

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

1 M. REED HOPPER, No. 131291
E-mail: mrh@pacificlegal.org
2 BRANDON M. MIDDLETON, No. 255699
E-mail: bmm@pacificlegal.org
3 Pacific Legal Foundation
930 G Street
4 Sacramento, California 95814
Telephone: (916) 419-7111
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs Friends of
Tahoe Forest Access, et al.
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 FRIENDS OF TAHOE FOREST ACCESS; WEBILT)
FOUR WHEEL DRIVE CLUB; FRIENDS OF)
12 GREENHORN; NEVADA COUNTY WOODS)
RIDERS; GRASS VALLEY 4-WHEEL DRIVE)
13 CLUB; HIGH SIERRA MOTORCYCLE CLUB;)
DAVID C. WOOD, an individual; and KYRA, an)
14 individual,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF)
AGRICULTURE; TOM VILSACK, in his official)
18 capacity as Secretary of the Department of Agriculture;)
UNITED STATES FOREST SERVICE; TOM)
19 TIDWELL, in his official capacity as Chief of the)
United States Forest Service; RANDY MOORE, in his)
20 official capacity as Regional Forester for the United)
States Forest Service's Pacific Southwest Region; and)
21 TOM QUINN, in his official capacity as Forest)
Supervisor at the Tahoe National Forest,)

22 Defendants.)
23

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

24
25
26
27
28

INTRODUCTION

1
2 1. This lawsuit challenges the United States Forest Service’s Final Environmental
3 Impact Statement and Record of Decision for the Tahoe National Forest Motorized Travel
4 Management Project (Tahoe Travel Management Project). The Forest Service’s Final
5 Environmental Impact Statement and Record of Decision are based on a flawed implementation
6 of the agency’s 2005 Travel Management Rule and call for the closure of hundreds of miles of
7 roads and trails to motor vehicle use, effectively preventing human access to a vast portion of the
8 Tahoe National Forest. This draconian denial of public lands access is unlawful because
9 Defendants completed and issued the Final Environmental Impact Statement and Record of
10 Decision in derogation of the National Environmental Policy Act and the Administrative Procedure
11 Act.

12 2. In completing and issuing the Final Environmental Impact Statement and Record
13 of Decision, the Forest Service failed to adequately account for the extent to which the closure of
14 hundreds of miles of roads and trails to motor vehicle access in the Tahoe National Forest would
15 significantly affect the quality of the human environment. In particular, the Forest Service failed
16 to adequately consider the human toll that results from denying Californians and others the ability
17 to continue cherished and family-friendly recreational activities that have been taking place for
18 generations.

19 3. The Forest Service also neglected to provide the public with important contextual
20 and background information in the Final Environmental Impact Statement and Record of Decision.
21 Indeed, the Forest Service’s Final Environmental Impact Statement and Record of Decision are
22 based on the misleading premise that, prior to the implementation of the 2005 Travel Management
23 Rule, motorized recreation off of the National Forest Transportation System was “unauthorized.”
24 In fact, however, the motorized recreation that is prohibited under the Final Environmental Impact
25 Statement and Record of Decision was previously lawful and legitimate. The Forest Service’s
26 Final Environmental Impact Statement and Record of Decision are therefore inaccurate and
27 misleading because they fail to fairly recognize the legality of prior motor vehicle access to the
28 Tahoe National Forest and provide the public with false information.

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

1 National Forest through motorized recreation on roads and trails within the Forest. Plaintiffs and
2 their members' recreational enjoyment of the Tahoe National Forest is dependent on access to
3 trails that are currently not part of the National Forest Transportation System. Plaintiffs and their
4 members intend to continue to participate in motorized recreation on trails that are currently not
5 part of the National Forest Transportation System until they are unable to do so for legal or
6 physical reasons.

7 9. Plaintiffs and their members will be adversely affected and injured by Defendants'
8 Final Environmental Impact Statement, Record of Decision, and the resulting loss of motorized
9 recreational opportunities at the Tahoe National Forest. Due to the loss of motorized recreational
10 access to roads and trails within the Tahoe National Forest, the overcrowding of roads and trails
11 that will remain open to motor vehicle use, and the diminished ability to clean up others' litter and
12 trash in the Tahoe National Forest through motorized access to roads and trails, Defendants'
13 actions adversely affect and injure Plaintiffs and their members' ability to obtain solitude,
14 recreational enjoyment, and aesthetic pleasure at the Tahoe National Forest.

15 10. Plaintiff Friends of Tahoe Forest Access is an unincorporated association based in
16 Nevada County, California. Friends of Tahoe Forest Access was organized in 2007 and is a
17 coalition of organizations and individuals residing in Nevada County, Placer County, and nearby
18 areas. Defendants' Final Environmental Impact Statement and Record of Decision adversely affect
19 and injure Friends of Tahoe Forest Access and their members through the wrongful prohibition of
20 motorized recreation on roads and trails that are currently not part of the National Forest
21 Transportation System, including routes known as the Old Gold Valley Trail and Willoughby Mine
22 Road.

23 11. Plaintiff Webilt Four Wheel Drive Club is an unincorporated association based in
24 Placer County, California. Webilt Four Wheel Drive Club includes over 30 members residing in
25 Placer County and nearby areas. Defendants' Final Environmental Impact Statement and Record
26 of Decision adversely affect and injure Webilt Four Wheel Drive Club and their members through
27 the wrongful prohibition of motorized recreation on roads and trails that are currently not part of

28 ///

1 the National Forest Transportation System, including routes known as the Peak Switchback Trail
2 and the Pierce Creek Off-Highway Vehicle area.

3 12. Plaintiff Friends of Greenhorn is an unincorporated association based in Auburn,
4 California. Friends of Greenhorn has over 150 members residing in Placer County and nearby
5 areas. Friends of Greenhorn was organized in 2007 in order to promote and maintain off-road
6 vehicular access to roads and trails within the Tahoe National Forest, including motorized
7 recreational access to the Greenhorn Creek Recreational Area. Friends of Greenhorn and its
8 members provide voluntary clean-up efforts at the Greenhorn Creek Recreational Area in response
9 to environmental degradation that occurs when nonmembers leave trash and other debris in the
10 area. Members of Friends of Greenhorn voluntarily educate users of the Tahoe National Forest
11 on how to recreate in an environmentally responsible manner at the Greenhorn Creek Recreational
12 Area and other areas. Using street-legal motorcycles as well as four-wheel drive, all-terrain, and
13 utility-task vehicles, members of Friends of Greenhorn enjoy the natural resources of the Tahoe
14 National Forest through motorized recreation on roads and trails that are currently not part of the
15 National Forest Transportation System. Defendants' Final Environmental Impact Statement and
16 Record of Decision adversely affect and injure Friends of Greenhorn and their members through
17 the wrongful prohibition of motorized recreation on roads and trails that are currently not part of
18 the National Forest Transportation System.

19 13. Plaintiff Nevada County Woods Riders is a nonprofit corporation, incorporated in
20 1995 under the laws of California, with its principal place of business in Nevada County,
21 California. Prior to incorporating, Nevada County Woods Riders existed as an unincorporated
22 association and was founded as such in 1973. Nevada County Woods Riders consists of off-road
23 motorcycle enthusiasts who enjoy trail rides and other recreational activities such as hiking and
24 camping, and the Riders' members have engaged in off-road recreation at the Tahoe National
25 Forest since the 1960's. Nevada County Woods Riders promotes responsible trail use, advocates
26 off-road vehicle access rights, and fosters trail improvement programs. Nevada County Woods
27 Riders has over 60 members residing in Nevada County and surrounding areas, many of which
28 built and have maintained existing single track trails that are not part of the National Forest

1 Transportation System. Members of Nevada County Woods Riders visit the Tahoe National Forest
2 frequently, and they enjoy and have an interest in the aesthetic pleasure that they derive through
3 motor vehicle recreation at the Forest. Members of Nevada County Woods Riders enjoy the
4 natural resources of the Tahoe National Forest through motorized recreation on roads and trails that
5 are currently not part of the National Forest Transportation System, including the trail known as
6 the Spencer Lakes Trail. Defendants' Final Environmental Impact Statement and Record of
7 Decision adversely affect and injure Nevada County Woods Riders and their members through the
8 wrongful prohibition of motorized recreation on roads and trails that are currently not part of the
9 National Forest Transportation System.

10 14. Plaintiff Grass Valley 4-Wheel Drive Club is a nonprofit corporation, incorporated
11 in 1967 under the laws of California, with its principal place of business in Nevada County,
12 California.¹ Grass Valley 4-Wheel Drive Club includes approximately 50 members as well as
13 families residing in Nevada County and nearby areas. Defendants' Final Environmental Impact
14 Statement and Record of Decision adversely affect and injure Grass Valley 4-Wheel Drive Club
15 and their members through the wrongful prohibition of motorized recreation on roads and trails
16 that are currently not part of the National Forest Transportation System, including routes known
17 as the Deadman's Lake and Moore's Flat.

18 15. Plaintiff High Sierra Motorcycle Club is a nonprofit corporation, incorporated in
19 1988 under the laws of Nevada, with its principal place of business in Reno, Nevada. High Sierra
20 Motorcycle Club has over 30 members residing in Reno and nearby areas. Defendants' Final
21 Environmental Impact Statement and Record of Decision adversely affect and injure High Sierra
22 Motorcycle Club and their members through the wrongful prohibition of motorized recreation on
23 roads and trails that are currently not part of the National Forest Transportation System, including
24 the trail known as the Spencer Lakes Trail.

25 _____
26 ¹ While the California Secretary of State's website (<http://kepler.sos.ca.gov/cbs.aspx>) indicates
27 that Grass Valley 4-Wheel Drive Club's nonprofit corporate status has been suspended, that
28 suspension was due to a clerical oversight on the part of the Club that has since been corrected.
In June, 2012, the Club received confirmation from the Secretary of State and the California
Franchise Tax Board that its nonprofit corporate status is currently in good standing.

1 16. Plaintiff David C. Wood is an individual who resides in Nevada County, California.
2 Mr. Wood visits the Tahoe National Forest frequently, and he enjoys and has an interest in the
3 aesthetic pleasure that he derives through motor vehicle recreation at the Forest. Since 1975,
4 Mr. Wood has enjoyed the natural resources of the Tahoe National Forest through motorized
5 recreation on roads and trails that are currently not part of the National Forest Transportation
6 System, including trails known as the Little Grizzly Creek Trail and the Spencer Lakes Trail.
7 Defendants' Final Environmental Impact Statement and Record of Decision adversely affect and
8 injure Mr. Wood through the wrongful prohibition of motorized recreation on roads and trails that
9 are currently not part of the National Forest Transportation System.

10 17. Plaintiff Kyra is an individual who resides in Nevada County, California. Ms. Kyra
11 visits the Tahoe National Forest frequently, and she enjoys and has an interest in the aesthetic
12 pleasure that she derives through motor vehicle recreation at the Forest. Since 2001, Ms. Kyra has
13 enjoyed the natural resources of the Tahoe National Forest through motorized recreation on roads
14 and trails that are currently not part of the National Forest Transportation System, including an area
15 known as the Spencer Lakes Trail and roads and trails near the Burlington Ridge Trail System.
16 Ms. Kyra's aesthetic enjoyment of the Tahoe National Forest is dependent on motorized access to
17 these trails, and she intends to continue to participate in motorized recreation on these trails until
18 she is unable to do so for legal or physical reasons. Defendants' Final Environmental Impact
19 Statement and Record of Decision adversely affect Ms. Kyra through the wrongful prohibition of
20 motorized recreation on roads and trails that are currently not part of the National Forest
21 Transportation System.

22 **Defendants**

23 18. Defendant United States Department of Agriculture is an executive department of
24 the United States. Congress has charged the Department with various duties and responsibilities,
25 including management of national forests within the United States. As the Department oversees
26 the administration and management of the Tahoe National Forest, it is responsible for the issuance
27 of the Record of Decision and Final Environmental Impact Statement.

28 ///

1 19. Defendant Tom Vilsack is the Secretary of the Department of Agriculture and is
2 named herein and sued in his official capacity. As the Secretary is responsible for the Department
3 of Agriculture’s administration and management of the Tahoe National Forest, he is responsible
4 for the issuance of the Record of Decision and Final Environmental Impact Statement.

5 20. Defendant United States Forest Service is an agency of the United States
6 government, within the Department of Agriculture, and has been delegated responsibility for the
7 day-to-day administration and management of the national forests within the United States,
8 including the Tahoe National Forest. As such, the Forest Service is responsible for the issuance
9 of the Record of Decision and Final Environmental Impact Statement.

10 21. Defendant Tom Tidwell is the Chief of the United States Forest Service, and is
11 named herein and sued in his official capacity. The Chief is responsible for the administration and
12 management of the national forests on behalf of the Secretary of Agriculture and, as such, is
13 responsible for the issuance of the Record of Decision and Final Environmental Impact Statement.

14 22. Defendant Randy Moore is the Regional Forester for the United States Forest
15 Service’s Pacific Southwest Region, and is named herein and sued in his official capacity. The
16 Regional Forester is responsible for the administration and management of national forests within
17 the Pacific Southwest Region, which includes California. As such, the Regional Director is
18 responsible for the issuance of the Record of Decision and Final Environmental Impact Statement.

19 23. Defendant Tom Quinn is the Forest Supervisor at the Tahoe National Forest, and
20 is named herein and sued in his official capacity. The Forest Supervisor is responsible for the
21 administration and management of the Tahoe National Forest and, as such, is responsible for the
22 issuance of the Record of Decision and Final Environmental Impact Statement.

23 **LEGAL FRAMEWORK**

24 **The National Environmental Policy Act**

25 24. The National Environmental Policy Act establishes a national policy whereby
26 federal agencies are “to use all practicable means and measures . . . in a manner calculated to foster
27 and promote the general welfare, to create and maintain conditions under which man and nature
28 can exist in productive harmony, and fulfill the social, economic, and other requirements of present

1 and future generations of Americans.” 42 U.S.C. § 4331(a). Federal procedures under the
2 National Environmental Policy Act “must insure that environmental information is available to
3 public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R.
4 § 1500.1(b). The statute is “intended to help public officials make decisions that are based on
5 understanding of environmental consequences, and take actions that protect, restore, and enhance
6 the environment.” *Id.* § 1500.1(c).

7 25. For major federal actions significantly affecting the quality of the human
8 environment, the National Environmental Policy Act requires that federal agencies provide a
9 detailed statement on the environmental impact of the proposed action, any adverse environmental
10 effects which cannot be avoided should the proposal be implemented, alternatives to the proposed
11 action, the relationship between local short-term uses of man’s environment and the maintenance
12 and enhancement of long-term productivity, and any irreversible and irretrievable commitments
13 of resources which would be involved in the proposed action should it be implemented. 42 U.S.C.
14 § 4332(2)(C)(i)-(v). Further, federal agencies are required, to the fullest extent possible, to “[u]se
15 the [National Environmental Policy Act] process to identify and assess all reasonable alternatives
16 to proposed actions that will avoid or minimize adverse effects of [major federal] actions upon the
17 quality of the human environment,” and to “[u]se all practicable means, consistent with the
18 requirements of the Act and other essential considerations of national policy, to restore and
19 enhance the quality of the human environment and avoid or minimize any possible adverse effects
20 of their actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e)-(f).

21 **The Administrative Procedure Act**

22 26. The Administrative Procedure Act authorizes judicial review of agency action for
23 which there is no other adequate remedy in court and requires that courts hold unlawful and set
24 aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of
25 discretion, or otherwise not in accordance with law. 5 U.S.C. §§ 704, 706.

26 ///

27 ///

28 ///

GENERAL ALLEGATIONS AND BACKGROUND

The United States Forest Service's 2005 Travel Management Rule: Background

27. In 2005, the Forest Service issued a Travel Management Rule. *See* 70 Fed. Reg. 68264 (Nov. 9, 2005) (2005 Travel Management Rule). The 2005 Travel Management Rule “requires designation of those roads, trails, and areas that are open to motor vehicle use” on National Forest System lands, and “prohibit[s] the use of motor vehicles off the designated system, as well as [the] use of motor vehicles on routes and in areas that is not consistent with the designations.” *Id.* at 68264.

28. In the 2005 Travel Management Rule, the Forest Service noted the existence of the National Forest Transportation System and that “[i]n addition to this managed system of roads and trails, many National Forests contain user-created roads and trails.” 70 Fed. Reg. at 68264. According to the Forest Service, “[t]here has been no comprehensive national inventory of user-created routes,” but such routes “are estimated to number in the tens of thousands of miles.” *Id.*

29. Whether on National Forest Transportation System roads and trails or on user-created or otherwise unclassified roads and trails, the Forest Service recognized in the 2005 Travel Management Rule that for many visitors to the National Forests, “motor vehicles . . . represent an integral part of their recreational experience,” and that “[m]otor vehicles are a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management.” *Id.*

30. According to the Forest Service’s 2005 Travel Management Rule, however, prior federal regulations “have not proven sufficient to control proliferation of routes or environmental damage” within National Forests. *Id.* at 68265. Moreover, the Forest Service also asserted in the 2005 Travel Management Rule that “[t]he growing popularity and capabilities of [off-highway vehicles] demand new regulations, so that the Forest Service can continue to provide [recreational] opportunities while sustaining the health of [National Forest System] lands and resources.” *Id.* at 68264-68265.

31. Thus, the Forest Service concluded in the 2005 Travel Management Rule that a “designated and managed system of roads, trails, and areas for motor vehicle use is needed,” and

1 that such a system, “established with public involvement, will enhance public enjoyment of the
2 National Forests while maintaining other important values and uses on [National Forest System]
3 lands.” *Id.* at 68265.

4 **The United States Forest Service’s 2005 Travel Management Rule: Structure**

5 32. The 2005 Travel Management Rule provides for rules and procedures governing
6 the establishment of this designated and managed system of roads, trails, and areas for motor
7 vehicle use. The 2005 Travel Management Rule is codified at 36 C.F.R. § 212.50, *et seq.*

8 33. The stated purpose of the 2005 Travel Management Rule is to “provide[] for a
9 system of National Forest System roads, National Forest System trails, and areas on National
10 Forest System lands that are designated for motor vehicle use.” 36 C.F.R. § 212.50(a). “After
11 these roads, trails, and areas are designated, motor vehicle use . . . not in accordance with these
12 designations is prohibited by 36 CFR 261.13.” *Id.* Further, motor vehicle use “off designated
13 roads and trails and outside designated areas is prohibited by 36 CFR 261.13.” *Id.*

14 34. According to the 2005 Travel Management Rule, motor vehicle use “on National
15 Forest System roads, on National Forest System trails, and in areas on National Forest System
16 lands shall be designated by vehicle class and, if appropriate, by the time of year by the responsible
17 official on administrative units or Ranger Districts of the National Forest System.” *Id.* § 212.51(a).
18 The public “shall be allowed to participate in the designation of National Forest System roads,
19 National Forest System trails, and areas on National Forest System lands.” *Id.* § 212.52(a).

20 35. The 2005 Travel Management Rule provides that “[i]n designating National Forest
21 System roads, National Forest System trails, and areas on National Forest System lands for motor
22 vehicle use,” the responsible official shall consider effects on National Forest System “natural and
23 cultural resources, public safety, provision of recreational opportunities, access needs, conflicts
24 among uses of . . . System lands, the need for maintenance and administration of roads, trails, and
25 areas that would arise if the uses under consideration are designated; and the availability of
26 resources for that maintenance and administration.” *Id.* § 212.55(a).

27 36. In addition, the 2005 Travel Management Rule provides for specific criteria for the
28 designation of roads, trails, and areas on National Forest System lands. *See id.* § 212.55(b)-(c).

1 The specific criteria for the designation of roads, trails, and areas on National Forest System lands
2 include effects on damage to soil, watershed, vegetation, and other forest resources; harassment
3 of wildlife and significant disruption of wildlife habitats; conflicts between motor vehicle use and
4 existing or proposed recreational uses of National Forest System lands or neighboring federal
5 lands; and conflicts among different classes of motor vehicle uses of National Forest System lands
6 or neighboring Federal lands. *Id.*

7 37. The 2005 Travel Management Rule also provides that “[a]fter National Forest
8 System roads, National Forest System trails, and areas on National Forest System lands have been
9 designated” pursuant to the Rule’s procedures, and after “these designations have been identified
10 on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National
11 Forest System lands . . . other than in accordance with those designations.” *Id.* § 261.13.

12 38. Plaintiffs bring this lawsuit to challenge Defendants’ implementation of the 2005
13 Travel Management Rule at the Tahoe National Forest and their actions in violation of the Rule’s
14 “national framework under which designations are made at the local level.” 70 Fed. Reg. at 68265.
15 Defendants’ flawed implementation of the 2005 Travel Management Rule at the Tahoe National
16 Forest resulted in an illegal Final Environmental Impact Statement and Record of Decision that
17 must be vacated.

18
19 **DEFENDANTS’ IMPLEMENTATION OF THE**
20 **2005 TRAVEL MANAGEMENT RULE AT THE TAHOE**
21 **NATIONAL FOREST: DRAFT AND SUPPLEMENTAL**
22 **DRAFT ENVIRONMENTAL IMPACT STATEMENTS**

23 39. On April 11, 2007, Defendants issued a notice of intent to prepare an environmental
24 impact statement to disclose, among other things, “the impacts associated with . . . [t]he addition
25 of approximately 50 miles of existing unauthorized routes to the current system of National Forest
26 System . . . trails currently open to the public for wheeled motorized vehicle use.” 72 Fed. Reg.
27 18198, 18198 (Apr. 11, 2007). Recognizing that the 2005 Travel Management Rule “requires
28 designation of those roads, trails, and areas that are open to motor vehicle use on National Forests,”
Defendants stated that the Forest Service “currently manages and maintains approximately

1 2,640 miles of [National Forest System] road[s] and 760 miles of [National Forest System]
2 motorized trails,” and that they “propose[] to add approximately 50 miles to its [National Forest
3 System] motorized trails, bringing the total National Forest system of motorized trails to
4 approximately 810 miles.” *Id.* at 18199-18200.

5 40. Defendants announced the release of a Draft Environmental Impact Statement on
6 September 26, 2008, and a Supplemental Draft Environmental Impact Statement on February 16,
7 2010. The Statements purported to disclose the environmental impacts associated with seven
8 alternatives for managing motor vehicle use in the Tahoe National Forest, with Defendants
9 choosing Alternative 6 as the preferred alternative. Notwithstanding that Alternative 6 as proposed
10 would significantly reduce motorized recreational opportunities at the Tahoe National Forest
11 through the closure of unclassified roads and trails, Defendants disingenuously suggested that their
12 preferred alternative would “provide motorized access to dispersed recreation opportunities
13 (camping, hunting, fishing, hiking, horseback riding, etc.) and a diversity of motorized recreation
14 opportunities (4WD Vehicles, motorcycles, ATVs, passenger vehicles, and so forth).” United
15 States Forest Service, Motorized Travel Management, Supplemental Draft Environmental Impact
16 Statement, Vol. 1: Chapters 1-4 at 29 (Feb. 2010).²

17 41. On April 12, 2010, Plaintiffs filed comments and objections to the Supplemental
18 Environmental Impact Statement. Defendants failed to adequately respond to Plaintiffs’ comments
19 and suggestions. Instead, the final Record of Decision and Final Environmental Impact Statement
20 retained the systemic flaws highlighted by Plaintiffs.

21
22 **DEFENDANTS’ IMPLEMENTATION OF THE**
23 **2005 TRAVEL MANAGEMENT RULE AT THE TAHOE**
24 **NATIONAL FOREST: FINAL ENVIRONMENTAL**
25 **IMPACT STATEMENT AND RECORD OF DECISION**

26 42. On September 21, 2010, in a letter addressed to “Friends of the Tahoe National
27 Forest,” Defendants announced the release of their Final Environmental Impact Statement and

28 ² Available at http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/sdeis/Entire-Vol1-TNF-TM-SDEIS.pdf (last visited July 11, 2012).

1 Record of Decision for the Tahoe National Forest Motorized Travel Management Project. *See*
2 Letter from Tom Quinn, Tahoe National Forest Supervisor, United States Forest Service, to
3 Friends of the Tahoe National Forest (Sept. 21, 2010).³ In the letter, Defendants informed the
4 public that the Alternative they selected (Alternative 6) “strikes the best balance between providing
5 motorized recreation access and opportunities and protecting critical natural and cultural
6 resources” and that it “ensur[es] public motorized access to recreation opportunities across the
7 Tahoe National Forest.” *Id.* The letter suggests that Defendants’ decision would benefit Plaintiffs
8 and other motor vehicle users through the “addition” of 62 miles of roads and motorized trails, but
9 failed to note that the same decision also closed over 800 miles of roads and trails to previously
10 lawful motor vehicle use. Defendants’ misleading letter to the public is representative of their
11 failure to act in accordance with the National Environmental Policy Act’s purpose to “insure that
12 environmental information is available to public officials and citizens before decisions are made
13 and before actions are taken” in issuing the Final Environmental Impact Statement and Record of
14 Decision. *See* 40 C.F.R. § 1500.1(b).

15 43. Indeed, given that the Final Environmental Impact Statement and Record of
16 Decision represent a fundamental change in the ability of the public to access the Tahoe National
17 Forest through motorized recreation, the documents are conspicuously lacking in forthrightness.
18 Although Defendants grudgingly concede in the Final Environmental Impact Statement and Record
19 of Decision that the Selected Alternative “will reduce the amount of motorized recreation
20 opportunities available as compared to the existing condition (which permits motorized travel off
21 [National Forest Transportation System] roads and trails),” Defendants’ qualifier that they “strike[]
22 a balance between reductions promoted by some and the increases supported by others”
23 significantly understates the actual impact of the Alternative 6. *See* United States Forest Service,
24 Motorized Travel Management Final Environmental Impact Statement, Vol. 1: Record of Decision

25 ///

26 ///

27
28 ³ Available at http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/DearFriendsLetter-9-2010.pdf (last visited July 11, 2012)

1 and Summary at 10 (hereinafter, “Record of Decision”).⁴ Stated differently, Defendants’
2 Alternative 6 and the resulting closure of nearly one-quarter of the roads and trails in the Tahoe
3 National Forest cannot be legitimately characterized as an increase in motorized recreation
4 opportunities.

5 44. The Defendants further misled the public by delegitimizing the lawfulness of
6 Plaintiffs’ and others’ motorized use of roads and trails outside of the National Forest
7 Transportation System. Throughout the Final Environmental Impact Statement and Record of
8 Decision, Defendants refer to the “existing 869 miles of unauthorized routes” in the Tahoe
9 National Forest, as if to suggest that motorized recreational use of these routes has historically been
10 impermissible, and that the designation of such routes as part of the National Forest Transportation
11 System would sanction motorized access to the Tahoe National Forest that previously was
12 unlawful.

13 45. However, until the implementation of the 2005 Travel Management Rule at the
14 Tahoe National Forest, motorized recreation on user-created or otherwise unclassified routes that
15 exist outside of the National Forest Transportation System was entirely legal. Thus, Defendants’
16 labeling of such recreation as “unauthorized” is disingenuous. As one court has noted, “[t]he term
17 ‘unauthorized’ applied to these routes is somewhat confusing, as the term implies that such travel
18 ways were not permitted under the previous guidelines.” *Idaho Conservation League v. Guzman*,
19 766 F. Supp. 2d 1056, 1063 n.3 (D. Idaho 2011). Indeed, “the so-called ‘unauthorized’ routes” are
20 in fact “user-created routes that were not identified, constructed, maintained, or otherwise
21 designated by the Forest Service,” but “these routes were not illegal; rather, they were permitted
22 under the previous travel management plan.” *Id.* Defendants’ implication to the contrary
23 prevented the public from fully and correctly understanding the effects of the Final Environmental
24 Impact Statement, Record of Decision, and Alternative 6.

25 46. The Final Environmental Impact Statement and Record of Decision also contradict
26 the mandate of the 2005 Travel Management Rule. Defendants unlawfully and prejudicially

27 ⁴ Available at http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume1-TNF-
28 [TM-FEIS.pdf](http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume1-TNF-TM-FEIS.pdf) (last visited July 11, 2012).

1 assumed that unclassified routes would not be designated as part of the National Forest
2 Transportation System and then “added” routes to the System in order only to maintain a minimum
3 level of motor vehicle access to the Tahoe National Forest, in conflict with the 2005 Travel
4 Management Rule’s requirement that the designation of National Forest Transportation System
5 routes be based on objective general and specific criteria.

6
7 **SPECIFIC ALLEGATIONS THAT**
8 **SUPPORT DECLARATORY RELIEF**

9 47. Plaintiffs hereby reallege and incorporate by reference the allegations contained in
10 Paragraphs 1 through 46 as though fully set forth herein.

11 48. An actual and substantial controversy exists between Plaintiffs and Defendants over
12 Defendants’ duty to comply with the National Environmental Policy Act and the Administrative
13 Procedure Act in issuing the Final Environmental Impact Statement and Record of Decision for
14 the Tahoe National Forest Motorized Travel Management Project.

15 49. This case is presently justiciable because Defendants’ failure to comply with these
16 laws is the direct result of final agency action that has caused and will cause immediate and
17 concrete injury to Plaintiffs through the loss of motorized access to roads and trails within the
18 Tahoe National Forest. Plaintiffs have a vital interest in knowing whether the Final Environmental
19 Impact Statement and Record of Decision are statutorily valid.

20 50. Declaratory relief is, therefore, appropriate to resolve this controversy.

21
22 **SPECIFIC ALLEGATIONS THAT**
23 **SUPPORT INJUNCTIVE RELIEF**

24 51. Plaintiffs hereby reallege and incorporate by reference the allegations contained in
25 Paragraphs 1 through 50 as though fully set forth herein.

26 52. If an injunction does not issue enjoining Defendants from effectuating and
27 executing the Record of Decision and Alternative 6, Plaintiffs will be irreparably harmed through

28 ///

1 the loss of motorized access to roads and trails within the Tahoe National Forest, which they have
2 previously enjoyed, in violation of federal law.

3 53. Likewise, if an injunction does not issue enjoining Defendants from enforcing the
4 Rule's prohibition at the Tahoe National Forest prior to the completion of a lawful implementation
5 of the Rule and a valid Final Environmental Impact Statement and Record of Decision, Plaintiffs
6 will be irreparably harmed by being subject to immediate and concrete injury through the loss of
7 motorized access to roads and trails within the Tahoe National Forest in violation of federal law.

8 54. Plaintiffs have no plain, speedy, and adequate remedy at law.

9 55. If not enjoined by this Court, Defendants will enforce the 2005 Travel Management
10 Rule's prohibition of motor vehicle use off a designated system of roads and trails at the Tahoe
11 National Forest and will act in reliance upon the Record of Decision and Final Environmental
12 Impact Statement in derogation of the rights and interests of Plaintiffs.

13 CLAIMS FOR RELIEF

14 First Claim for Relief 15 Unlawful Purpose and Need for Action (Violation of National Environmental Policy Act and Administrative Procedure Act)

16 56. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
17 through 55.

18 57. For proposed major federal actions that will significantly affect the quality of the
19 human environment, the National Environmental Policy Act requires federal agencies to prepare
20 an Environmental Impact Statement, discussing, among other things, the environmental impact of
21 the proposed action, any adverse environmental effects which cannot be avoided, and alternatives
22 to the proposed action. *See* 42 U.S.C. § 4332(2)(C).

23 58. The Environmental Impact Statement "shall briefly specify the underlying purpose
24 and need to which the agency is responding in proposing the alternatives including the proposed
25 action." 40 C.F.R. § 1502.13. Thus, the range of alternatives considered in the Environmental
26 Impact Statement flows from the agency's statement of purpose and need.

27 59. Defendants' statement of purpose and need in the Final Environmental Impact
28 Statement and Record of Decision was required to comply with the 2005 Travel Management Rule.

1 60. The Final Environmental Impact Statement’s statement of purpose and need is
2 unlawful because it conflicts with the objective general and specific route designation criteria set
3 forth in the 2005 Travel Management Rule. *See* 36 C.F.R. § 212.55(a)-(c). *See also supra* ¶¶ 35-
4 36 (listing general and specific route designation criteria contained in 36 C.F.R. § 212.55(a)-(c)).
5 Instead of relying on the 2005 Travel Management Rule’s objective general and specific route
6 designation criteria, Defendants’ purpose and need for route designation as set forth in their Final
7 Environmental Impact Statement is merely to “maintain motor vehicle access to dispersed
8 recreation activities that are known to have been historically accessed by motor vehicles” at the
9 Tahoe National Forest, thereby providing only “limited changes to the [Tahoe National Forest]
10 transportation system.” United States Forest Service, Motorized Travel Management Final
11 Environmental Impact Statement, Vol. 2: Final Environmental Impact Statement Chapters 1 – 4
12 at 7-9 (hereinafter, “Volume 2”).⁵ Defendants’ statement of purpose and need unlawfully
13 prejudiced the implementation of the 2005 Travel Management Rule in favor of closing roads and
14 trails to motor vehicle access and is not countenanced by the 2005 Travel Management Rule’s
15 general and specific objective criteria for route designation. *See* 36 C.F.R. § 212.55.

16 61. As Defendants further explained, “[w]ithout adding” user-created and other
17 unclassified routes to the National Forest Transportation System, implementation of the Rule
18 “would make continued use of such routes illegal through the prohibition of cross country travel,
19 and would preclude access to many dispersed recreation activities.” Volume 2 at 8. Defendants
20 thereby assumed, in disregard of the 2005 Travel Management Rule’s objective general and
21 specific designation criteria, that motor vehicle access would be prohibited on user-created and
22 other unclassified routes and then chose to “add” certain routes only to “maintain” a minimal level
23 of access to dispersed recreational activities.

24 62. Defendants’ statement of purpose and need in the Final Environmental Impact
25 Statement conflicts with the 2005 Travel Management Rule because it presumptively assumes that
26 routes will not be designated. Whereas the 2005 Travel Management Rule requires the objective

27 ⁵ *Available at* [http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume2-TNF-](http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume2-TNF-TM-FEIS.pdf)
28 [TM-FEIS.pdf](http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume2-TNF-TM-FEIS.pdf) (last visited July 11, 2012).

1 assessment of user-created and other unclassified routes without assuming their lack of
2 designation, Defendants' statement of purpose and need prejudices the route designation process
3 by seeking to implement the Rule from the standpoint of "maintaining" motor vehicle access to
4 dispersed recreation activities. This conflict violates the National Environmental Policy Act. *See*
5 42 U.S.C. § 4332(2)(C). *See also* 40 C.F.R. § 1502.14.

6 63. The statement of purpose and need's conflict with the 2005 Travel Management
7 Rule is arbitrary and capricious and therefore violates the Administrative Procedure Act, 5 U.S.C.
8 § 706(2)(A).

9
10 **SECOND CLAIM FOR RELIEF**

11 **Unlawful "No Action" Alternative**
12 **(Violation of National Environmental Policy Act and Administrative Procedure Act)**

13 64. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
14 through 63.

15 65. When federal agencies prepare an Environmental Impact Statement, they are
16 required to include in the Statement a detailed analysis of the alternatives to the proposed federal
17 action. *See* 42 U.S.C. § 4332(2)(C)(iii). The analysis of the alternatives to the proposed action "is
18 at the heart of the [E]nvironmental [I]mpact Statement" and must include the "alternative of no
19 action." 40 C.F.R. § 1502.14.

20 66. The "no action" alternative is "'no change' from current management
21 direction or level of management intensity." Council on Environmental Quality,
22 *NEPA's Forty Most Asked Questions*.⁶

23 67. The analysis of the "no action" alternative "provides a benchmark, enabling
24 decisionmakers to compare the magnitude of environmental effects of the action alternatives." *Id.*
25 A valid determination of what constitutes the "no action" alternative in an Environmental Impact
26 Statement is thus imperative because it establishes baseline conditions, without which "there is

27 _____
28 ⁶ Available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm> (last visited July 11, 2012).

1 simply no way to determine what effect an action will have on the environment and, consequently,
2 no way to comply with” the National Environmental Policy Act. *Am. Rivers v. FERC*, 201 F.3d
3 1186, 1195 n.15 (9th Cir. 1999) (brackets omitted) (quoting *Half Moon Bay Fishermans’ Mktg.*
4 *Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)) (other citations omitted).

5 68. In the Final Environmental Impact Statement, Defendants acknowledged that the
6 “no action” alternative is supposed to provide “a baseline for comparing the other alternatives.”
7 Volume 2 at 22. Defendants also noted that the selection of Alternative 6 “will reduce the amount
8 of motorized recreation opportunities available as compared to the existing condition (which
9 permits motorized travel off [National Forest transportation system] roads and trails).” Record of
10 Decision at 10.

11 69. But Defendants also characterized the “no action” alternative as meaning that “no
12 changes would be made to the [National Forest Transportation System] and there would be no
13 prohibition of cross country travel.” *Id.* at 36. Moreover, under Defendants’ supposed “no action”
14 alternative, the 2005 Travel Management Rule “would not be implemented, and no motor vehicle
15 use map . . . would be published.” *Id.* Further, “[m]otor vehicle travel by the public would not be
16 limited to designated routes,” and “[u]nauthorized routes would continue to proliferate and would
17 have no status or authorization.” *Id.* Also, according to Defendants’ no action alternative, “[n]o
18 unauthorized routes would be added to the [National Forest Transportation System] as roads or
19 motorized trails under” this supposed “no action” alternative.” *Id.* These characterizations of what
20 would occur under a “no action” alternative are entirely inaccurate and misleading.

21 70. In this case, a valid “no action” alternative would have maintained the status quo
22 by designating as part of the National Forest Transportation System all unclassified routes and
23 trails previously available for lawful and legitimate motor vehicle access, thereby ensuring an
24 accurate baseline “to compare the magnitude of environmental effects of the action alternatives.”
25 *Forty Most Asked Questions, supra*, ¶ 66.

26 71. Defendants’ failure to set forth a valid “no action” alternative in the Final
27 Environmental Impact Statement violates the National Environmental Policy Act. *See* 42 U.S.C.
28 § 4332(2)(C)(iii).

1 72. Defendants' failure to set forth a valid "no action" alternative in the Final
2 Environmental Impact Statement is arbitrary and capricious and therefore violates the
3 Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

4 **THIRD CLAIM FOR RELIEF**

5 **Failure To Consider Reasonable Range of Alternatives**
6 **(Violation of National Environmental**
7 **Policy Act and Administrative Procedure Act)**

8 73. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
9 through 72.

10 74. Under the National Environmental Policy Act, an Environmental Impact Statement
11 must consider "alternatives to the proposed action" and "study, develop, and describe appropriate
12 alternatives to recommended courses of action in any proposal which involves unresolved conflicts
13 concerning uses of available resources." 42 U.S.C. §§ 4332(2)(C)(iii), 4332(E).

14 75. Federal agencies must "[r]igorously explore and objectively evaluate all reasonable
15 alternatives" to a proposed action, including a "no action" alternative. 40 C.F.R. § 1502.14(a), (d).

16 76. Federal agencies "shall not commit resources prejudicing selection of alternatives
17 before making a final decision." 40 C.F.R. § 1502.2(f).

18 77. Alternatives must be presented in a "comparative form, thus sharply defining the
19 issues and providing a clear basis for choice among options by the decisionmaker and the public."
20 40 C.F.R. § 1502.14.

21 78. Defendants violated the National Environmental Policy Act and the Act's
22 implementing regulations because they failed to consider a reasonable range of alternatives that
23 would implement the 2005 Travel Management Rule and minimize the closure of access to user-
24 created and other routes by motor vehicles. The range of alternatives that was analyzed in a
25 detailed manner by Defendants in the Final Environmental Impact Statement is impermissibly
26 narrow, as each alternative proposed designating fewer than 85 miles of routes to the National
27 Forest Transportation System.

28 79. Moreover, the Final Environmental Impact Statement should have analyzed a range
of alternatives that included at least one alternative that maintained the status quo, *i.e.*, the

1 continuation of lawful motor vehicle access to hundreds of miles of routes that were not previously
2 part of the National Forest Transportation System. As motor vehicle access to these routes was
3 legal and permissible prior to the implementation of the 2005 Travel Management Rule, it was
4 unreasonable for the Service to fail to consider in detail an alternative that would designate such
5 routes and thereby maintain legal access to them through implementation of the 2005 Travel
6 Management Rule. This failure constitutes a violation of the National Environmental Policy Act.
7 *See* 42 U.S.C. § 4332(2)(C)(iii), (E). *See also* 40 C.F.R. § 1502.14.

8 80. The failure of Defendants to consider a reasonable range of alternatives in the Final
9 Environmental Impact Statement is arbitrary and capricious and therefore violates the
10 Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

11 **FOURTH CLAIM FOR RELIEF**

12 **Failure To Articulate a Rational Connection Between** 13 **Defendants' Conclusions and the Defendants' Rejection of Alternative 5** **(Violation of National Environmental Policy Act and Administrative Procedure Act)**

14 81. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
15 through 80.

16 82. According to Defendants, of all the action alternatives considered in detail but not
17 selected by Defendants, "Alternative 5 adds the greatest mileage of motorized roads and trails to
18 the [National Forest Transportation System]." Record of Decision at 23. Defendants rejected
19 Alternative 5 based in part on Defendants' allegations that "potential adverse impacts on air quality
20 [and] watershed conditions . . . are greatest under this alternative compared to the other action
21 alternatives." *Id.* at 24.

22 83. However, in its Final Environmental Impact Statement, Defendants concluded that
23 "the amount of pollutants other than fugitive dust is anticipated to increase by the same amount
24 in all alternatives." It further concluded that "Alternative 5 potentially improves air quality by
25 reducing the amount of acreage open to motorized vehicle use," that "[g]enerally for the existing
26 unauthorized and closed [National Forest Transportation System] routes, the direct effects to soil
27 productivity have already occurred," and that, "[f]rom the standpoint of watershed resources, most

28 ///

1 | adverse impacts with . . . roads and motorized trails have already occurred.” Volume 2 at 67, 72,
2 | 96, 131.

3 | 84. In rejecting Alternative 5 based on allegations that it would have the greatest
4 | adverse impacts on air quality and water conditions, despite the utter absence of support for such
5 | a conclusion in the Final Environmental Impact analysis, Defendants violated the National
6 | Environmental Policy Act. *See* 42 U.S.C. § 4332(2)(C). *See also* 40 C.F.R. § 1502.14.

7 | 85. By rejecting Alternative 5 based in part on allegations that the Alternative would
8 | have the greatest adverse impacts on air quality and water conditions even though the Final
9 | Environmental Impacts’ analysis does not support such conclusions, Defendants acted arbitrarily,
10 | contrary to law, and in excess of its statutory authority, and therefore violated the Administrative
11 | Procedure Act, 5 U.S.C. § 706(2).

12 |
13 | **FIFTH CLAIM FOR RELIEF**

14 | **Failure To Provide Site-Specific Analysis**
15 | **in the Final Environmental Impact Statement**
16 | **(Violation of the National Environmental**
17 | **Policy Act and Administrative Procedure Act)**

18 | 86. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
19 | through 86.

20 | 87. A federal agency’s Final Environmental Impact Statement under the National
21 | Environmental Policy Act must include a hard look at the direct and indirect environmental
22 | consequences of a proposed action to the human environment. *See* 42 U.S.C. § 4332(2)(C). *See*
23 | *also* 40 C.F.R. § 1502.16.

24 | 88. “[W]hen there is an ‘irretrievable commitment of resources’ by a federal agency
25 | to a project,” the National Environmental Policy Act requires that a Final Environmental Impact
26 | Statement contain a site-specific analysis for particular locations, including individual roads and
27 | trails, that will be affected by the federal agency’s project. *See N. Alaska Envtl. Ctr. v.*
28 | *Kemphorne*, 457 F.3d 969, 975 (9th Cir. 2006) (citing *Conner v. Burford*, 848 F.2d 1441 (9th Cir.
1988)). Further, the Final Environmental Impact Statement “shall succinctly describe the

1 | environment of the area(s) to be affected or created by the alternatives under consideration.” 40
2 | C.F.R. § 1502.15.

3 | 89. Site-specific analyses completed prior to approval of the federal project “insure that
4 | environmental information is available to public officials and citizens before decisions are made
5 | and before actions are taken.” 40 C.F.R. § 1500.1(b).

6 | 90. The Forest Service’s decision to designate or not designate an unclassified road or
7 | trail as part of the National Forest Transportation System determines whether previously lawful
8 | and legitimate recreational activities will be permitted to continue on such roads and trails and
9 | requires a site-specific analysis to evaluate the environmental impacts that will result from the
10 | designation decision. However, the Final Environmental Impact Statement fails to conduct a site-
11 | specific analysis for many of the roads and trails that were not designated and therefore are closed
12 | to motor vehicle access by the Forest Service’s Final Environmental Impact Statement and Record
13 | of Decision. This lack of site-specific analysis violates the National Environmental Policy Act
14 | because it prevents the full and accurate disclosure of human environmental effects resulting from
15 | a road or trail becoming newly restricted to motor vehicle use. *See* 42 U.S.C. § 4332(2)(C), (E).
16 | *See also* 40 C.F.R. § 1502.15-1502.16.

17 | 91. The Forest Service’s failure to conduct a site-specific analysis for many of the roads
18 | and trails that were not designated and therefore were closed to motor vehicle access by the Forest
19 | Service’s decision is arbitrary and capricious and violates the Administrative Procedure Act. *See*
20 | 5 U.S.C. § 706(2)(A).

21 |
22 | **SIXTH CLAIM FOR RELIEF**

23 | **Failure To Accurately Detail Human**
24 | **and Environmental Impacts of Action**
25 | **(Violation of the National Environmental**
Policy Act and Administrative Procedure Act)

26 | 92. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
27 | through 91.

28 | ///

1 93. A federal agency’s Final Environmental Impact Statement under the National
2 Environmental Policy Act must include a detailed statement on the environmental impact of the
3 proposed action, any adverse environmental effects which cannot be avoided should the proposal
4 be implemented, the relationship between local short-term uses of man’s environment and the
5 maintenance and enhancement of long-term productivity, any irreversible and irretrievable
6 commitments of resources which would be involved in the proposed action should it be
7 implemented. 42 U.S.C. § 4332(2)(C). Further, National Environmental Policy Act procedures
8 “must insure that environmental information is available to public officials and citizens before
9 decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

10 94. In the Service’s Final Environmental Impact Statement, the Service submits that
11 “[a]dding unauthorized roads and trails may have a negative effect (short and long term) on non-
12 motorized opportunities due to an increase in noise, dust, physical presence, possible use conflicts
13 and displacement.” Volume 2 at 702. The Service also submits that “[a]dding unauthorized roads
14 and trails to the [National Forest Transportation System] would have a beneficial effect on
15 motorized opportunities by providing additional miles of recreation opportunities.” *Id.* at 703.

16 95. In fact, however, by reducing the amount of trails and roads open to motorized use,
17 Defendants’ Final Environmental Impact Statement and Record of Decision result in a negative
18 effect on motorized opportunities in the Tahoe National Forest. Because the Final Environmental
19 Impact Statement and Record of Decision “reduce[s] the amount of motorized recreation
20 opportunities available as compared to the existing condition (which permits motorized travel off
21 [National Forest Transportation System] roads and trails),” Defendants’ assertion that Final
22 Environmental Impact Statement and Record of Decision would have a beneficial effect on
23 motorized opportunities is false. *See* Volume 1 at 10.

24 96. Defendants’ Final Environmental Impact Statement and Record of Decision also
25 mislead the public through the disingenuous assertion that, prior to the implementation of the 2005
26 Travel Management Rule, motorized recreation off of the National Forest Transportation System
27 was “unauthorized.” *See* Volume 1 at 1 (“There are approximately 869 miles of unauthorized
28 routes on the Forest.”). On the contrary, the motorized recreation that is prohibited under the Final

1 Environmental Impact Statement and Record of Decision was previously lawful and legitimate.
2 Defendants' failure to fairly recognize the legality of prior motor vehicle access to the Tahoe
3 National Forest impermissibly minimized the human and environmental impacts resulting from
4 the Final Environmental Impact Statement and Record of Decision.

5 97. Defendants' Final Environmental Impact Statement and Record of Decision also
6 failed to adequately detail other environmental impacts resulting from the closure of formerly
7 accessible roads and trails to motor vehicle use. These impacts include increased risk of forest
8 fires throughout the Tahoe National Forest, as motor recreationists who previously cleared brush,
9 trees, and other impediments from roads and trails used to combat forest fires will now be unable
10 to access and clear numerous routes throughout the Forest, thereby increasing the risk that
11 emergency personnel's ability to combat forest fires by way of these routes will be impeded.

12 98. Defendants' inaccurate detailing of the true impact resulting from the Final
13 Environmental Impact Statement and Record of Decision prevented the public from being fully
14 informed of the consequences of Defendants' decisionmaking and therefore violates the National
15 Environmental Policy Act. *See* 42 U.S.C. § 4332(2)(C). *See also* 40 C.F.R. § 1500.1.

16 99. Defendants' failure to accurately detail the true impact resulting from the Final
17 Environmental Impact Statement and Record of Decision is arbitrary and capricious and violates
18 the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

19 **SEVENTH CLAIM FOR RELIEF**

20 **Failure To Adequately Consider Cumulative Impacts**
21 **(Violation of the National Environmental**
22 **Policy Act and Administrative Procedure Act)**

23 100. Plaintiffs incorporate by reference all the allegations set forth in Paragraphs 1
24 through 99.

25 101. A federal agency's Final Environmental Impact Statement under the National
26 Environmental Policy Act must include a hard look at the cumulative impacts and effects of the
27 proposed action and other actions on the human environment. *See* 42 U.S.C. § 4332(2)(C). *See*
28 *also* 40 C.F.R. § 1508.25 *and Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)
(National Environmental Policy Act "requires that where several actions have a cumulative or

1 synergistic environmental effect, this consequence must be considered in an [Environmental
2 Impact Statement].”).

3 102. A cumulative impact is “the impact on the environment which results from the
4 incremental impact of the action when added to other past, present, and reasonably foreseeable
5 future actions regardless of what agency (Federal or non-Federal) or person undertakes such other
6 actions.” 40 C.F.R. § 1508.7. “Cumulative impacts can result from individually minor but
7 collectively significant actions taking place over a period of time.” *Id.*

8 103. Under the National Environmental Policy Act, a cumulative impact analysis “must
9 be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past,
10 present, and future projects.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067,
11 1076 (9th Cir. 2011) (internal quotations and citations omitted). Further, in order to “insure that
12 environmental information is available to public officials and citizens before decisions are made
13 and before actions are taken,” 40 C.F.R. § 1500.1(b), the cumulative impact analysis must include
14 “some quantified or detailed information; . . . general statements about possible effects and some
15 risk do not constitute a hard look absent a justification regarding why more definitive information
16 could not be provided.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d at 1076
17 (internal quotations and citations omitted).

18 104. While Defendants nominally conducted a cumulative impacts analysis in the Final
19 Environmental Impact Statement, it did not consider the cumulative impacts resulting from past,
20 current, and future loss of recreational road and trail access for those who use motor vehicles in
21 National Forests throughout California and Nevada. Instead, the Service impermissibly limited
22 its cumulative impacts analysis to the Tahoe National Forest, explaining that “[t]he cumulative
23 effects section for recreation bounds the analysis within the Tahoe [National Forest] . . . and
24 provides a rationale for the bounding.” United States Forest Service, Motorized Travel
25 Management Final Environmental Impact Statement, Vol. 3: Final Environmental Impact

26 ///

27 ///

28 ///

1 Statement Appendices C, D, E, F and N at N-70 (Sept. 2010).⁷ According to the Defendants, “[i]f
2 the cumulative effects analysis considered a larger spatial bounding, addressing the effects of the
3 proposed action and the interaction with similar actions on adjacent national forests, the site
4 specificity would have been lost among all the assumptions.” *Id.* Defendants further noted that
5 “[d]ecisions on the national forests do affect regional recreation use; however, the effects of
6 evolving decisions would be difficult to quantify.” *Id.* at N-70–N-71.

7 105. Defendants did not adequately consider the cumulative effects of the action at the
8 Tahoe National Forest in conjunction with past, present, and reasonably foreseeable future actions
9 and failed to rationally or adequately address the effects of similar losses of recreational road and
10 trail access for those who use motor vehicles in National Forests throughout California and
11 Nevada. Defendants’ claim that analyzing such effects “would be difficult to quantify” does not
12 constitute a sufficient justification as to why more detailed information could not be provided.

13 106. Defendants’ failure to conduct an adequate cumulative impacts analysis violates the
14 National Environmental Policy Act. *See* 42 U.S.C. § 4332(2)(C). *See also* 40 C.F.R. § 1508.25.

15 107. Defendants’ failure to conduct an adequate cumulative impacts analysis is arbitrary
16 and capricious and therefore violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

17 PRAYER FOR RELIEF

18 Wherefore, Plaintiffs pray that this Court:

19 1. Declare the Defendants violated the National Environmental Policy Act and the
20 Administrative Procedure Act and the statutes’ implementing regulations in approving and issuing
21 the Final Environmental Impact Statement and Record of Decision for the Tahoe National Forest
22 Motorized Travel Management Project;

23 2. Declare that the Final Environmental Impact Statement and Record of Decision for
24 the Tahoe National Forest Motorized Travel Management Project are insufficient as a matter of
25 law, and order Defendants to undertake a new implementation of the 2005 Travel Management

26 ///

27 _____
28 ⁷ Available at http://www.r5.fs.fed.us/tahoe/projects_plans/ohv_inv/feis/Entire-Volume3-TNF-TM-FEIS.pdf (last visited July 11, 2012)

1 Rule at the Tahoe National Forest that is done in accordance with Defendants' obligations under
2 the National Environmental Policy Act and Administrative Procedure Act;

3 3. In order to protect Plaintiffs from irreparable harm in the form of reduced motorized
4 access to the Tahoe National Forest, enjoin Defendants from restricting access to motorized routes,
5 roads, and trails based on the Final Environmental Impact Statement and Record of Decision for
6 the Tahoe National Forest Motorized Travel Management Project, and enjoin Defendants from
7 enforcing the 2005 Travel Management Rule's prohibition of possession and operation of motor
8 vehicles on nondesignated routes, roads, and trails unless and until Defendants issue a legally
9 sufficient Final Environmental Impact Statement and Record of Decision;

10 4. An award to Plaintiffs of reasonable attorneys' fees and in bringing and maintaining
11 this action;

12 5. An award to Plaintiffs of costs of suit pursuant to Federal Rule of Civil Procedure
13 54(d); and

14 6. An award to Plaintiffs of any other and further relief that the Court deems proper
15 under the circumstances of this case.

16 DATED: July 17, 2012.

17 Respectfully submitted,

18 M. REED HOPPER
19 BRANDON M. MIDDLETON

20 By /s/ Brandon M. Middleton
21 BRANDON M. MIDDLETON

22 Attorneys for Plaintiffs Friends of
23 Tahoe Forest Access, et al.

24
25
26
27
28