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12
13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION
16

17 WILDERNESS WATCH, SEQUOIA
18 FORESTKEEPER, TULE RIVER
19 CONSERVANCY, and JOHN MUIR
PROJECT,

20 Plaintiffs,

21 v.

22 NATIONAL PARK SERVICE,

23 Defendant.
24
25
26
27
28

No.: 1:23-cv-01398-ADA-BAM

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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

INTRODUCTION

1
2 1. This is a civil action for declaratory and injunctive relief regarding two related
3 actions by Federal Defendant, the National Park Service (NPS). Following recent wildfires in
4 Sequoia and Kings Canyon National Parks, NPS authorized two projects with designs to
5 reengineer the natural environment in the Parks’ designated Wilderness areas to manipulate post-
6 fire regeneration and future wildfire dynamics. NPS’s actions challenged here include its “Fuels
7 Reduction Efforts to Protect Sequoia Groves in Sequoia and Kings Canyon National Parks from
8 the Devastating Effects of High-Intensity Fire” (hereafter, the “Fuels Reduction Project”),
9 authorized in October 2022; and its “Re-establish Tree Seedlings in Severely Burned Giant
10 Sequoia Groves and Adjacent Fisher Habitat” (hereafter, the “Wilderness Planting Project”),
11 authorized in October 2023.

12 2. NPS’s Fuels Reduction Project, as approved, involves over a thousand acres of
13 timber cutting with chainsaws to thin the forests in and around remote giant sequoia groves and
14 over 20,000 acres of manager-ignited fires and associated activity. Much of the tree cutting and
15 burning would occur within designated Wilderness areas, and the project activity would span an
16 indefinite, at least years-long time period.

17 3. NPS’s Wilderness Planting Project involves planting giant sequoia and other tree
18 seedlings in six remote sequoia groves that burned in wildfires in 2020 and 2021. To accomplish
19 the tree planting, NPS authorized the cutting of large trees and the use of dynamite to create
20 clearings and landing areas for helicopters to transport materials and seedlings within the Parks’
21 designated Wilderness areas. The Wilderness Planting Project would include installation of 600
22 plot markers and 60 temperature and moisture probe installations, which NPS expects could
23 remain installed for 30 to 40 years. Tree planting would continue for several years, potentially
24 through 2028 or 2029.

25 4. Both projects are designed to coerce the natural environment in these Wilderness
26 areas—with active, hands-on management and the use of machinery—to better reflect NPS
27 managers’ desired forest conditions. The Wilderness Planting Project is aimed at replacing
28 natural processes of forest succession and regeneration with artificially reestablished sequoia

1 groves by planting and continued human monitoring and manipulation. The Fuels Reduction
2 Project is aimed at altering the forest conditions in thousands of acres in and around giant
3 sequoia groves, by cutting down trees with chainsaws and starting intentional fires, in order to
4 reengineer the forest structure to reflect what managers predict would better match desired future
5 fire intervals and fire behavior.

6 5. But NPS’s authorization of the two projects suffers serious legal flaws. Chief
7 among them is the agency’s disregard for its statutory obligations toward management of lands
8 in the National Wilderness Preservation System (NWPS). These lands were set aside by
9 Congress to be administered under the strict environmental protection provisions of the
10 Wilderness Act, with express language to retain natural areas where we refrain from imposing
11 “the imprint of man’s work,” where nature and its “primeval character and influence” call the
12 shots such that wild ecosystems remain “untrammeled by man.” The Wilderness Act’s explicit
13 purpose is to rescue from our increasing numbers and “growing mechanization” protected public
14 lands that people do not “occupy and modify.”

15 6. NPS’s approach in the challenged projects here, where the activities would occur
16 on Wilderness lands, fundamentally contravenes its statutory mandate. In pursuing work to re-
17 engineer forest ecosystems with the use of motors and other machinery in its rush to manipulate
18 predicted fire dynamics or desired patterns of regrowth, the agency is importing into its
19 management of Wilderness lands the same active, intensive and industrialized land management
20 tactics that it pursues on non-Wilderness units of National Park lands.

21 7. NPS’s contravention of statutory restrictions in Wilderness administration poses a
22 threat to Congress’s direction for these and similar lands across the NWPS. For example, the
23 fuzzy concepts of “fuels reduction” and forest “treatment” have for decades masked extensive
24 and impactful commercial timber activity, particularly across the non-Wilderness portions of the
25 National Forest system. NPS’s cavalier approach of expanding its penchant for hands-on
26 ecological manipulation and landscape-scale forest “treatment” into the NWPS exemplifies an
27 administrative posture threatening the security of designated Wilderness areas system-wide.

1 challenged projects, as they will no longer be able to scientifically study these areas in their
2 unmanipulated state, take nature photographs of the areas in their natural state without the
3 intensive impacts of thinning, burning, and planting management activity, or enjoy the aesthetic
4 beauty of the natural forest habitat and its inhabitants.

5 19. Plaintiff TULE RIVER CONSERVANCY is a nonprofit corporation organized
6 under the laws of the State of California whose mission is to protect the forests of the southern
7 Sierra Nevada and their numerous groves of giant sequoia by advocating for their best and most
8 responsible management. Many of Tule River Conservancy's members reside and/or recreate
9 throughout these forests. For over three decades, Tule River Conservancy has studied and
10 commented on a wide variety of proposals and management activities proposed and/or
11 implemented by the many agencies that manage the Sequoia National Forest and Giant Sequoia
12 National Monument, Sequoia and Kings Canyon National Parks, and Mountain Home State
13 Forest. Tule River Conservancy's activities include alerting and educating the public about
14 projects and proposals so they can provide input to these agencies. Tule River Conservancy was
15 founded in 1991 and is based in Porterville, California.

16 20. Plaintiff JOHN MUIR PROJECT is a project of Earth Island Institute, a nonprofit
17 corporation organized under the laws of the State of California and headquartered in Berkeley,
18 California. Earth Island Institute's mission is to develop and support projects that counteract
19 threats to the biological and cultural diversity that sustains the environment. Through education
20 and activism, these projects promote the conservation, preservation, and restoration of the earth.
21 One of these projects is the John Muir Project, whose mission is to protect all federal public
22 forestlands from commercial exploitation and other manipulation that undermines and
23 compromises natural ecological conditions. Earth Island Institute is a member organization with
24 over 15,000 members in the United States, thousands of whom use and enjoy the National
25 Forests of California for recreational, educational, aesthetic, spiritual, and other purposes.

26 21. This suit is brought by Plaintiff organizations on behalf of themselves and their
27 adversely affected members and staff. Plaintiffs and their members' present and future interests
28 in and use of the areas subject to the Fuels Reduction Project and Wilderness Planting Project are

1 and will be directly and adversely affected by the agency's impending actions.

2 22. Plaintiffs' staff, members, and supporters have longstanding interests in
3 preserving the wilderness character of federally designated Wilderness in the Sierra Nevada,
4 including in the Wildernesses of Sequoia and Kings Canyon National Parks. Members of these
5 organizations value Wilderness and have interests in protecting Wilderness whether or not they
6 ever set foot inside its boundaries. They value Wilderness for its own sake, for the sake of
7 wildlife who find increasingly scarce refuge there, and for the sake of current and future
8 generations who rely on the preservation of Wilderness for a multitude of personal, spiritual,
9 societal, and ecological reasons. Plaintiffs' staff, members, and supporters also visit the
10 Wilderness areas of Sequoia and Kings Canyon for wilderness-based recreational pursuits such
11 as hiking, summer and winter camping, backpacking, snowshoeing, backcountry skiing, wildlife
12 viewing, and aesthetic enjoyment. They seek out the Wildernesses for these activities because of
13 their incomparably remote, quiet, and untrammelled qualities and the opportunities for
14 exceptional solitude and reflection that Wilderness provides. They also work in fields like
15 tourism, research, and academia that depend upon wilderness character and minimally disturbed
16 ecosystems; and they depend upon the integrity of the Wildernesses' wildlife, expansive and
17 unfragmented natural landscapes, and the immeasurable environmental benefits that stem from
18 leaving these areas as unmolested by people as possible and as minimally disturbed as the law
19 requires.

20 23. Within the areas of the Fuels Reduction and Wilderness Planting Projects,
21 Plaintiffs and their staff, members and supporters have a long history of seeking out and enjoying
22 Wilderness groves of giant sequoias and enjoying the ecology of the landscape in its
23 untrammelled state. The legal violations alleged in this complaint cause direct injury to the
24 aesthetic, conservation, recreational, scientific, educational, wildlife and wilderness preservation
25 interests of Plaintiffs and their staff, members, and supporters by intruding upon the natural
26 systems in the Sequoia and Kings Canyon National Park Wilderness areas with human activity to
27 intervene in the ecosystem and the habitat there. The Projects' intensive motorized tree-cutting
28 activity, expansive use of manager-ignited fire and associated activities, and establishment and

1 maintenance of human-planted seedlings and manipulated forest succession will disturb the
2 peace and quiet and the solitude of the Wilderness as well as permanently impair its natural,
3 undisturbed quality. In addition to injury to the immediate experience of wilderness character
4 through the direct human activity on the landscape, Plaintiffs' staff, members, and supporters
5 will be injured by the presence of this ecological trammeling by NPS administrators, which will
6 permanently supplant natural, unconstrained ecological processes with outcome-driven
7 environmental conditions shaped directly by human hands, the antithesis of the purpose of
8 Wilderness designation.

9 24. Outside of designated Wilderness, Plaintiffs and their staff, members and
10 supporters are familiar with and have an appreciation for viewing groves of famously large giant
11 sequoias near human development, where federal land managers manicure features to facilitate
12 heavy human visitation and manipulate the forests surrounding those groves to preserve desired
13 conditions and insulate certain trees from ecological mortality risks. But the legal interest that
14 Plaintiffs and their staff, members and supporters have in the protected Wilderness areas of
15 Sequoia and Kings Canyon National Parks is that of seeing the ecosystems—and their giant
16 sequoias—in these designated Wilderness areas respond to natural forces and experience
17 ecological changes, forest succession and other processes that shape forests *without* being
18 coerced by human hands. There, the manicuring influence of the human landscaper can only
19 harm the wild ecological integrity of the forests and the sequoia groves within them. NPS's
20 museum-diorama approach of coercing environmental conditions injures Plaintiffs' legal interest,
21 under the Wilderness Act, in having the landscape protected from human activity so that
22 Plaintiffs' staff, members, and supporters may observe, learn from, and appreciate ecological
23 changes (including sequoia mortality and forest succession) as dictated only by the wild
24 landscape itself.

25 25. Plaintiffs and their members and staff also have an interest in ensuring that NPS
26 complies with all applicable laws, regulations, and procedures pertaining to the management of
27 National Park lands.

28 26. The National Park Service's Fuels Reduction and Wilderness Planting Projects

1 are in contravention of the National Environmental Policy Act (NEPA) and violate the
2 Wilderness Act. Because Defendant’s actions approving these projects violate the law, a
3 favorable decision by this Court will redress the actual and imminent injuries to Plaintiffs. If
4 NPS were to comply with NEPA, it would prepare Environmental Impact Statements (EIS) to
5 consider the significant effects from the Fuels Reduction and Wilderness Planting projects, given
6 the significant effects on Sequoia and Kings Canyon National Parks’ Wildernesses, *before* acting
7 on the landscape. If NPS were to comply with the Wilderness Act, it must ultimately reject
8 intensive landscape-scale ecological manipulations—such as cutting trees with chainsaws,
9 burning across thousands of acres, and planting seedlings and actively managing sequoia
10 regrowth, all of which directly contravene the legal strictures of Wilderness designation under
11 Act—which would avoid harm to Plaintiffs’ legal interests in the protection of these areas as
12 Wilderness.

13 27. Defendant NATIONAL PARK SERVICE is a federal government agency within
14 the Department of Interior, which holds the Sequoia and Kings Canyon National Parks and its
15 Wildernesses in trust for the American people and is responsible for actions in the Fuels
16 Reduction Project and Wilderness Planting Project areas.

17 **LEGAL FRAMEWORK**

18 The Wilderness Act and Acts Establishing Wilderness Designation within the Project Area

19 28. The Wilderness Act of 1964 established the National Wilderness Preservation
20 System and imposed legal requirements for federal administration of lands designated as
21 Wilderness. Pub. L. 88-577, 78 Stat. 893-96 (Sept. 3, 1964); 16 U.S.C. § 1131 *et seq.* The
22 Wilderness Act has an “explicit statutory purpose ‘to assure that an increasing population,
23 accompanied by expanding settlement and growing mechanization, does not occupy and modify
24 all areas within the United States and its possessions, leaving no lands designated for
25 preservation and protection in their natural condition.’” *Wilderness Soc’y v. U.S. Fish & Wildlife*
26 *Serv.*, 353 F.3d 1051, 1055 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)).

27 29. The Wilderness Act defines “wilderness” as “an area where the earth and its
28 community of life are untrammelled by man,” as “retaining its primeval character and influence,”

1 and as “protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c).

2 30. Although the Wilderness Act recognizes that conservation-related activities can
3 sometimes be appropriate within wilderness areas, see 16 U.S.C. § 1133(b), the statute places
4 paramount its mandate of wilderness preservation, requiring that all activities in designated
5 Wilderness be conducted in a manner that “preserv[es] . . . wilderness character” and “will leave
6 [designated wilderness areas] unimpaired for future use and enjoyment as wilderness.” 16 U.S.C.
7 § 1131(a). Congress expressly prohibited certain activities in designated Wilderness that are
8 defined by the Act to be antithetical to wilderness character preservation. The statute dictates that
9 “there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats,
10 no landing of aircraft, no other form of mechanical transport, and no structure or installation”
11 within Wilderness areas. 16 U.S.C. § 1133(c). The only exception that this provision affords is
12 for activities that are “necessary to meet minimum requirements for the administration of the
13 area for the purpose of [the Wilderness Act].” *Id.*

14 31. The Wilderness Act imposes a legal duty on federal lands agencies that administer
15 designated Wilderness to “preserv[e] the wilderness character of the area.” In a designated
16 Wilderness area that may also have “other purposes for which it may have been established,” the
17 Wilderness Act expressly requires that administration for those purposes be conducted “as also
18 to preserve its wilderness character.” 16 U.S.C. § 1133(b).

19 32. Less than three percent of the land area in the lower 48 states is protected today as
20 designated Wilderness.

21 33. With passage of the California Wilderness Act of 1984, Pub. L. 98-425, 98 Stat.
22 1627 (Sept. 28, 1984), Congress designated over 736,000 acres of Sequoia and Kings Canyon
23 National Parks as Wilderness, to be administered under the provisions of the Wilderness Act. In
24 2009, Congress designated an additional over 39,000 acres within Sequoia and Kings Canyon
25 National Parks as Wilderness, known as the John Krebs Wilderness. Pub L. 111-11, 123 Stat.
26 1608-09 (Mar. 30, 2009).

27 34. NPS’s Fuels Reduction Project and Wilderness Planting Project encompass
28 extensive areas within the Parks’ designated Wildernesses.

1 The National Environmental Policy Act and Implementing Regulations

2 35. The National Environmental Policy Act (NEPA) is the nation’s basic charter for
3 protection of the environment. *See* 40 C.F.R. § 1500.1(a). NEPA’s twin aims are (1) to foster
4 informed decision-making by requiring agencies to consider the environmental impacts of their
5 proposed actions and (2) to ensure that agencies inform the public that they considered
6 environmental concerns. 42 U.S.C. § 4331; 40 C.F.R. § 1500.1. To accomplish these goals,
7 federal agencies must prepare an Environmental Impact Statement (EIS) to consider the effects
8 of each “major Federal action[] significantly affecting the quality of the human environment.” 42
9 U.S.C. § 4332(2)(C). An EIS must, among other things, rigorously explore a range of alternative
10 actions and assess site-specific, direct, indirect, and cumulative impacts. 42 U.S.C.
11 § 4332(2)(c)(iii); 40 C.F.R. §§ 1502.4, 1502.16, 1508.1.

12 36. To determine whether and to what extent a federal action requires NEPA
13 compliance such as the preparation of an EIS, agencies must engage with NEPA early in
14 decision-making processes and “identify environmental effects and values in adequate detail” to
15 aid informed decision-making. 40 C.F.R. § 1501.2(b)(2). Agencies must consider both the short-
16 and long-term effects of contemplated actions and whether any effects would violate federal laws
17 protecting the environment. 40 C.F.R. § 1501.3(b)(2). In determining whether an EIS is
18 warranted, agencies may first prepare an Environmental Assessment (EA). 40 C.F.R. §§ 1501.5,
19 1502.1.

20 37. Prior to completion of NEPA analyses, agencies may not take actions that would
21 have adverse environmental impacts or limit the choice of reasonable alternatives available for
22 analysis and consideration. 40 C.F.R. § 1506.1.

23 38. In cases of emergency, regulations promulgated by the Council on Environmental
24 Quality (CEQ) permit agencies to seek, following required consultation with CEQ, alternative
25 arrangements for compliance with regulatory provisions governing NEPA compliance processes.
26 Any actions subject to such alternative arrangements must be limited to those “necessary to
27 control the immediate impacts of the emergency.” 40 U.S.C. § 1506.12. “Other actions remain
28 subject to NEPA review.” *Id.*

1 39. Regulations specific to NPS allow agency officials to take “actions necessary to
2 control the immediate impacts” of an emergency and require such actions to be documented in
3 writing along with a determination that an emergency exists along with detail about the actions
4 taken at the time the emergency exists. 43 C.F.R. § 46.150(a)-(b). Actions taken beyond those
5 constrained to “immediate impacts” continue to require the preparation of an EA or EIS. 43
6 C.F.R. § 46.150(c). NPS officials may consult with officials at the department’s Office of
7 Environmental Policy and Compliance to get approval to complete EA work while actions
8 following immediate emergency response actions are ongoing. *Id.* However, if actions beyond
9 those constrained to the immediate impacts of an emergency are likely to have significant
10 environmental effects, necessitating an EIS, consultation with CEQ is required for any
11 alternative arrangements regarding regulatory compliance. 43 C.F.R. § 46.150(d). Alternative
12 arrangements provided by CEQ are limited to actions “necessary to control the immediate
13 impacts of the emergency.” *Id.* Other proposed actions with significant environmental effects
14 going beyond such immediate emergency response remain subject to full NEPA regulatory
15 compliance. *Id.*

16 The Administrative Procedure Act

17 40. The Administrative Procedure Act (APA), 5 U.S.C. §§ 553-559 and §§ 704-706,
18 governs the decision-making, public process, and final actions taken by federal agencies. The
19 APA establishes a right in members of the public harmed by federal agency decisions to redress
20 unlawful actions; the statute authorizes courts to “hold unlawful and set aside agency action,
21 findings, and conclusions found to be [] arbitrary, capricious, an abuse of discretion, or otherwise
22 not in accordance with law.” 5 U.S.C. § 706(2)(A). Compliance with the APA hinges on an
23 agency’s well-reasoned decision-making and its consideration of all relevant factors (including
24 statutory requirements). *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins.*,
25 463 U.S. 29, 43 (1983); *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021).

26 **FACTS**

27 **Sequoias and Wildfire**

28 41. About 39% of the total range for the giant sequoia, a species of conifer, sits within

1 Sequoia and Kings Canyon National Parks.

2 42. Over 90% of Sequoia and Kings Canyon National Parks is statutorily designated
3 Wilderness.

4 43. The 10% of the Parks that is non-Wilderness contains about 35% of the Parks'
5 area of giant sequoia groves. The designated Wilderness within the Parks contains about 65% of
6 the giant sequoia grove area.

7 44. Large-scale wildfires are a natural occurrence in these parks.

8 45. NPS wrote in its applicable Fire and Fuels Management Plan for these Parks that
9 “[w]ildland fire has long been recognized as one of the most significant natural processes
10 operating within and shaping Sierra Nevada ecosystems. Virtually all vegetation communities
11 show evidence of fire dependence or tolerance.”

12 46. NPS’s Wilderness Stewardship Plan for the Parks further explains the relationship
13 between giant sequoias and fire:

14 Fire is an important ecological process which drives giant sequoia
15 population dynamics and shapes the groves. Sequoias have thick,
16 non-resinous bark, thus are well protected from fire. Fire
17 stimulates seed release from cones and also removes the
18 accumulated organic layer from mineral soil; sterilizes the soil,
19 thereby killing seedling pathogens; and opens up the forest canopy
20 to allow in sufficient sunlight for germination and growth.
21 Historically, occasional localized high-intensity/high-severity fire
22 events — in an otherwise low-intensity fire regime — created
23 canopy gaps where giant sequoia seedlings could establish and
24 recruit. As a result, a large number of seedlings tended to
25 germinate after fire.

1 47. One study cited by NPS in its recent planning documents demonstrated findings
2 that giant sequoia regeneration “benefited from high- and moderate-severity wildfire but not low-
3 severity wildfire.”¹

4 48. Up until the 1960s, the federal government’s approach to wildfires was to
5 aggressively put them out.

6 49. Decades of fire suppression altered the structural forest conditions conducive to
7 giant sequoia reproduction, but over the past 50 years or so, NPS has begun allowing some
8 wildfire to reassert its natural role while also implementing manager-ignited fires meant to
9 mimic natural low-intensity fire patterns.

10 50. NPS’s EIS for its Wilderness Stewardship Plan for the Parks explained that
11 “[l]oss of the structural diversity usually created by fire, as well as the buildup of duff and litter
12 layers usually removed by fire, has resulted in lower seedling recruitment and thus groves with
13 fewer young sequoias than were present historically.”

14 51. In 2003, NPS issued a Fire and Fuels Management Plan to mitigate threats to
15 humans and property “while at the same time restoring and/or maintaining [wildfire’s] function
16 as a natural process.”

17 52. In 2020 and 2021, two notable wildfires—the impetus for the projects challenged
18 here—burned in Sequoia and Kings Canyon National Parks. These fires burned mostly at low-
19 and moderate-intensity, but substantial portions, including some sequoia grove areas, also burned
20 at high intensity, where most trees are killed.

21 53. First, in 2020, the Castle Fire started from a natural lightning strike on national
22 forest lands just south of the Parks. It burned northward into the national park lands containing
23 the designated John Krebs Wilderness area, and there, the fire reached several giant sequoia

24 ¹ Meyer, M.D. and Safford, H.D. 2011. Giant Sequoia Regeneration in groves exposed to
25 wildfire and retention harvest. *Fire Ecology*, 7(2), 2-15. doi: 10.4996/fire ecology.0702002 (cited
26 in NPS’s Final Revised EA for the Wilderness Planting Project). Moreover, the study also cites
27 findings that “giant sequoia seedling densities were 8 to 11 times greater several years following
28 fire on intensively burned substrates than on unburned sites,” and “[s]urvival of giant sequoia
regeneration in the same study sites was nearly 7 times greater in heavily charred soils than
unburned substrates approximately 35 years following prescribed fire,” concluding that “[t]hese
results emphasize the importance of periodic high- and moderate-severity fire for giant sequoia
regeneration and longterm recruitment” *Id.* (scientific citations omitted).

1 groves, parts of which burned at high severity.

2 54. Second, in 2021, natural lightning strikes started several fires within Sequoia
3 National Park, and their merged activity became the KNP Complex Fire. This fire reached
4 several giant sequoia groves within the designated Sequoia and Kings Canyon Wilderness area,
5 parts of which also burned at high severity.

6 55. NPS's management response in the aftermath of these two fires included
7 authorization of the Fuels Reduction Project and Wilderness Planting Project, the challenged
8 actions here.

9 56. The central characteristic of these projects is NPS's decision not to allow fire and
10 natural patterns of succession to play out freely on the landscape—instead, NPS would wield
11 industrial machinery and anthropogenic influence to engineer substitutes for natural fire
12 dynamics—to cut down trees with chainsaws in order to influence future fires, and to plant and
13 maintain seedlings where the agency worries they otherwise may not regenerate as desired.

14 **The Fuels Reduction Project**

15 57. NPS's motivation for the Fuels Reduction Project is fear of giant sequoia
16 mortality in high-severity portions of wildfires. The agency's aim is to re-engineer forest
17 structure, through intentional burning and through cutting down trees with chainsaws, to abate
18 the predicted risk of an undesirable number of larger, overstory sequoias dying in future fire
19 events.

20 58. NPS's 2003 Fire and Fuels Management Plan had previously described the use of
21 similar activities to manipulate forest conditions in the pursuit of anticipated fire severity
22 reduction, out of particular concern for the risks posed to human safety and property (a factor not
23 relevant to remote wilderness groves).

24 59. Also referred to as "thinning," "mechanical fuel reduction," according to the plan,
25 is "the use of mechanical equipment (i.e. weed whackers, chainsaws, dozers, rubber tired
26 skidders, chippers, etc.) to cut and remove, or prepare for burning, woody fuels."

27 60. However, the Fire and Fuels Management Plan did not incorporate the practice of
28 mechanical fuel reduction in designated Wilderness.

1 61. NPS acknowledged this Wilderness Act constraint in the Environmental
2 Assessment (EA) that the agency prepared for its NEPA compliance prior to approval of the Fire
3 and Fuels Management Plan. The EA documented that an alternative incorporating mechanical
4 fuels treatment in Wilderness was considered but rejected. Wilderness designation, the agency
5 wrote, “is a primary constraint on mechanical fuel reduction, limiting its application to [the non-
6 Wilderness portions of the parks].”

7 62. Additionally, “serious questions remain,” the agency wrote, “as to whether the
8 outcomes of large-scale mechanical fuel treatments could produce ecological effects that
9 sufficiently mimicked the effects of fire[.]”

10 63. As NPS wrote in the Fire and Fuels Management Plan, considering Wilderness
11 designation, “[m]echanical techniques to reduce fuel load prior to prescribed burning is therefore
12 limited by law and administrative policy to only the park developed areas. Mechanical fuel
13 reduction is limited to areas immediately adjacent to developments in order to provide protection
14 of structures or infrastructure from unwanted, damaging fire events.”

15 64. Indeed, the “mechanical fuel reduction” practice of cutting down trees with
16 chainsaws is plainly the sort of activity that is only lawfully permissible in more developed
17 locations and is not appropriate for remote natural areas protected as designated Wilderness.

18 65. In the context of federal lands management nationwide, the “fuel reduction” label
19 often serves as a euphemism for the facilitation of projects carried out by commercial timber
20 operators.²

21 66. But despite the legal prohibitions acknowledged in its own prior planning
22 documents, NPS’s October 2022 decision memorandum authorized motorized tree cutting on

23 ² For example, in a March 2020 [letter](#) that hundreds of concerned scientists sent to members
24 of Congress, they summarized the issue as follows: “In countless public communications, and at
25 numerous Congressional hearings, industry representatives have advocated for increased logging
26 in the context of reducing wildland fire and related emissions. While small-tree thinning can
27 reduce fire intensity when coupled with burning of slash debris under very limited conditions,
28 recent evidence shows intensive forest management characterized by young trees and
homogenized fuels burn at higher severity. Further, the extremely low probability (less than 1%)
of thinned sites encountering a fire where thinning has occurred limits the effectiveness of such
activities to forested areas near homes. Troublingly, to make thinning operations economically
attractive to logging companies, commercial logging of larger, more fire-resistant trees often
occurs across large areas.” (*Internal citations omitted*).

1 879 acres of designated Wilderness anyways, in addition to 20,592 acres of manager-ignited fire
2 and associated activities.

3 67. Upon information and belief, NPS's approval of the Fuels Reduction Project in
4 Sequoia and Kings Canyon National Parks represents the first time any federal agency has
5 authorized this amount of tree cutting with chainsaws inside designated Wilderness.

6 68. Throughout the National Wilderness Preservation System, the environmentally
7 damaging ramifications of NPS opening the door to such activity are dire.

8 69. NPS's October 2022 approval of the "Fuels Reduction Project" also suffered an
9 important procedural flaw. In addition to contravening the Wilderness Act, as acknowledged in
10 the Fire and Fuels Management Plan (and contravening the Plan itself), NPS approved the
11 project without complying with NEPA.

12 70. Instead, the agency framed approval of the Project as "emergency activities" and
13 as "requesting alternative arrangements" for NEPA compliance.

14 71. But the actions described in NPS's October 2022 Decision memo were not limited
15 to those taken in the "immediate" wake of a discrete emergency. Instead, the Project is framed in
16 the Memo as "proposed," i.e., prospective, action to pursue extensive "fuels reduction"
17 activities—in anticipation of hypothetical future "emergencies"—over an indefinite period of
18 years. Dependent on site and weather delays, on entire seasons such as winter, on contractor
19 coordination, on endangered species impact mitigation, on summer park visitation, and on other
20 factors, NPS described in the Memo that it would "opportunistically" implement the project over
21 an indefinite period of time between approval and the completion of proper plan revision
22 processes that would more fully analyze alternatives and substantiate NEPA and Wilderness Act
23 compliance for similar work.

24 72. In other words, NPS's Fuels Reduction Project approval is not constrained to
25 actions taken for the "immediate impacts" of any discrete emergency; this framing only served to
26 justify bypassing NEPA and other legal constraints so that the agency could approve extensive
27 and long-term proposed actions beyond what could be supported by the existing legal predicates
28 applying to the agency's administration of the project area.

1 73. In fact, upon information and belief, only a small portion of the Fuels Reduction
2 Project has been implemented in the Parks' Wilderness in the Redwood Meadow Grove area,
3 starting in the late fall of 2022 and continuing in the early summer of 2023, until further
4 implementation was delayed by a lightning-caused fire, which burned slowly and at low intensity
5 through the Redwood Meadow Grove area.

6 74. NPS provided no public scoping notice and sought no public input in the
7 preparation of the Fuels Reduction Project and the October 2022 Decision Memo. Plaintiffs only
8 became aware of the Project after the National Park Service issued a Press Release and posted
9 their signed Decision Memorandum on their website on October 14, 2022. Upon information and
10 belief, operations to fell trees with chainsaws began within Sequoia and Kings Canyon National
11 Park Wildernesses on the next day, on October 15, 2022, and are ongoing.

12 **The Wilderness Planting Project**

13 75. NPS's motivation for the Wilderness Planting Project is the agency's fears that
14 some areas that burned at high severity in the Castle and KNP Complex fires will not naturally
15 regenerate at levels leading to the return of robust sequoia forests with desired structural
16 composition. Rather than risk a possibility that nature's pathway after these fires might not
17 restore forest cover through natural succession at rates desired by managers, NPS formulated
18 plans to plant extensive areas of actively managed regrowth.

19 76. On October 3, 2023, NPS issued a final revised Environmental Assessment and
20 Finding of No Significant Impact approving the project to artificially plant nursery-grown
21 seedlings in six giant sequoia groves within the Parks' Wilderness and proposed Wilderness
22 areas, overlapping where the KNP Complex and Castle Fires burned at high severity. NPS
23 subsequently authorized grove-specific planting plans for the Redwood Mountain and Board
24 Camp Sequoia Groves.

25 77. Prior to revision, NPS's final EA had asserted that the agency "anticipates that
26 roughly 700 acres of giant sequoia grove would be lost" in the absence of managed replanting.

27 78. Members of Plaintiffs' organizations contacted the agency to take issue with the
28 fact that the study upon which NPS purported to rely for its assertion (and from which the

1 agency derived a target of 14,112 seedlings per acre) had not in fact contained any relevant
2 inquiry or information regarding whether natural regeneration below the cited seedling density
3 threshold would lead to “loss” of sequoia acreage.

4 79. NPS’s Revised Final EA thus rephrased its assertion to acknowledge that the
5 naturally regenerating seedling density at which giant sequoia recovery may occur was
6 “unknown,” and further acknowledged that “the research team, which includes NPS and USGS
7 staff, are still developing an approach on what appropriate reference density should be used for a
8 conservation-oriented decision likelihood threshold.”

9 80. Proceeding from this inherent unknown, NPS then reframed the explanations in
10 its Revised Final EA to emphasize that the agency was choosing to carry out its planting
11 actions—still triggered by reference to the 14,112 seedlings per acre threshold below which
12 “regeneration would be considered ‘insufficient’”—out of a desire to merely “reduce the
13 potential for” loss of sequoia coverage post-regeneration.

14 81. In the Wilderness Planting Project, NPS authorized planting 100-400 nursery-
15 raised seedlings per acre in areas below the threshold.

16 82. The Wilderness Planting Project as approved includes monitoring the planted
17 seedlings over several years and continuing to plant seedlings each subsequent year until the
18 agency is satisfied with the results. Decisions regarding second-stage or third-stage plantings,
19 which may occur in Wilderness areas through 2028 and 2029, would be based entirely on
20 whether or not managers are satisfied with the growth and survival of the monitored planted
21 seedlings, regardless of how many natural sequoia seedlings continue to grow and thrive in the
22 planting areas.

23 83. In order to monitor the planted area long-term, NPS authorized the installation of
24 600 plot markers and 60 temperature and moisture probes, which NPS expects could remain in
25 the Wildernesses for up to 30 or 40 years.

26 84. To facilitate the planting, NPS also authorized the use of chainsaws and
27 explosives to create a series of forest clearings in these Wilderness groves for helicopter landing
28 zones to drop seedlings and other equipment, as well as for camps for planting crews.

1 85. Upon information and belief, NPS’s approval of the Wilderness Planting Project
2 in Sequoia and Kings Canyon National Parks represents the first time any federal agency has
3 authorized significant areas of tree planting using nursery-raised seedlings inside designated
4 Wilderness Areas.

5 86. NPS has acknowledged that its authorization of the Wilderness Planting Project
6 represents the first time sequoia seedlings will be planted within Wilderness in these Parks.

7 87. Moreover, NPS’s planting action also includes experimentation with a
8 management practice called “assisted gene flow,” whereby planted seedlings will be sourced
9 from sequoia groves far from the groves where planting is proposed, to alter and add to the
10 genetic diversity of the seedlings regenerating in the project area.

11 88. Plaintiffs submitted extensive comments to the agency regarding the scientific
12 uncertainty and risk to natural populations inherent in such experiments and the
13 inappropriateness of such tinkering with naturally undisturbed areas in designated Wilderness
14 that serve as essential scientific controls.

15 89. Upon information an belief, nowhere in the National Wilderness Preservation
16 System has any federal agency intentionally introduced new genetic material to manipulate
17 natural conifer groves.

18 90. NPS’s stated justification for the Wilderness Planting Project is that the forest
19 regrowth conditions coerced by its active management would more closely resemble conditions
20 that would have occurred had the factors of past fire suppression and climate change not
21 influenced the effects of the Castle and KNP Complex fires. Thus, NPS asserts that it is pursuing
22 an enhancement to the “naturalness” of these post-fire forests.

23 91. The agency’s logical framing suffers from the intrinsic play of an oxymoron
24 whereby “natural” wilderness is redefined to be dependent upon human control.

25 92. And the self-contradiction in the idea that conditions contrived and managed by
26 human administrators are somehow more “natural” and “wild” than those that would flow from
27 nature’s own unmanaged processes was not entirely lost on the agency as NPS devised the
28 Wilderness Planting Project.

1 93. NPS prepared a “Minimum Requirements Analysis,” an agency worksheet for
2 assessing compliance with the Wilderness Act’s strict prohibitions against the use of motors and
3 other prohibited activities under 16 U.S.C. § 1133(c). In this worksheet, the agency explained its
4 analytical reasoning for how the Wilderness Planting Project could be justified as compliant with
5 the Wilderness Act’s statutory mandate and restrictions.

6 94. At the core of NPS’s reasoning is the notion that the effects of recent lightning-
7 ignited wildfires on sequoia mortality render the Wilderness areas less “natural” and therefore
8 diminished in their wilderness character.

9 95. But this redefinition of “natural” does not comport with the Wilderness Act’s
10 express definition of “wilderness” as retaining “primeval character and influence” and where
11 “the earth and its community of life are untrammelled by man.” These statutory provisions clarify
12 that designated Wilderness is for the protection of areas where humans abstain from wielding
13 influence, where the earth’s own work and unrestrained processes dictate environmental
14 conditions. “Natural,” wild areas are those that flow from the “untrammelled” conditions, which
15 is why the Act included express prohibitions on human infrastructure, machines and other
16 activity so associated with anthropogenic wilderness damage.

17 96. To circumvent this contradiction, NPS borrowed from a research framework
18 designed merely for monitoring to build a decision-making rubric that dissociates “wilderness
19 character” into distinct constituent parts. Under this framework “natural” becomes an
20 independent component juxtaposed against other criteria that NWPS lands be “untrammelled,”
21 “undeveloped,” and present “opportunities for solitude and primitive or unconfined recreation.”

22 97. NPS documented in its internal worksheet on Wilderness Act compliance that its
23 Wilderness Planting Project would negatively impact three of the above four components of
24 wilderness character—untrammelled, undeveloped, and recreational primitiveness/solitude—but
25 would purportedly benefit “naturalness” by engineering a vegetative composition less reflective
26 of post-fire-suppression and post-climate change effects.

27 98. NPS did not explain why a vegetative composition that was literally constructed
28 by human administrators would reflect less human impact than one in which natural processes

1 are left to play out in the wake of much more attenuated effects from global- and regional-scale
2 human legacy.

3 99. NPS explained clearly in its response to comments during the project planning
4 process that “no one [wilderness] quality predominates or trumps the others.”

5 100. Yet NPS has premised its project approval on the notion that purported benefit to
6 the dissociated “natural” factor that the agency contrived can be lawfully exchanged for
7 intentional damage to the other express characteristics of designated Wilderness as defined by
8 the Act.

9 **Summary**

10 101. Congress set aside designated lands in the NWPS to be administered as places
11 where protected pockets of nature are insulated from the pervasive impact of increasing numbers
12 of people and the increasing damage that our motorized and mechanized industrial technology
13 can cause. Project-motivated NPS administrators may think that the attenuated effects of the
14 human industrial era, like climate change, should justify doubling down and adding mechanized
15 impact in protected wild areas to coerce their adaptation. But NPS is not free to reorder the
16 statutory priorities for administration of NWPS lands set by Congress.

17 102. The ramifications of NPS opening the door to these types of management
18 activities within the NWPS are dire. The Fuels Reduction Project and Wilderness Planting
19 Project demonstrate a protracted pattern by federal public lands agencies toward management
20 interventions in Wilderness areas, disregarding the natural resilience of these protected
21 ecosystems and arresting any opportunity to observe such natural resilience. These novel,
22 dangerous, and unprecedented management approaches suggest that NPS no longer plans to
23 allow untrammled, natural processes and the inherent resilience and integrity of wild
24 ecosystems to take precedence in statutorily-designated Wilderness, where Congress set such
25 priorities as legally paramount.

26 103. Because the Fuels Reduction Project and the Wilderness Planting Project are
27 agency actions contrary to law in violation of the Wilderness Act’s statutory mandate for NPS
28 administration, and because the Fuels Reduction Project was authorized in contravention of legal

1 requirements for public engagement and environmental analysis under NEPA, Plaintiffs raise the
2 following claims.

3 **FIRST CLAIM FOR RELIEF**

4 **Wilderness Act Violations: Wilderness Planting Project**

5 104. The paragraphs above are incorporated herein by reference.

6 105. The Wilderness Act charges NPS with a duty to preserve the wilderness character
7 of the designated Wilderness areas in Sequoia and Kings Canyon National Parks. 16 U.S.C.
8 § 1133(b). The Wilderness Act defines Wilderness “in contrast with those areas where man and
9 his own works dominate the landscape,” as “an area where the earth and its community of life
10 are untrammelled by man,” as “retaining its primeval character and influence,” and as “protected
11 and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Among its provisions
12 to further the protection of wilderness character, the Wilderness Act expressly prohibits motor
13 vehicle and motorized equipment use, the landing of aircraft, mechanical transport, and
14 structures or installations within Wilderness areas, “except as necessary to meet minimum
15 requirements for the administration of the area” as Wilderness. 16 U.S.C. § 1133(c).

16 106. NPS’s authorization of the Wilderness Planting Project includes the authorization
17 of extensive use of motorized and mechanical equipment, aircraft landings, and installations
18 within the Parks’ Wildernesses to carry out extensive seedling planting and monitoring over a
19 period of years.

20 107. NPS’s approval of this activity to reengineer the natural landscape into reflecting
21 the forest regeneration conditions most desired by managers also undermines the goals of the
22 Wilderness Act. The Wilderness Act expressly requires NPS to administer these areas in an
23 “untrammelled” state reflecting the free flow of natural processes, their “primeval character and
24 influence,” to minimize the “imprint of man’s work.” 16 U.S.C. § 1131(c). NPS directly
25 contravened this mandate through its approval of landscape-scale human intervention in the
26 quick pursuit of more desirable forest conditions.

27 108. By its violations of the Wilderness Act, Defendant’s action is arbitrary,
28 capricious, or otherwise not in accordance with law, within the meaning of the Administrative

1 Procedure Act. 5 U.S.C. § 706(2). As such, the Court should hold Defendant’s actions as
2 unlawful and set them aside. *Id.*

3 **SECOND CLAIM FOR RELIEF**

4 **Wilderness Act Violations: Fuels Reduction Project**

5 109. The paragraphs above are incorporated herein by reference.

6 110. The Wilderness Act charges NPS with a duty to preserve the wilderness character
7 of the designated Wilderness areas in Sequoia and Kings Canyon National Parks. 16 U.S.C.
8 § 1133(b). The Wilderness Act defines Wilderness “in contrast with those areas where man and
9 his own works dominate the landscape,” as “an area where the earth and its community of life
10 are untrammelled by man,” as “retaining its primeval character and influence,” and as “protected
11 and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Among its provisions
12 to further the protection of wilderness character, the Wilderness Act expressly prohibits the use
13 of motor vehicles, motorized equipment, the landing of aircraft, and mechanical transport,
14 “except as necessary to meet minimum requirements for the administration of the area” as
15 Wilderness. 16 U.S.C. § 1133(c).

16 111. NPS’s authorization of the Fuels Reduction Project includes the authorization of
17 extensive use of motorized and mechanical equipment and aircraft landings within the Parks’
18 Wildernesses to carry out tree cutting on 879 acres with chainsaws and other equipment and to
19 implement over twenty thousand acres of fire activity. As NPS acknowledged in its preparation
20 of its current Fire and Fuels Management Plan, such activity is inconsistent with the statutory
21 directives of the Wilderness Act.

22 112. NPS’s approval of tens of thousands of acres of activity to reengineer the natural
23 landscape into reflecting the vegetative and wildfire conditions most desired by managers also
24 undermines the goals of the Wilderness Act. The Wilderness Act expressly requires NPS to
25 administer these areas in an “untrammelled” state reflecting the free flow of natural processes,
26 their “primeval character and influence,” to minimize the “imprint of man’s work.” 16 U.S.C.
27 § 1131(c). NPS directly contravened this mandate through its approval of landscape-scale human
28

1 intervention in the quick pursuit of more desirable forest conditions to reduce the risk of
2 unwanted natural wildfire effects.

3 113. By its violations of the Wilderness Act, Defendant's action is arbitrary,
4 capricious, or otherwise not in accordance with law, within the meaning of the Administrative
5 Procedure Act. 5 U.S.C. § 706(2). As such, the Court should hold Defendant's actions as
6 unlawful and set them aside. *Id.*

7 **THIRD CLAIM FOR RELIEF**

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

9 114. The paragraphs above are incorporated herein by reference.

10 115. Under NEPA, NPS must prepare an Environmental Impact Statement fully
11 analyzing the consequences of any project that would have a significant effect on the
12 environment. 42 U.S.C. § 4332(2)(C).

13 116. Federal regulations implementing processes for NEPA compliance allow, in
14 narrow circumstances, NPS to seek alternative arrangements for the preparation of an
15 Environmental Assessment for actions that do not have significant environmental effects. These
16 regulations create only a narrow exception to full regulatory compliance for limited actions taken
17 as "necessary to control the immediate impacts" of an emergency. 40 U.S.C. § 1506.12; 43
18 C.F.R. § 46.150.

19 117. NPS's October 2022 Decision Memorandum authorizing the Fuels Reduction
20 Project contravened NEPA and its above-referenced implementing regulations.

21 118. NPS authorized extensive and long-term actions that go far beyond the
22 "immediate impacts" of any emergency. Tens of thousands of acres of prescribed burning and
23 over a thousand acres of mechanical thinning over an indefinite period of years, subject to
24 subsequent on-the-ground and site-specific planning processes, cannot properly be characterized
25 as encompassing the "immediate impacts" of a discrete emergency. By circumventing its NEPA
26 obligations under the guise of "emergency action," NPS denied the public adequate notice and
27 the necessary environmental analysis and assessment of alternatives required by statute.

28 119. Furthermore, even under NPS's purported "emergency" posture, federal

1 regulations still require the preparation of at least an Environmental Assessment for all actions
2 beyond those so “immediate” to a bona fide emergency that such compliance is impossible. 43
3 C.F.R. § 46.150(b). NPS has not prepared an Environmental Assessment or adequately analyzed
4 alternatives for the Fuel Reduction Project and instead authorized the extensive and long-term
5 work it encompasses with only the October 2022 Decision Memorandum.

6 120. Even under NPS’s purported “emergency” posture, consultation with CEQ is
7 required to secure any alternative regulatory arrangements for all actions with significant
8 environmental effects taken both “immediate” to and beyond the immediacy of an emergency. 43
9 C.F.R. § 46.150(d). NPS did not consult with CEQ in authorizing the Fuels Reduction Project.

10 121. Additionally, for both the Fuels Reduction Project and the Wilderness Planting
11 Project, NPS improperly determined that the projects would not have significant environmental
12 effects. An Environmental Impact Statement is required when a federal action would have
13 significant environmental effects, regardless of the project’s motivation or perceived
14 environmental benefit.

15 122. As NPS’s own handbook guiding its NEPA compliance processes makes clear,
16 among other things, actions that rise to significance requiring an EIS include those rooted in
17 scientific uncertainty, those with uncertain or unknown risks, those that may establish a
18 precedent for future environmentally impactful work, those that may adversely affect a
19 threatened or endangered species, and those that threaten a violation of federal law.

20 123. NPS’s two projects meet numerous of these factors. Notable among them are the
21 degree to which landscape-scale ecological interventions are inherently uncertain; the critical
22 scientific debate about the assumptions and effects inherent in such intensive practices in
23 Wilderness areas; the extent to which the project activity sets precedent for future similar actions
24 in Wilderness; and the scope of project activity contravening federal statutory directives in the
25 Wilderness Act.

26 124. By its violations of NEPA, Defendant’s actions are arbitrary, capricious, or
27 otherwise not in accordance with law, or without observance of procedure required by law,
28 within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2). As such, the Court

1 should hold Defendant's actions as unlawful and set them aside. *Id.*

2 **REQUEST FOR RELIEF**

3 For these reasons, Plaintiffs requests that the Court:

- 4 a) Declare that NPS's "Fuels Reduction Project" violates the Wilderness Act and NEPA;
- 5 b) Declare that NPS's "Wilderness Planting Project" violates the Wilderness Act and
- 6 NEPA;
- 7 c) Set aside the Fuels Reduction Project decision memorandum;
- 8 d) Set aside the Wilderness Planting Project decision documents;
- 9 e) Issue injunctive relief prohibiting Defendant from implementing the Fuels Reduction
- 10 Project;
- 11 f) Issue injunctive relief prohibiting Defendant from implementing the Wilderness Planting
- 12 Project;
- 13 g) Award Plaintiffs their costs of litigation, including reasonable attorneys' fees under the
- 14 Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 15 h) Provide such other relief as the Court deems just and proper.

16 Respectfully submitted this 17th day of November, 2023.

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19 _____
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22 *Attorneys for Plaintiffs*

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