-risk conditions, it is apparent that time is running out for a strategy to successfully avert high-cost, high-loss

consequences." (p.14)

135. The report roughly mapped areas of risk by their "Condition Class." The areas at highest risk (Condition Class 3, CC-3) were defined in terms of four main characteristics:

a) Disturbance Regime-- The disturbance regime has been significantly altered and historic disturbance processes and effects may be precluded.

b) Disturbance Agents-- The effects of insect, disease or fire may cause significant or complete loss of one or more defining ecosystem components.

c) Smoke Production-- Episodic smoke production is unpredictable and in high volume and long duration, poses significant impacts to human health, safety, and societal values.

d) Hydrologic Function-- Hydrologic functions may be adversely altered, with significant increases in sedimentation potential and measurable reductions in stream flows. (Cohesive Strategy, p. 76, Appendix A)

136. Subsequent higher resolution mapping of the Sierra Nevada shows that the HFQLG area includes as high or higher proportion of CC-3 than anyplace else in the Sierra Nevada, other inland western forests, or the nation as a whole.

137. The National Fire Plan followed the Cohesive Strategy, and is largely based on the same data and concepts. It calls for comprehensive fuel reduction, starting on areas of highest risk and hazard, and progressing to areas of moderate risk (a total of about one-third of all federally owned forest land) over a period of up to 15 years. QLG believes the HFQLG Pilot Project provides the best start on implementing the Cohesive Strategy and the National Fire Plan locally; because the HFQLG rate of fuel reduction is fully consistent with the national plan, the DFPZ strategy would provide early and effective protection to the areas of highest risk and hazard and would provide, if implemented according to requirements of the Act, the most

cost-effective implementation.

138. QLG never said to construct DFPZs and stop there. It has always said that DFPZs are the best first step, that a long-term strategy needs to be developed in the follow-on forest plan amendments required by the HFQLG Act, and that, if these follow-on plans are done right, it will not be necessary to maintain a dedicated DFPZ network indefinitely. As envisioned in the National Fire Plan, the forest as a whole would become sufficiently fire-resilient for long-term sustainability of forest health. The DFPZ network should come first but not be a substitute for comprehensive fuel reduction.

The Framework Impact on the HFQLG Act

139. In 1998 the Forest Service initiated the Sierra Nevada Framework for Conservation and Collaboration (the Framework), which became the Sierra Nevada Forest Plan Amendment Draft EIS [SNFPA DEIS]. Five problems were identified for action:

1. Old forest ecosystems and associated species.
2. Aquatic, riparian, and meadow ecosystems.
3. Fire and fuels.
4. Noxious weeds.
5. Lower west-side hardwood forest ecosystems.

The first three of these problems directly affect implementation of the HFQLG Pilot Project.

140. "Old forest associated species" is primarily another way to say "spotted owls" in our area. The HFQLG Act requires the Pilot Project to abide by the CASPO guidelines or subsequently issued guidelines, whichever are in effect. Therefore, that part of the Framework decision that specified new owl guidelines would apply to the Pilot Project.

141. "Aquatic, riparian, and meadow ecosystems" would involve the need to reconcile the riparian guidelines coming out of the Framework decision with the riparian protection

guidelines specified in the HFQLG Act.

142. The “fire and fuels” strategy for the HFQLG area is based on DFPZs until termination of the Pilot Project, and thereafter on results of the forest plan amendments required by the HFQLG Act. In the other Framework national forests outside the HFQLG area, the fire and fuels strategy is based on DFPZ-like treatments in a narrow defense zone immediately adjacent to urban areas, with Strategically Placed Area Treatments (SPLATs) in the remainder of the Wildland Urban Intermix zone (WUI) and elsewhere in the forest.

143. Intractable problems were created by restrictions on management activity imposed by the spotted owl and old forest emphasis area [OFEA] standards and guidelines (S&Gs) adopted in the Framework Record of Decision [the SNFPA ROD]. The Forest Service's own Review Team analysis shows that, under SNFPA guidelines, it is not possible to achieve either the extent or the effectiveness of fuel reduction that would be required to meet the goals of the HFQLG Act or the current national forest fuels policy, the National Fire Plan. The permitted treatments would not be effective, and they would cost so much that treating the target acreage would not be feasible.

144. The original CASPO interim guidelines were specified in the HFQLG Act and were the basis of the alternative adopted in the HFQLG FEIS and ROD. Then first the HFQLG ROD’s “mitigation” and now the SNFPA decision have imposed quite different owl guidelines on the Pilot Project. The new guidelines were adopted on the basis of inadequate scientific information mistakenly interpreted and improperly applied. Instead of providing permanent guidelines that would meet the fuel reduction and forest restructuring objectives so well described and supported in the SNEP Report, the SNFPA decision crippled fuel reduction and imposed even more rigid and narrowly defined diameter and canopy cover limits, directly contrary to the recommendations of Franklin and Fites-Kaufmann in their SNEP article.

145. As noted earlier, the Framework decision did not resolve the major issues it claimed to address, either Region-wide or with particular reference to the HFQLG Pilot Project. Regionally, the adoption of Modified Alternative 8 (8-mod) was concocted at the last minute, and neither analyzed in the FEIS nor subjected to any public scrutiny and comment before its adoption, thus adding to other violations of NEPA and NFMA in the Framework process from its beginning.

146. With regard to issues of particular concern to QLG, the ROD:

(1) Imposed an owl habitat management strategy that was not legitimately founded in science, was not feasible to implement, and if implemented would not achieve the results claimed for it.

(2) Did not permit implementation of the DFPZ network specified in the HFQLG Act, either to an acceptable standard of effective fire protection, or by the most cost-effective means available, as required by the Act.

(3) Did not permit initiation of group selection silviculture on the landscape specified in the Act. Instead, in violation of the Organic Act and subsequently adopted law, the ROD effectively removed timber production as a management objective.

(4) Interfered with the program of riparian restoration specified in the Act, in part by adding large Critical Aquatic Reserves (CARs) to HFQLG Forests by an ill-founded and arbitrary process that overburdened HFQLG forests with these reserves.

(5) Used questionable data and analysis to justify a false claim that recreation usage of HQLG forests would compensate any adverse social or economic effects of Framework implementation. .

(6) Failed to analyze and consider the social and economic effects that would actually result from Framework implementation.

147. Faced with this barrage of adverse effects from the Framework decision, QLG, joined by Plumas County, filed an appeal of the SNFPA ROD. The major points of the Petitioner's administrative case are outlined below, largely in excerpts from the Executive Summary of the QLG appeal. They include:

The New Spotted Owl Conservation Strategy

148. How do the SNFPA FEIS and ROD perform in implementing the CASPO and SNEP findings and recommendations? One concept in both the CASPO and SNEP reports is active management to rebuild late successional forests and reduce the threat of lethal fire effects to large old trees and forest canopies. But the concept of active management, particularly mechanical removal of fuels, is not endorsed — indeed, is barely tolerated — by the SNFPA FEIS and ROD. In disregard of recent history the Forest Service, under influence of the U.S. Fish and Wildlife Service, has concluded that fire is not enough of a threat to owls to implement the management program originally recommended by the owl scientists.

149. The FEIS and ROD attempt instead to finesse the problem with an untried theory of strategic fuel reduction that cannot be implemented under the rules adopted and would not do the job if it were implemented. The FEIS and ROD fail to provide substantial evidence to support their new old growth and spotted owl standards and guidelines, nor do they provide substantial evidence that the CASPO guidelines are not adequate to ensure the viability of the California Spotted Owl.

150. Additionally, both the Forest Service and the Fish and Wildlife Service omitted critical information from their analyses:

(1) Spotted owls in PACs and Spotted Owl Habitat Areas (SOHAs) have not been assessed or monitored in any systematic way since the adoption of the CASPO Interim guidelines in 1993; and

(2) No cause-and-effect relationship has been established between the forest management methods specified in this Decision and spotted owl population viability. The CASPO Report said it clearly, and no established science has changed that statement of the situation:

> "At the landscape scale, we see little in the overall distribution pattern of California spotted owls to suggest how we might distinguish between suitable and unsuitable habitat. We have learned much about particular stand attributes that are used selectively by California spotted owls, but we have been unable to connect them with studies of the owl's reproductive success — or failure. We are still uncertain about what levels of canopy cover, tree densities and sizes, quantities and sizes of downed woody debris, and so on, are found where owls reproduce consistently and well. Only by linking demographic rates with habitat attributes can we eventually distinguish among superior, suitable, marginal, and unsuitable habitat." (CASPO Report, p. 28)

151. Unfortunately, the Forest Service failed to conduct the necessary research and "obtain and keep current inventory data appropriate for planning and managing the resources" (NFMA 219.12(d)) related to California spotted owls.

152. If the Forest Service has valid scientific support for the proposed spotted owl management in any of the alternatives, it had an obligation to disclose it. In fact the FEIS provides no references to support these elements of the alternatives:

(1) The selection of landscape-scale old forest desired conditions (FEIS Vol. 1, Ch. 2, p. 8);

(2) The identification of "reserves (saving nature's legacy, ecological basis of conservation" (ibid.);

(3) The quantity, quality, and spatial arrangement of habitat to sustain viable populations of old forest associated species (ibid.); and

(4) The rate and means used to reduce fire hazard (FEIS Vol. 1, Ch. 2, p. 9).

153. The California spotted owl conservation strategy presented in the SNFPA ROD fails to satisfy NEPA and NFMA procedures in that it was not developed in an integrated and

interdisciplinary manner, which led to mutual inconsistencies between owl habitat direction, fire and fuels objectives, and riparian standards and guidelines. Before the final Decision on the FEIS and ROD was made by the Regional Forester, all of these problems were identified as needing solution by Forest Service personnel including the Washington Office Review Team, the hastily conducted Science Consistency Check Team, and numerous individual Pacific Southwest Research Station and academic scientists working with the Framework staff. The unfinished state of the owl management strategy and the disarray of opinions among Forest Service staff and outside scientists on this subject can be documented by the numerous entries in the planning record chronicled earlier.

154. Furthermore, because there was no supplemental draft EIS circulated to the public containing the spotted owl conservation strategy and other non-circulated portions of the EIS prior to adoption of the FEIS, the SNFPA ROD violates the NEPA public disclosure and comment requirements.

155. In spite of redrafting and adjusting the selected alternative until the last few days before the Record of Decision was signed, the California spotted owl conservation strategy is still incoherent, incompatible with other resource directions, and violates NEPA by not having been circulated for public review and comment prior to adoption.

The Treatment of Fire and Fuels

156. Strategic fuel reduction for protection of people and the environment from high intensity wildfire is a pivotal issue in the FEIS but, among the action alternatives considered, the adopted alternative 8-mod is well below average in providing that fuel reduction. In projections of Wildfire Acres 8-mod makes little or no change in the current rate of loss over the whole 14-decade analysis period. For Lethal or Stand Replacement Acres Burned, 8-mod is one of only three action alternatives that would cause *greater* loss to lethal wildfire, as much as

1/3 more than the current loss.

157. This increase in lethal wildfire is reflected in projections of poor performance by Alt 8-mod on Owl Nesting Habitat, Old Growth Forest, Large Trees, Very Large Trees, and Large Hardwoods. In contrast, other alternatives (e.g. Alt 4) show early, significant, and persistent reductions in lethal fire and better results for owl habitat and old growth forest characteristics.

158. In fact, Alt 8-mod would not actually deliver even the dismal performance projected for it as a fuel reduction strategy, primarily for three reasons:

(1) The SNFPA fuel reduction strategy is overly dependent upon an untried theoretical concept called Strategically PLaced Area Treatments (SPLATs) that could not work as advertised even if they were applied to the landscape according to the SPLAT specifications.

(2) The standards and guidelines specified in the Decision do not require SPLATs to meet the theoretical requirements of the strategy.

(3) In any case, those standards and guidelines would not permit enough SPLATs actually to be implemented and placed correctly on the landscape to provide adequate protection, even if the theory could work and were otherwise implemented correctly.

159. The ID Team and the decision maker were given ample warning by Forest Service experts and outside comments that fuel reduction was a high priority issue and that the SPLAT strategy was not an adequate response.

160. Because the SPLAT strategy would not work, and in any case is not proposed at a scale or pace that would be adequate, the Decision also fails to be consistent with the national Cohesive Strategy for fuel reduction. The FEIS doesn't give straight-forward numbers on the fuel reduction acreage the Cohesive Strategy requires to be treated or on the acreage proposed for treatment, but our best estimates for both numbers from partial information provided in the

FEIS and the planning record show that the Decision would implement less than half the fuel reduction required by the Cohesive Strategy. Furthermore, as noted above, the treatments actually proposed in the FEIS would not be as effective in reducing the risk and hazard of wildfire as is contemplated in the Cohesive Strategy and by the House and Senate committees that authorized funding for effective large-scale fuel reduction.

The Treatment of Timber Management

161. The FEIS fails to address timber production as an authorized use on the forests of the Sierra Nevada. Petitioners allege that this is arbitrary and capricious and inconsistent with the Organic Act, the Multiple Use Sustained Yield Act, the NFMA, and the applicable implementing regulations. The FEIS fails to provide a range of timber producing alternatives in compliance with the Organic Act, other applicable law, and NFMA regulations. California currently imports approximately 76% of the 8 billion board feet of softwood lumber consumed annually by its residents. The FEIS shrugs off this fact with the inconsequential comment, "Imported logs and lumber from Canada and South America have been meeting the demands for wood products." Importing this volume of lumber instead of properly managing and harvesting readily available timber and biomass resources within California national forests has at least these significant adverse consequences:

(1) Loss of primary jobs and local economic opportunities in logging, timber processing and lumber milling.

(2) Loss of secondary economic opportunities in support industries and services.

(3) Loss of economic viability in rural communities dependent or partly dependent on logging, timber processing and lumber milling.

(4) Loss of electric generating capacity due to reduced fuel for biomass-fired plants.

(5) Increased direct Federal costs to conduct the required fuel reduction and forest

health work entirely through service contracts.

(6) Loss of tax revenue due to the adverse economic effects.

(7) Increased federal costs for direct county roads and schools payments that could be largely or completely handled out of forest reserve revenues that are generated from gross timber receipts.

(8) Increased costs to consumers and reduced national economic security due to the increase in balance-of-trade deficits.

(9) Increased hazards to society related to:

a. Delay in implementing fuel reduction and/or curtailment of the fuel reduction program, with consequent increase in local wildfire hazards and loss of critical watersheds and wildlife habitats.

b. Greatly increased health hazard due to smoke and air pollution from wildfire or prescribed burning of material that could be mechanically removed and processed with better than 97 percent reduction of pollutants.

c. Irresponsible transfer of troublesome environmental effects to exporting nations where timber and milling operations are less efficient and well regulated.

162. In adopting this FEIS and ROD, the Forest Service has failed to recognize that sustaining a viable industrial infrastructure is not just an economic and social issue, it has become a vital *ecological* necessity. Without a healthy and competitive industry with a capacity to remove and process the increasing volume of hazardous fuels that now threaten our national forests, there is no hope to accomplish the necessary fuel reductions and silvicultural treatments that will make our national forests truly safe and sustainable. And without the offsetting revenues from an economically viable timber component in the fuel reduction program, there is little hope of obtaining the continued appropriations (nationally) that would

be needed to pay for fuel reduction at the scale and pace specified in the national Cohesive Strategy and other policy statements. Far from being "sensitive to economic efficiency" as required by NFMA, the FEIS and ROD generate the highest costs while implementing the least effective and productive methods of fuel reduction in the alternatives considered.

The Treatment of Riparian Area Management Zones.

163. The SNEP report found that:

(1) Aquatic/riparian systems are the most altered and impaired habitats of the Sierra, and that dams and diversions throughout most of the Sierra Nevada have profoundly altered stream-flow patterns (timing and amounts of water) and water temperatures, with significant impacts to aquatic biodiversity. Native fish populations have been severely reduced or have gone locally extinct, especially at low elevations, primarily as a consequence of dams and introduction of non-native fish species.

(2) Many Sierran ecosystem declines are due to lack of institutional capacities to capture and use resources from Sierran beneficiaries for investment that sustains the health and productivity of the ecosystems from which benefits derive. This is due to fragmented control of ecosystems, absence of exchange mechanisms to sustain rates of investment and cooperative actions, detachment between those who control ecosystems and communities that depend upon and care for them, and inflexibility in response to rapid changes in population, economy, and public interest.

(3) Water is the most valuable Sierra Nevada commodity, followed by timber, livestock, and other agricultural products, based on gross revenues. Water accounts for more than 60% of that total value, followed by "other commodities" and "services," each at 20%. Around 2% of all resource values are at present reinvested into the ecosystem or local communities through taxation or revenue sharing arrangements.

164. The FEIS ignores most of these SNEP findings in that it fails to address the overwhelming role that dams and diversions have in altering the riparian areas, much less how to ameliorate their more negative affects. It completely neglects a discussion on the institutional relationships regarding water, and it does not discuss the growing role that local stream and watershed restoration efforts have assumed throughout the Sierra and particularly in the QLG counties. It ignores the SNEP report's findings about the value of water, and it fails to note the California energy crisis and the key role that hydroelectric plays in that issue.

The Treatment of Critical Aquatic Refuges.

165. The Final EIS takes the limited concept of Critical Aquatic Refuges [CARs] in the Draft EIS and greatly expands CAR acreage and effect without proper basis, disclosure or rationale. CARs were expanded 76 percent from the DEIS to the FEIS without public disclosure or a basis in analysis. The mapped CARs do not conform to the criteria specified in the FEIS and ROD. The mapping of CARs was inconsistent from forest to forest, because it was left to individual forest biologists without adequate familiarity with the concept or instruction on how to interpret and apply the criteria

The Treatment of Recreation.

166. The FEIS analysis of public demands for outdoor recreational uses is not adequately documented or easy to follow in the FEIS. There are conflicts in the information presented and in its interpretation. One effect of the Decision is to shift the allocation of recreational opportunities away from "general use" and make it available only for Primitive and Semi-primitive Non-motorized use. There is an obvious attempt to justify and sugar-coat this shift of recreational opportunity by statements such as "The fastest growing recreational activities... are, for the most part, low impact and nature-oriented activities" and "Californians have clear preferences for natural, undeveloped, and nature-oriented areas and parks."

167. These claims are directly contradicted by information and other discussion in that section of the FEIS. The fastest growing uses are said to include downhill skiing, visiting historic places, sight-seeing and biking, none of which is a "primitive" or "undeveloped" use, whereas the slowest growing uses include rafting, backpacking, and primitive camping. The FEIS sets a management program in direct opposition to the actual recreation trends it claims to be supporting.

168. The FEIS methods of projecting recreation usage for future decades seems straightforward, but our computation of usage projected for the current decade using those methods comes out different from the FEIS numbers by about 17 percent, which means something in the FEIS analysis is a lot more obscure than it seems to be or actually should be.

169. There are direct inconsistencies in supposedly simple hard facts from one place to another in the FEIS discussion of recreation. For example, on one chart the 1996 total of Individual Visitor Days for "Resorts" (including group camps, lodging resorts, and recreational residences) is 4.145 million IVDs, while in another place it says "Recreation resident use accounted for 6.9 million visitors in 1996."

170. Finally, nothing in the Recreation section indicates a methodology or its application that would actually determine the "supply" of recreational opportunities that are feasible or are being made available by any of the Alternatives or the Decision. Historic "demands," adjusted by growth factors, are treated as if they were the available "supply" at some future date, without any showing of how that equivalency is established or justified. Most enterprises are founded on a clear understanding that supply and demand are two different things. That logic does not apply in this FEIS and ROD.

171. The underlying fallacy of the FEIS regarding recreation is the strong implication that recreation is going to save the Sierra Nevada, particularly the northern Sierra Nevada, from

the economic devastation that would accompany the shutdown of its remaining timber and milling industry. There is nothing credible in the recreation section of the FEIS to support that theory.

The Rejection of the QLG Appeal

172. Every point of every appeal on the SNFPA Record of Decision was rejected by the Content Analysis Enterprise Team [CAET], the Regional Forester and the Chief of the Forest Service. In Section VI of the Chief's appeal decision, Response to Appeal Issues, the Forest Service often omitted or misstated the issue actually brought forward by an appellant and, in cases where the explanation did actually deal with the issue raised, the response was often ill-founded or spurious. For example, QLG raised the issue of whether the Regional Forester had the authority under applicable regulations to amend forest plans directly or whether that process had to be conducted by Forest Supervisors of the affected forests. In response the Chief quoted two of the several applicable regulations cited by QLG in its appeal, then rejected QLG's point on spurious grounds, as follows:

> "The 1982 implementing regulation at 36 CFR 219.10 discusses the general procedures for forest planning. The regulation discusses those procedures specific to an amendment as follows:
>
> "(f) Amendment. The Forest Supervisor may amend the forest plan. Based on an analysis of the objectives, guidelines, and other contents of the forest plan, the Forest Supervisor shall determine whether a proposed amendment would result in a significant change in the plan. If the change resulting from the proposed amendment is determined to be significant, the Forest Supervisor shall follow the same procedure as that required for development and approval of a forest plan. If the change resulting from the amendment is determined not to be significant for the purposes of the planning process, the Forest Supervisor may implement the amendment following appropriate public notification and satisfactory completion of NEPA procedures.
>
> "The regulation at 36 CFR 219.4(b)(3) provides that the Regional Forester shall approve the forest plan.
>
> "Discussion: Given the Regional Forester's authority to approve forest plans including significant amendments to forest plans (219.4(b)(3)), it was appropriate

for him to approve and sign the SNFPA.

> "Decision: After my review of the record, I find that the Regional Forester appropriately approved the significant amendment to the forest plans and did not usurp decision-making authority granted to the Forest Supervisors."

173. In other words, the Chief admitted that the regulation assigns all aspects of forest plan amendment to Forest Supervisors, but finds that the Regional Forester can take over that whole process because he has "approval" authority over the eventual outcome. Under the Chief's theory on how "approval authority" relates to "decision making," it would be lawful for the Senate to make treaties and appoint federal judges. Since that is clearly not the case, we must continue to insist that the whole Framework process was based on a fatal error from the beginning.

The Framework Review Initiated

174. In a very unusual and disturbing sequence of events, the Chief turned down every issue of every appeal, and the Deputy Secretary of Agriculture refused to exercise his right to review that decision, but then the Chief ordered the Regional Forester to conduct a comprehensive Review to reconsider major elements of the original SNFPA Decision.

175. The Regional Forester outlined a scope of review somewhat broader than specified by the Chief, appointed a Review Team, and said all aspects of the Review, including any needed amendments, would be completed within one year (i.e. by the end of 2002). The Review was not completed in one year, but now looks like it will not produce a new Record of Decision until late in 2003, and probably not before the end of 2003, its second full year.

Review Team Findings

176. The Review Team's Findings validate every one of the appeal points raised by QLG, to the extent those points were reviewed at all.

Review Team Recommendations.

177. The Review Team has recommended new Standards and Guidelines that are very similar to the original CASPO guidelines and quite different from the SNFPA S&Gs. The Review Team has found that the SNFPA eliminates the objective of providing commercial forest products from national forests in the Sierra Nevada. The Review Team "could find no documentation of the rationale for this decision."

178. In other words, in the three-and-a-half years since the HFQLG Pilot Project was supposedly initiated under the CASPO guidelines, the Forest Service has gone full circle. While repeatedly erecting barriers against Pilot Project implementation, first in the "mitigation," then in a drawn-out Framework and Review process, they have finally come back to the original CASPO concepts because those concepts were based on the best available science at the time, and nobody has produced significantly better science since then.

HFQLG Act Vindicated by Review

179. The Review Team's findings validate every QLG appeal issue that was reviewed. QLG did ask to have all appeal issues reviewed, but the Forest Service declined to deal with some of them. The issues not reviewed are largely procedural matters under NFMA, NEPA, and APA. These procedural issues remain extremely important, among other things, to assure procedural integrity in the many long-term and project-level processes yet to be completed. However, while those unreviewed issues are litigated, QLG believes it is appropriate and necessary to begin immediate full implementation of the HFQLG Pilot Project using the CASPO Interim Guidelines until such time as the final CASPO-like guidelines are processed and adopted.

IRREPARABLE HARM

180. Respondents' action has resulted in irreparable harm to Petitioners in that the

adoption of the SNFPA Environmental Impact Statement and Record of Decision has:

a. Caused significant environmental impacts that should have been mitigated or avoided;

b. Adversely and unlawfully affected Petitioners' rights or the rights of the general citizenry of Plumas County and the other residents of the Sierra Nevada.

c. Unlawfully deprived Petitioners of the protection due them under the National Environmental Policy Act, the Act's implementing regulations, the National Forest Management Act and corresponding implementing regulations and the Administrative Procedures Act. Petitioners have been harmed by the actions of the United States Forest Service in restricting the lawful implementation of the HFQLG Act and these injuries are irreparable and ongoing unless restrained.

EXHAUSTION OF REMEDIES

181. Petitioners have exhausted their administrative remedies in that they have each taken part in many years of Forest Service planning activities on the subject matter of the SNFPA process, and they have brought before the United States Forest Service in the appropriate administrative processes each and every point now presented to this Court and submitted evidence pertinent thereto.

ABSENCE OF REMEDY AT LAW

182. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of federal law, in that the United States Forest Service decision cannot otherwise be reviewed at law.

Therefore, QLG alleges as follows:

183. **The FEIS and ROD violate provisions of the Organic Act, MUSYA, RPA, and NFMA** by failing to consider as significant goals the production of a continuous supply of

timber or favorable conditions of water flows. They do not maximize long-term net public benefit in an environmentally sound manner. They do not form one integrated plan. They do not reflect the use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management. The Decision instead would result in "few issue" or even "single issue" management, not multiple use management. Implementation of the Decision would not be in a manner that is sensitive to economic efficiency. The FEIS and Decision repeatedly sacrifice the economic efficiency that could be attained with multi-product sales and timber production that are fully justified under the FEIS analysis, and instead impose management options that employ more costly service contracting and increase the risk and hazard of wildfires, thus assuring the continued escalation of suppression costs and loss of high value resources. The Decision is not consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources. In this process the Regional Forester usurped decision-making authority assigned by law to Forest Supervisors. The Decision is arbitrary and capricious and contrary to law under 5 U.S.C. 704.

184. **The FEIS and ROD violate NEPA** in that significant environmental effects were not revealed to public officials and citizens before the decision was made and the information provided was not of high quality and based on accurate scientific analysis and expert agency comments. The FEIS is often not concise, clear, and to the point, and it is not supported by evidence that necessary environmental analyses were made. The standards and guidelines and the owl conservation strategy contained in the FEIS were added after the close of public comment and contained elements that require re-circulation under legal standards. The standards and guidelines and owl conservation strategy are not supported by substantial evidence in the FEIS or the record. The productive harmony goal of NEPA is not attained or

even attempted. Professional and scientific integrity were not insured but were instead sacrificed to other agendas and motives. The FEIS and ROD final Decisions were arbitrary and capricious and counter to law under 5 U.S.C. Section 704.

185. **The FEIS and ROD violate the Administrative Procedures Act** in that key intermediate decisions and the cumulative final Decisions were arbitrary and capricious and counter to law under 5 U.S.C. Section 704, were in excess of the deciding official's statutory authority, and did not observe procedure required by law. Analyses provided to the Regional Forester by the Forest Service Inter-Disciplinary Team (ID Team) regarding projected environmental, economic, and social effects of the alternatives do not support a logical choice of alternative 8-modified (8-mod) as the alternative to be implemented. Numerous procedural violations of NFMA and NEPA regulations in the SNFPA process also constitute violations of 5 U.S.C. section 704.

186. **The FEIS and ROD violate the Herger-Feinstein QLG Forest Recovery Act** in that the Decision places arbitrary, capricious, and unreasonable restrictions on management activities, and these restrictions make it impossible for the Pilot Project to be implemented in the manner and at the scale and pace specified in the Act. Application of the Framework Decisions to eliminate or change portions of the HFQLG Act was arbitrary and capricious and counter to law under 5 U.S.C. Section 704.

WHEREFORE, Petitioners pray as follows:

1. That a preemptory writ of mandate issue under the seal of the Court commanding the United States Forest Service and the Region Five Regional Forester immediately upon receipt of the writ to:

a. Set aside, vacate, and rescind certification of the Environmental Documents in connection with the SNFPA amendments;

b. Set aside, vacate, and rescind the Record of Decision for the SNFPA; and

c. Prepare, re-circulate, consider, and certify a new EIS and otherwise comply with NEPA in any subsequent action to approve the project;

2. That a preliminary injunction be issued restraining Respondents from permitting any application of standards and guidelines and land allocations in the SNFPA ROD that interfere with the implementation of the HFQLG Act. The HFQLG shall be implemented in accordance with the standards and guidelines in effect prior to the approval of the SNFPA ROD. Such injunction is to remain in effect until the hearing on the writ of mandate can be heard and the Court can render its decision on the merits;

3. That preliminary and permanent injunctions be issued restraining the United States Forest Service, and the Regional Forester for Region 5, their agents, servants, and employees, and all persons acting in concert with them, from taking any action to implement in any way the Sierra Nevada Forest Plan amendments as described above in the area designated in the HFQLG Act;

4. For costs of suit incurred herein;

5. For reasonable attorneys' fees; and

6. For such other and further relief as the Court deems proper.

Dated:

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MICHAEL B. JACKSON
Attorney for Petitioners

VERIFICATION

I am the Attorney of Record for Petitioners and am authorized to execute this Verification on behalf of Petitioners. I have read this Petition and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege the matters stated therein are true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed at Quincy, California on March 11, 2003.

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Michael B. Jackson