

1 Wendy Park (Cal. Bar No. 237331)
CENTER FOR BIOLOGICAL DIVERSITY
2 2100 Franklin, Suite 375
Oakland, CA 94612
3 Phone: 510-844-7138
Email: wpark@biologicaldiversity.org

4 Brandon Jones-Cobb (AK Bar No. 1610078)
(*pro hac vice* pending)
5 CENTER FOR BIOLOGICAL DIVERSITY
6 P.O. Box 1178
Homer, AK 99603
7 Phone: 564-397-0830, ext. 478
Email: bjonescobb@biologicaldiversity.org

8 Hannah Connor (VA Bar No. 74785)
(*pro hac vice* pending)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 1411 K St. NW, Suite 1300
Washington, DC 20005
11 Phone: 202-681-1676
Email: hconnor@biologicaldiversity.org

12 *Attorneys for Plaintiffs Center for Biological*
13 *Diversity and Sierra Club*

14 Nathaniel Shoaff (Cal. Bar No. 256641)
Elizabeth Benson (Cal. Bar No. 268851)
15 SIERRA CLUB
2101 Webster Street, Suite 1300
16 Oakland, CA 94612
Phone: 415-977-5610
17 Email: nathaniel.shoaff@sierraclub.org
Email: elly.benson@sierraclub.org

18 *Attorneys for Sierra Club*

19
20 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

22 CENTER FOR BIOLOGICAL DIVERSITY and
23 SIERRA CLUB,

24 *Plaintiffs,*

25 v.

26 UNITED STATES DEPARTMENT OF
27 AGRICULTURE; BROOKE L. ROLLINS, in
her official capacity as Secretary, United States
28 Department of Agriculture; UNITED STATES

Civil Action No. _____

**COMPLAINT FOR DECLATORY
AND INJUNCTIVE RELIEF**

(Administrative Procedure Act Case)

1 FOREST SERVICE; TOM SCHULTZ, in his
2 official capacity as Chief, United States Forest
3 Service; ANIMAL AND PLANT HEALTH
4 INSPECTION SERVICE; MICHAEL
5 WATSON, in his official capacity as
6 Administrator, Animal and Plant Health
7 Inspection Service,

Defendants.

8 INTRODUCTION

9
10 1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and SIERRA CLUB bring
11 this action against Defendants BROOKE L. ROLLINS, Secretary of the United States
12 Department of Agriculture, and UNITED STATES DEPARTMENT OF AGRICULTURE
13 (collectively “USDA”), to challenge and remedy USDA’s violations of the Administrative
14 Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, and the National Environmental Policy Act
15 (NEPA), 42 U.S.C. § 4321 *et seq.*, with respect to USDA’s rescission of regulations and
16 procedures requiring public participation in USDA’s and its sub-agencies’ environmental
17 reviews under NEPA, and USDA’s unlawful major amendments to its NEPA regulations.
18 Plaintiffs also bring this action against the following agencies within USDA to remedy their
19 unlawful implementation of NEPA pursuant to USDA’s challenged rulemaking: UNITED
20 STATES FOREST SERVICE (“Forest Service”); TOM SCHULTZ, in his official capacity as
21 Chief of the Forest Service; ANIMAL AND PLANT HEALTH INSPECTION SERVICE
22 (“APHIS”); and MICHAEL WATSON, in his official capacity as Administrator of APHIS.

23 2. This case concerns USDA’s elimination of the public’s vital role in federal
24 agency environmental reviews for projects undertaken by it and its sub-agencies. With respect to
25 the Forest Service, this includes the approval of logging, prescribed burns, mining, road
26 construction, and additional projects and activities on national forests. It also applies to APHIS’s
27 exercise of broad authorities over plant and animal management, including the killing of
28 predators and other wildlife, disposal of diseased livestock, and pesticide application to

1 agricultural products. In these and many other circumstances, NEPA requires that agencies
2 prepare an environmental impact statement (EIS) that takes a “hard look” at the significant
3 environmental impacts of a proposed action before approving it. Alternatively, agencies must
4 demonstrate that the action’s effects are insignificant in an environmental assessment (EA), or
5 that the action falls within a “categorical exclusion” (CE) for actions that normally have no
6 significant effects.

7 3. For nearly 50 years, Council on Environmental Quality (CEQ) and USDA
8 regulations required that federal agencies solicit public comment on a draft EIS and provided for
9 public involvement in preparation of an EA. In the case of the Forest Service, these regulations
10 also required public involvement when determining that a project may fall within a CE. Thus, for
11 decades, CEQ’s and USDA’s regulations ensured that not just the agency decisionmakers but
12 also the affected communities would be apprised of a project’s environmental impacts before
13 approval of a project. The opportunity to weigh in on a proposal and the agency’s analysis within
14 an EIS, an EA, or a CE allowed the public to alert an agency to significant environmental
15 impacts the agency had overlooked, as well as ways to avoid or reduce harmful impacts. This led
16 to better informed, and, inevitably, more environmentally protective decisions, as intended by
17 NEPA’s “look before you leap” mandate.

18 4. Earlier this year, however, USDA dismantled its longstanding NEPA regulatory
19 framework governing USDA project reviews, citing section 5(b) of President Trump’s Executive
20 Order 14154, Unleashing American Energy (Jan. 20, 2025), and its directive that “all agencies
21 must prioritize efficiency and certainty above all other objectives,” *id.* § 5(c). USDA’s revised
22 procedures, adopted in a rushed rulemaking process that sidestepped basic APA procedural
23 requirements, now make public involvement in nearly all aspects of the NEPA process
24 nonexistent or, at best, entirely discretionary. As a result, sub-agencies within USDA can leave
25 the public in the dark as to the full scope of a proposed project and its impacts—or even the very
26 existence of a project proposal, when an EA is prepared—until after the agency approves the
27 project. And in the case of the Forest Service, which has historically approved more than 80% of
28 its actions under CEs, the revised regulations eliminate the longstanding requirements to solicit

1 public comment and inform the public when it determines that a CE applies and thus the public
2 may never learn about the agency’s decision. Such inadequate and belated (or in some cases
3 nonexistent) disclosure precludes meaningful public input and undermines NEPA’s goal to
4 promote informed agency decisionmaking.

5 5. USDA adopted these procedures via a so-called “Interim Final Rule,” which the
6 agency finalized and made effective without any advanced public notice of, or opportunity to
7 comment on, the rule, and which provided no explanation for USDA’s major changes to its
8 longstanding public participation procedures. Plaintiffs now seek judicial relief declaring that
9 USDA’s Interim Final Rule violates the APA and NEPA. Plaintiffs also ask the Court to vacate
10 the Interim Final Rule, and to order that, in the interim, USDA, the Forest Service, and APHIS
11 operate under USDA’s and the respective sub-agency’s prior NEPA procedures.

12 **JURISDICTION AND VENUE**

13 6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
14 question) and 5 U.S.C. § 702 (APA). The relief sought is authorized by 28 U.S.C. § 2201
15 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 5 U.S.C. §§ 701–706.

16 7. This Court has jurisdiction to order declaratory relief under 28 U.S.C. § 2201. If
17 the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive
18 relief.

19 8. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
20 1391(e) as this civil action is brought against an agency of the United States and officers and
21 employees of the United States acting in their official capacities and under the color of legal
22 authority; as Plaintiff Sierra Club maintains its principal place of business in this judicial district,
23 in Oakland, California; as all Plaintiffs maintain offices in this judicial district; and as no real
24 property is involved in this action.

25 **PARTIES**

26 9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
27 corporation incorporated and existing under the laws of the State of California, with its main
28 California office in Oakland. The Center for Biological Diversity has over 93,000 members

1 throughout the United States and the world. The Center for Biological Diversity’s mission is to
2 ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems,
3 public lands and waters, and public health through science, policy, and environmental law.

4 Based on the understanding that the health and vigor of human societies and the integrity and
5 wildness of the natural environment are closely linked, the Center for Biological Diversity is
6 working to secure a future for animals and plants hovering on the brink of extinction, for the
7 ecosystems they need to survive, and for a healthy, livable future for all of us.

8 10. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under
9 the laws of the State of California, with its headquarters located in Oakland. Sierra Club is the
10 oldest and largest grassroots environmental organization in the United States, with approximately
11 621,000 members nationally. Sierra Club’s mission is to explore, enjoy, and protect the wild
12 places of the Earth; to practice and promote the responsible use of the Earth’s resources and
13 ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and
14 human environment; and to use all lawful means to carry out these objectives. Sierra Club and its
15 state chapters perform this mission through advocacy, litigation, and educational outreach to
16 members.

17 11. The protection of wildlife, wildlands, ecosystems, and recreational opportunities
18 on public lands and other areas affected by USDA’s actions is central to Plaintiffs’ missions.
19 Plaintiffs and their members have a long history of involvement in proposed actions and
20 activities by USDA and its sub-agencies, including actions on national forests managed by the
21 United States Forest Service, and actions undertaken by APHIS impacting the health and
22 management of wildlife and animals raised for agricultural purposes. Those activities include
23 tracking proposals for development and/or resource extraction; commenting on proposed projects
24 and their NEPA reviews to limit or eliminate damaging impacts; researching and analyzing
25 potential environmental effects; surveying project sites; proposing project alternatives and
26 mitigation measures; educating Plaintiffs’ members and the public via newsletters, press
27 releases, their websites, action alerts, and other communications; and activating their members
28 and the public to weigh in on proposed projects. To carry out these activities, Plaintiffs and their

1 members rely on agency NEPA reviews for information about proposed projects that may
2 otherwise be unavailable. Such information may include a project's proposed location,
3 configuration, acreage, scope, activities, and timing; the condition of the existing environment
4 and resources that would be affected; the project's predicted environmental effects, such as
5 pollution emissions, habitat disturbance, and land-use conflicts, and the severity of those effects;
6 and potential alternatives and mitigation measures the agency is considering to achieve the
7 project's goals while reducing harmful effects.

8 12. Plaintiffs' members use and enjoy national forests for hiking, fishing, hunting,
9 photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational
10 activities. Plaintiffs' members derive recreational, inspirational, religious, scientific, educational,
11 and aesthetic benefit from their activities within the national forest system. Plaintiffs' members
12 intend to continue to use and enjoy the national forests frequently and on an ongoing basis in the
13 future, including this winter and spring.

14 13. Plaintiffs' members live and recreate in or near areas nationwide where they enjoy
15 observing, attempting to observe, photographing, and studying wildlife, including in areas
16 impacted by APHIS's activities to control plant and animal disease outbreaks within industrial
17 agricultural facilities, and in areas where Wildlife Services—a program within USDA sub-
18 agency APHIS—engages in predator and other wildlife killing activities. The opportunity to
19 possibly view wildlife or signs of wildlife in these areas is of significant interest and value to
20 Plaintiffs' members and increases their use and enjoyment of public lands and associated
21 ecosystems nationwide. Plaintiffs' members also have an interest in the health and humane
22 treatment of animals. Plaintiffs' members have definite plans to visit public lands for the purpose
23 of engaging in these activities in the near future.

24 14. Plaintiffs' members have been extensively involved in the public comment and
25 administrative process for agency actions taken by USDA and its sub-agencies pursuant to the
26 APA and NEPA and/or rely on Plaintiffs and other organizations to engage in those
27 administrative processes on their behalf.

1 15. Plaintiffs’ members who use the public lands administered by USDA and its sub-
2 agencies and are otherwise affected by USDA’s actions have a procedural interest in USDA fully
3 complying with the APA’s public participation requirements in the development, promulgation,
4 and implementation of the Interim Final Rule.

5 16. The APA’s rulemaking procedures require public participation except in limited
6 circumstances. USDA’s failure to abide by those procedures deprived Plaintiffs and Plaintiffs’
7 members of their procedural right to protect their concrete interests in participating in
8 decisionmaking affecting the environments they use and enjoy around the country. As a result,
9 USDA’s rulemaking violation deprived Plaintiffs and Plaintiffs’ members of their substantial and
10 long-standing interest in NEPA public participation while simultaneously depriving Plaintiffs
11 and Plaintiffs’ members of their right to comment on that deprivation of interest or to receive
12 advance notice of the deprivation.

13 17. Plaintiffs have members who have visited and used, and will continue to visit and
14 use, lands that could be harmed by future projects implementing the Interim Final Rule,
15 including harm to their interests in recreation, wildlife viewing, plant observation, aesthetic
16 enjoyment, scientific study, educational pursuits, and/or spiritual practices, among other uses.
17 Plaintiffs’ members regularly visit and engage in these activities within areas that could be the
18 target of Interim Final Rule implementation and will continue to do so in the foreseeable future.
19 Because of regulatory changes included in the Interim Final Rule, these future projects have been
20 or will be approved without the benefit of public notice and comment on a draft EIS or public
21 involvement in preparation of the EA, significantly reducing or eliminating Plaintiffs’ and their
22 members’ ability to meaningfully participate in the NEPA review process for these projects, and
23 increasing the risk of environmental harm within these specific areas. Those increased harms will
24 reduce Plaintiffs’ members’ ability to engage in and enjoy their planned activities within these
25 specific areas. These actual, concrete interests are directly connected to and jeopardized by
26 USDA’s failure to comply with its mandatory rulemaking requirements under the APA.
27 Plaintiffs’ members are therefore injured by USDA’s failure to abide by the APA process that
28 protects those concrete interests. The injuries would be redressed by the relief sought.

1 18. For example, with respect to Forest Service projects approved under a CE, the
2 Interim Final Rule eliminates Plaintiffs' and Plaintiffs' members' right to advance notice of, an
3 opportunity to comment on, and decisional notice of the application of a CE. Plaintiffs and
4 Plaintiffs' members therefore may not learn about a CE-approved project until long after it has
5 been approved and implemented, by which time any recourse to prevent irreparable harm to their
6 concrete interests would no longer be available. The elimination of notice and comment on CEs
7 without following APA-required notice and comment rulemaking procedures threatens imminent
8 irreparable injury to Plaintiffs and their members' concrete interests.

9 19. For example, one of the Center for Biological Diversity's and Sierra Club's
10 members is the Forest Management Issue Chair for the Lone Star Chapter of the Sierra Club and
11 Chair for the Forestry Subcommittee of the Houston Regional Group of the Sierra Club. He has
12 served as the Chair for these Sierra Club sub-entities for about 20 years. As part of his chair
13 position, he provides comments on public notices published by the Forest Service related to
14 potential agency activities on National Forests and Grasslands in Texas, including the Sam
15 Houston, Davy Crockett, Angelina, and Sabine National Forests and Ranger Districts. He also
16 frequently recreates each year in National Forests and Grasslands in Texas, including the Big
17 Creek Scenic Area; the Lone Star Hiking Trail; the Winters Bayou Scenic Area; and other areas
18 of the Sam Houston National Forest. He regularly visits and recreates in these places, and he has
19 definite plans to return in the foreseeable future. In both his Chair and personal capacities, the
20 member responds to public notices with site-specific, detailed comments about proposals that are
21 of concern to Plaintiffs and Plaintiffs' members. Thus, this member has been harmed by USDA's
22 removal of public notice and comment opportunities on scoping, application of categorical
23 exclusions, environmental assessments, and environmental impact statements.

24 20. Another member of the Center for Biological Diversity has traveled widely
25 throughout his life to enjoy and experience the nation's public lands, including in California,
26 Missouri, Arkansas, Arizona, and New Mexico. Since moving to Arizona in 2011, the member
27 has regularly engaged in family outings, hiked, camped, picnicked, watched sunsets, hunted for
28 signs of ancient cultures, sought solitude, enjoyed educational opportunities, and sought spiritual

1 renewal within national forests in Arizona and New Mexico, including the Coronado National
2 Forest (visited 2-3 times per month); Tonto National Forest (once per month); Apache-Sitgreaves
3 National Forest (once per month); and Gila National Forest (twice per year). The member has
4 made definite plans to return once or twice per year to numerous National Forest, National Park,
5 Bureau of Land Management, and National Wildlife Refuge lands in the future. The member has
6 frequently relied on public participation opportunities previously provided by Defendants to
7 receive notice of, learn about, and provide comments on proposed actions subject to NEPA. In
8 view of the member's aesthetic, recreational, and spiritual interests in areas that will be affected
9 by mining, logging, and construction projects on these public lands approved by Defendants in
10 the future, this member is injured by USDA's decision to limit public dissemination of
11 information about these projects and eliminate opportunities for public participation.

12 21. Another member of the Center for Biological Diversity lives and works near the
13 Cape Fear River in North Carolina, which he has visited since childhood and worked to protect
14 since at least 2010. He travels and recreates by boat in the Cape Fear River several times per
15 month, viewing wildlife and investigating potential pollution sources. The member is deeply
16 concerned about environmental and public health impacts to the river caused by nearby
17 concentrated animal feeding operations, such as impacts from pollution, mortality management,
18 carcass disposal, and airborne emissions—many of which can contribute directly or indirectly to
19 the spread of zoonotic diseases regulated by APHIS. He relies on APHIS public reports,
20 including documents prepared under NEPA, to understand exposure risks to him and his family
21 from these operations, and he relies on NEPA public participation opportunities to share crucial
22 information with APHIS about its proposed actions. He also relies on Plaintiff organizations to
23 represent his interests before APHIS and other agencies through public participation
24 opportunities. Thus, the member is injured by USDA's decision to limit public dissemination of
25 information about these projects and eliminate opportunities for public participation.

26 22. USDA's rulemaking, including the failure to solicit prior public comment,
27 violates Plaintiffs' and their members' rights under the APA, and will cause and threaten injury
28 to Plaintiffs and their members until the Court grants the relief requested herein. A court order

1 declaring invalid and vacating the Interim Final Rule would redress Plaintiffs' and Plaintiffs'
2 members' injuries, and restore the status quo ante, including the public's opportunity to comment
3 on draft EISs and participate in the preparation of EAs, and in the preparation of CEs proposed
4 by the Forest Service. An order requiring USDA to comply with NEPA and the APA, and to
5 operate under USDA's prior NEPA procedures in the interim, would likewise restore the status
6 quo ante and could result in a new rule that requires public participation in the preparation of an
7 EIS, EA, and/or CE.

8 23. Defendant BROOKE L. ROLLINS, the Secretary of Agriculture, is the highest
9 ranking official within USDA and, in that capacity, has ultimate responsibility for the
10 administration and implementation of the APA and NEPA within USDA, and for compliance
11 with all other federal laws applicable to USDA and its agencies. Secretary Rollins is sued in her
12 official capacity.

13 24. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE's primary
14 missions are to provide assistance to America's farmers, improve health, end hunger, ensure food
15 safety, provide market assistance, and conserve and protect natural resources.

16 25. Sub-agencies within USDA that are subject to the Interim Final Rule include the
17 United States Forest Service and the Animal and Plant Health Inspection Service.

18 26. Defendant UNITED STATES FOREST SERVICE manages 154 national forests
19 and 20 national grasslands spanning 193.1 million acres across 43 states and two U.S. territories.
20 The Forest Service manages these lands for timber harvesting, grazing, minerals development,
21 recreation, and other uses.

22 27. Defendant TOM SCHULTZ is the Chief of the Forest Service and is the highest
23 ranking official within the Forest Service, and in that capacity has responsibility for the
24 administration and implementation of NEPA within the Forest Service, and for compliance with
25 all other federal laws applicable to the Forest Service. Chief Schultz is sued in his official
26 capacity.

1 28. Defendant ANIMAL AND PLANT HEALTH INSPECTION SERVICE exercises
2 broad authorities over plant and animal management, including the killing of predators and other
3 wildlife, disposal of diseased livestock, and pesticide application to agricultural products.

4 29. Defendant MICHAEL WATSON is the Administrator of APHIS and is the
5 highest ranking official within APHIS, and in that capacity has responsibility for the
6 administration and implementation of NEPA within APHIS, and for compliance with all other
7 federal laws applicable to APHIS. Administrator Watson is sued in his official capacity.

8 LEGAL BACKGROUND

9 A. National Environmental Policy Act

10 30. On January 1, 1970, President Nixon signed into law the National Environmental
11 Policy Act of 1969. Pub. L. No. 91-190, title I, § 101, 83 Stat. 852 (1970).

12 31. NEPA declares a national policy “to promote efforts which will prevent or
13 eliminate damage to the environment and biosphere.” 42 U.S.C. § 4321. Its “twin aims” are to
14 ensure federal agencies “consider every significant aspect of the environmental impacts of a
15 proposed action” and to “inform the public that it has considered environmental concerns in its
16 decisionmaking process.” *Balt. Gas & Elec Co. v. NRDC*, 462 U.S. 87, 97 (1983). Accordingly,
17 NEPA establishes “a set of ‘action-forcing’ procedures that require that agencies take a hard look
18 at environmental consequences.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,
19 350 (1989) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

20 32. Specifically, agencies must prepare a “detailed” environmental impact statement
21 (EIS) when they propose to take “major Federal actions significantly affecting the quality of the
22 human environment,” 42 U.S.C. § 4332(2)(c), if those significant effects are “reasonably
23 foreseeable,” *id.* § 4336(b)(1). Among other things, the EIS must analyze the “reasonably
24 foreseeable environmental effects of the proposed agency action,” including “adverse” effects
25 that “cannot be avoided should the proposal be implemented”; “a reasonable range of
26 alternatives to the proposed agency action”; “the relationship between local short-term uses of
27 man’s environment and the maintenance and enhancement of long-term productivity”; and “any
28 irreversible and irretrievable commitments of Federal resources which would be involved in the

1 proposed agency action should it be implemented.” *Id.* § 4332(2)(C)(i)-(v). The EIS must also
2 discuss “steps that can be taken to mitigate adverse environmental consequences.” *Robertson*,
3 427 U.S. at 351. Agencies “shall ... ensure the professional integrity, including scientific
4 integrity, of the discussion and analysis” in an EIS. 42 U.S.C. § 4332(2)(D).

5 33. The EIS “ensures that the agency, in reaching its decision, will have available,
6 and will carefully consider, detailed information concerning significant environmental impacts; it
7 also guarantees that the relevant information will be made available to the larger audience that
8 may also play a role in both the decisionmaking process and the implementation of that
9 decision.” *Robertson*, 490 U.S. at 349.

10 34. Although Congress granted agencies some flexibility in implementing NEPA, it
11 also directed that agencies use “all practicable means” in cooperation with the public to fulfill
12 NEPA’s objectives:

13 [I]t is the continuing policy of the Federal Government, *in cooperation with State*
14 *and local governments, and other concerned public and private organizations*, to
15 use *all practicable means and measures*, including financial and technical
16 assistance, in a manner calculated to foster and promote the general welfare, to
17 create and maintain conditions under which man and nature can exist in
18 productive harmony, and fulfill the social, economic, and other requirements of
19 present and future generations of Americans.

20 42 U.S.C. § 4331(a) (emphases added); *see also id.* § 4331(b) (establishing the Federal
21 Government’s “continuing responsibility” to “use all practicable means, consistent with other
22 essential considerations of national policy, to improve and coordinate Federal plans, functions,
23 programs, and resources to the end that the Nation may ... fulfill the responsibilities of each
24 generation as trustee of the environment for succeeding generations,” among other objectives
25 (emphasis added)).

26 35. Accordingly, Congress directed that agencies, “to *the fullest extent possible ...*
27 shall ... identify and develop methods and procedures, in consultation with the Council on
28 Environmental Quality ..., which will ensure that presently unquantified environmental
amenities and values may be given appropriate consideration in decisionmaking along with

1 economic and technical considerations.” *Id.* § 4332(2)(B) (emphasis added); *see* section B, *infra*
2 (detailing those procedures, including former CEQ and USDA regulations).

3 36. NEPA established CEQ in the Executive Office of the President. 42 U.S.C. §
4 4342. The CEQ is a three-member council whose members are appointed by the President. *Id.*

5 37. In 2023, in the first significant revision of NEPA since its 1970 enactment,
6 Congress enshrined into law many of the CEQ NEPA regulations then in effect (formerly at 40
7 C.F.R. §§ 1500 *et seq.*). Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 321, 137 Stat.
8 10, 38 (2023).

9 38. Among other things, the 2023 amendments codified the CEQ’s provisions
10 providing for an EA and “finding of no significant impact” when an agency elects to avoid
11 preparation of an EIS notwithstanding potentially significant impacts. *See* 40 C.F.R. §§ 1501.5,
12 1501.6 (2022). Agencies must prepare an EA when the significance of an agency proposal’s
13 effects is unknown, or there is no reasonably foreseeable significant effect. 42 U.S.C. §
14 4336(b)(2). The EA is a “concise public document” that “set[s] forth the basis of [an] agency’s
15 finding of no significant impact.” *Id.* This finding serves as the agency’s determination that a
16 proposed action “does not require the issuance of an [EIS].” *Id.* § 4336e(7).

17 39. The 2023 amendments also codified CEQ’s provisions allowing agencies to apply
18 “categorical exclusions” in lieu of preparing an EIS or EA. *Id.* § 4336(a)(2). A “categorical
19 exclusion” refers to “a category of actions that a Federal agency has determined normally does
20 not significantly affect the quality of the human environment within the meaning of section
21 102(2)(C).” *Id.* § 4336e(1).

22 **B. Regulatory History of NEPA’s Public Participation Procedures**

23 40. The CEQ and federal agencies, including USDA and its sub-agencies, have since
24 NEPA’s enactment recognized that the solicitation of public input throughout the NEPA process
25 is a vital and practicable means to help ensure that agencies identify and consider potentially
26 significant environmental impacts, weigh reasonable alternatives and mitigation measures to
27 avoid or reduce impacts, and arrive at well-informed decisions that consider environmental
28 values. As the Supreme Court has recognized, the EIS plays an important “informational role”

1 not just for decisionmakers but for the public: the EIS “gives the public the assurance that the
2 agency has indeed considered environmental concerns in its decisionmaking process, and,
3 perhaps more significantly, provides a springboard for public comment.” *Robertson*, 490 U.S. at
4 349 (cleaned up).

5 41. Two months after NEPA’s enactment, President Nixon issued an Executive Order
6 directing agencies to develop procedures for public involvement to carry out NEPA’s
7 environmental objectives:

8 Consonant with Title I of the National Environmental Policy Act of 1969 ..., the
9 heads of Federal agencies shall ... [d]evelop procedures to ensure the *fullest*
10 *practicable provision of timely public information and understanding of Federal*
11 *plans and programs with environmental impact in order to obtain the views of*
12 *interested parties*. These procedures shall include, whenever appropriate,
13 provision for public hearings, and *shall provide the public with relevant*
14 *information, including information on alternative courses of action*.

15 Executive Order 11514, *Protection and Enhancement of Environmental Quality*, 35 Fed. Reg.
16 4247, § 2(b) (Mar. 5, 1970) (emphasis added).

17 42. Executive Order 11514 remains in effect today.

18 43. Since shortly after NEPA’s enactment in 1970, and until USDA’s issuance of the
19 Interim Final Rule in 2025, USDA, the Forest Service, and APHIS—like other federal
20 agencies—required the agencies to provide for public notice and comment on draft EISs.

21 *Council on Environmental Quality NEPA Regulations*

22 44. In 1971, CEQ issued guidelines advising agencies to publish and consider public
23 comments on a draft EIS. 36 Fed. Reg. 7724, 7726 (Apr. 23, 1971) (noting final EISs shall
24 include “all comments received thereon by the responsible agency from Federal, State, and local
25 agencies and from private organizations and individuals”). In 1973, CEQ revised the guidelines,
26 fleshing out public input procedures. The guidelines advised agencies to “[p]rovide for
27 circulation of draft [EISs] to other Federal, State, and local agencies and for their availability to
28 the public,” “consider the comments of the agencies and the public,” and “issue final [EISs]
responsive to the comments received.” 38 Fed. Reg. 20550, § 1500.2(b)(1), (2), & (3) (Aug. 1,
1973).

1 55. In 2008, the Forest Service revised its NEPA procedures and codified them in the
2 Code of Federal Regulations. 73 Fed. Reg. 43084 (July 24, 2008). The Forest Service said the
3 regulations “supplement[] and do[] not lessen the applicability of the CEQ regulations,” and that
4 they were “to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR
5 part 1b.” 36 C.F.R. § 220.1(b) (2008). The purpose of the codification was to provide “more
6 visibility” and make the procedures “more readily available to the public, making it easier for the
7 public and interested parties to engage the Forest Service during decisionmaking and to ensure
8 they are following the regulations.” 73 Fed. Reg. at 43084, 43085.

9 56. The 2008 regulations recognized that the Forest Service remained subject to
10 public involvement requirements under the CEQ regulations. *Id.* at 43086; *see also* 36 C.F.R. §
11 220.1(b) (2008). Thus, for example, the Forest Service would be required to make a draft EIS
12 available to the public and invite comment on it. The 2008 regulations also reiterated the duty of
13 the “responsible official” to consider “public and agency comments” in its decisionmaking, as
14 well as “agency responses to those comments.” 36 C.F.R. § 220.4(c)(2) (2008).

15 57. The 2008 regulations also specified that CEQ’s EIS scoping process
16 requirements—including the requirement to solicit public comment on the scope of
17 environmental issues to be addressed for a proposed project—applied to “all Forest Service
18 proposed actions, including those that would appear to be categorically excluded from further
19 analysis and documentation in an EA or an EIS[.]” 36 C.F.R. § 220.4(e)(1) (2008).

20 *Animal and Plant Health Inspection Service NEPA Regulations*

21 58. APHIS’s initial NEPA guidelines, published in 1972, just two years after NEPA’s
22 passage, provided that an EIS would be “prepared in two stages,” with a “draft” that would be
23 subject to “review and comment by other Agencies and the public,” followed by a final EIS that
24 would “reflect[] the results of the draft review process.” 39 Fed. Reg. 40048, 40050 (Nov. 13,
25 1974).

26 59. APHIS revised its NEPA procedures in 1979. *See* 44 Fed. Reg. 50381 (Aug. 28,
27 1979). Those guidelines required each NEPA analysis to “have designated major decision
28

1 points,” which included “completion of a draft EIS” and “evaluation of comments and
2 completion of final EIS.” *Id.* at 50382.

3 60. The 1979 APHIS guidelines also set forth robust public involvement
4 requirements, including that officials would be required to “inform and involve the public” at
5 multiple steps in the NEPA process, through the use of “distribution lists of interested persons,”
6 “direct verbal contact, meetings, printed materials, news media, public notices and hearings, and
7 any other appropriate means of increasing public participation in evaluating the environmental
8 impact of agency actions.” *Id.* at 50383.

9 61. In 1995, APHIS replaced its 1979 NEPA guidelines with regulations codified at 7
10 C.F.R. Part 372. *See* 60 Fed. Reg. 6000 (Feb. 1, 1995). Those regulations specifically required
11 that “[a]ll public and other involvement in APHIS’ environmental impact statement process,
12 including the scoping process, commenting on draft documents, and participation in the
13 preparation of any supplemental documents, will be pursuant to CEQ’s implementing
14 regulations.” 7 C.F.R. § 372.8(b)(1) (1995).

15 62. APHIS revised its NEPA regulations in 2018, but retained their reliance on
16 parallel CEQ and USDA NEPA requirements. *See* 83 Fed. Reg. 24003 (May 24, 2018) (noting
17 “the APHIS regulations supplement the CEQ regulations and the USDA NEPA implementing
18 regulations to take into account APHIS missions, authorities, and decision making”). The
19 explicit requirement to comply with CEQ’s NEPA regulations was recodified at 7 C.F.R. §
20 372.7. *See* 83 Fed. Reg. at 24011. Thus, APHIS’s regulations retained the requirements to
21 publish a draft EIS (per 40 C.F.R. § 1502.9 (2024)) and provide an opportunity for comment on
22 it (per 40 C.F.R. § 1503.1(a)(2)(v) (2024)), as well as the requirement to involve the public in the
23 preparation of an EA “to the extent practicable” (per 40 C.F.R. § 1501.5(f) (2024)).

24 *Congressional Response to NEPA Implementation*

25 63. Congress has reinforced the understanding expressed in CEQ’s and USDA’s prior
26 regulations that public comment is required for draft EISs. For example, in statutes aimed at
27 expediting NEPA reviews, Congress has limited the length of comment periods on draft EISs,
28 based on the premise that notice and comment on draft EISs is required. *See, e.g.*, 42 U.S.C. §

1 4370m-4(d)(1), Fixing America’s Surface Transportation Act (“FAST Act”), Pub. L. No. 114-
2 94, 129 Stat. 1741 (2015) (setting both minimum and maximum lengths for draft EIS comment
3 periods—“not less than 45 days” and “not more than 60 days”—for certain transportation,
4 energy, manufacturing, and other projects); 33 U.S.C. § 2348(g)(2)(A), Water Resources Reform
5 and Development Act of 2014, Pub. L. No. 113–121, title I, § 1005(a)(1), 128 Stat. 1205 (2014)
6 (establishing “a [public comment] period of not more than 60 days” for “acceleration” of water
7 resource development projects); 23 U.S.C. § 139(g)(2)(A)-(B), Safe, Accountable, Flexible,
8 Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109–59, 119 Stat. 1862
9 (2005) (same for “efficient environmental reviews” for highway projects); 49 U.S.C. §
10 47171(m)(2)(A), FAA Reauthorization Act of 2024, Pub. L. No. 118–63, 138 Stat. 1307 (2024)
11 (same for “expedited, coordinated” reviews for aviation projects).

12 64. Likewise, Congress has reinforced the understanding expressed in CEQ’s and
13 USDA’s prior regulations that the preparation of EAs requires public involvement. 16 U.S.C. §
14 6514(g), Infrastructure Investment and Jobs Act, Pub. L. No. 117–58, div. D, title VIII, § 40807,
15 135 Stat. 1097 (2021) (“In accordance with section 102(2) of [NEPA] (42 U.S.C. 4332(2)) and
16 the applicable regulations and administrative guidelines, the Secretary shall provide an
17 opportunity for public comment during the preparation of any environmental assessment or
18 environmental impact statement for an authorized hazardous fuel reduction project.”); *id.* §
19 6592c(c)(3), Pub. L. 117-58, § 40803, 135 Stat. 1113 (requiring same for emergency actions).

20 C. APA RULEMAKING PROCEDURES

21 65. The APA, 5 U.S.C. § 551 *et seq.*, provides general rules governing the issuance of
22 proposed and final regulations by federal agencies. Fundamental to the APA’s procedural
23 framework is the requirement that, absent narrow circumstances, a federal agency publish as a
24 proposal any rule that it is considering adopting, and allow the public the opportunity to submit
25 written comments on the proposal. 5 U.S.C. § 553.

26 66. A “rule” is defined by the APA as “the whole or a part of an agency statement of
27 general or particular applicability and future effect designed to implement, interpret, or prescribe
28

1 law or policy or describing the organization, procedure, or practice requirements of an
2 agency...” *Id.* § 551(4).

3 67. The APA provides that all federal agencies must provide “general notice” of any
4 “proposed rule making” to the public by publication in the Federal Register. *Id.* § 553(b). The
5 publication must, at a minimum, include “(1) a statement of the time, place, and nature of public
6 rule making proceedings; (2) reference to the legal authority under which the rule is proposed;
7 and (3) either the terms or substance of the proposed rule or a description of the subjects and
8 issues involved.” *Id.*

9 68. The APA requires that “the agency shall give interested persons an opportunity to
10 participate in the rule making through submission of written data, views, or arguments with or
11 without opportunity for oral presentation. After consideration of the relevant matter presented,
12 the agency shall incorporate in the rules adopted a concise general statement of their basis and
13 purpose.” *Id.* § 553(c).

14 69. The foregoing APA public notice and comment procedures do not apply to “rules
15 of agency organization, procedure, or practice,” 5 U.S.C. § 553(b)(A), or to “interpretative
16 rules,” *id.* An agency may only short circuit the public notice and comment requirements of the
17 APA if it finds, “for good cause,” that “notice and public procedure thereon are impracticable,
18 unnecessary, or contrary to the public interest.” *Id.* § 553(b)(B).

19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 **A. Executive Order 14154 and CEQ’s Rescission of its Regulations**

21 70. On January 20, 2025, President Trump issued Executive Order 14154, *Unleashing*
22 *American Energy* (Jan. 20, 2025).

23 71. Section 5 of the Executive Order—titled “Unleashing Energy Dominance through
24 Efficient Permitting”—directed CEQ to “propose rescinding CEQ’s NEPA regulations found at
25 40 CFR 1500 *et seq.*” within 30 days of the executive order. EO 14154, § 5(b), 90 Fed. Reg. at
26 8355.

27 72. Section 5 further directed that, once CEQ issued its new NEPA guidance, CEQ
28 “shall convene a working group to coordinate the revision of agency-level implementing

1 regulations for consistency.” *Id.* § 5(c). Section 5 also directed that the CEQ guidance and the
2 agency-level implementing regulations “must expedite permitting approvals,” and that
3 “[c]onsistent with applicable law, all agencies must prioritize efficiency and certainty over any
4 other objectives, including those of activist groups, that do not align with the policy goals set
5 forth in section 2 of this order or that could otherwise add delays and ambiguity to the permitting
6 process.” *Id.*

7 73. Executive Order 14154 states that “[i]t is the policy of the United States ... to
8 guarantee that all executive departments and agencies ... provide opportunity for public
9 comment.” *Id.* § 2(h), 90 Fed. Reg. at 8354.

10 74. Subsequently, CEQ issued an interim final rule rescinding CEQ’s NEPA
11 implementing regulations, effective April 11, 2025. *See* 90 Fed. Reg. 10610 (Feb. 25, 2025).
12 CEQ also issued guidance to federal agencies on NEPA implementing procedures, including
13 NEPA implementation in the absence of CEQ regulations and while agencies revise their NEPA
14 procedures. *See* CEQ, Memorandum for Heads of Federal Departments and Agencies,
15 Implementation of the National Environmental Policy Act (Feb. 19, 2025).¹ CEQ has since
16 conferred and coordinated with federal agencies to guide agency revision of their NEPA
17 procedures.

18 75. CEQ directed all agencies to update their NEPA procedures within 12 months. *Id.*
19 at 7. In the absence of CEQ regulations, CEQ advised agencies that “[w]hile these revisions are
20 ongoing, agencies should continue to follow their existing practices and procedures for
21 implementing NEPA consistent with the text of NEPA, E.O. 14154, and this guidance.” *Id.* at 4.

22 **B. USDA’s Rescission of NEPA Regulations**

23 76. On July 3, 2025, USDA issued an Interim Final Rule without any public notice
24 and comment. 90 Fed. Reg. 29632 (July 3, 2025). The Interim Final Rule rescinded the NEPA

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26 ¹ Available at <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>, superseded by Sept. 29, 2025 Memorandum,
27 available at <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Agency-NEPA-Implementation-Guidance.pdf>.

1 regulations of all USDA sub-agencies and consolidated all agency-wide NEPA procedures into
2 the USDA regulations at 7 C.F.R. Part 1b.

3 77. The regulations enacted through the Interim Final Rule eliminated the
4 requirement to publish a draft EIS, as well as any requirement to solicit input from the public on
5 an EIS. *Compare* 7 C.F.R. § 1b.7(d) (making entirely discretionary whether USDA or its sub-
6 agencies request comments from State, Tribal, or local governments; other agencies; the project
7 applicant; or the public), *with* 7 C.F.R. § 1b.1(a) (1995) (incorporating CEQ regulations) *and* 40
8 C.F.R. §§ 1502.9, 1503.1(a)(2)(v) (2024) (requiring draft EIS and opportunity for public
9 comment).

10 78. In addition, the Interim Final Rule eliminated the requirement for the Forest
11 Service to solicit “scoping comments” on the scope of issues to be addressed in any NEPA
12 review, including an EA or CE. *Compare* 7 C.F.R. § 1b.3(e), (g), *with* 36 C.F.R. § 220.4(e)(1)
13 (requiring scoping for “all Forest Service proposed actions”).

14 79. USDA’s rulemaking provides only a cursory rationale for the removal and/or
15 drastic revision of public participation procedures, stating that “NEPA (the Act itself) does not
16 require publication of a draft EIS,” and that publishing notice of a draft EIS “adds time and
17 unnecessary process.” 90 Fed. Reg. at 29637. The rulemaking does not acknowledge, let alone
18 justify, changes to public participation procedures for EAs and categorical exclusions, and its
19 departure from CEQ’s former public participation requirements, on which those procedures were
20 based.

21 80. USDA’s rulemaking was finalized and made immediately effective as an “interim
22 final rule” without any advance public notice of, or an opportunity to comment on, the rule.
23 USDA determined that notice-and-comment rulemaking was not required on four grounds:

- 24 a. First, USDA’s rulemaking states that the rule falls within the APA exception
25 for “rules of agency organization, procedure, or practice,” 5 U.S.C. §
26 553(b)(A), because they are purportedly “purely procedural” rules that
27 “prescribe how USDA will conduct NEPA reviews.” 90 Fed. Reg. at 29644.
28

1 83. USDA's rulemaking was implemented immediately, without any publication of a
2 general notice of proposed rulemaking in the Federal Register and without any opportunity for
3 interested persons to participate in the rulemaking process before the rule went into effect, as
4 required by the APA, 5 U.S.C. § 553(b) and (c).

5 84. USDA's determinations that it need not provide advanced publication of a
6 proposed rule, nor provide the public with an opportunity to participate, nor delay the rule's
7 effective date, because the Interim Final Rule establishes "rules of agency, organization,
8 procedure, or practice," 5 U.S.C. § 553(b)(A), "interpretative rules," and/or "general statements
9 of policy," *id.*, are arbitrary, capricious, and not in accordance with law, in violation of the APA,
10 5 U.S.C. § 706(2).

11 85. Likewise, USDA's determinations that it need not provide advanced publication
12 of a proposed rule, nor provide the public with an opportunity to participate in USDA's
13 rulemaking process, nor delay the rule's effective date, because doing so would be either
14 impracticable, unnecessary, or contrary to the public interest is arbitrary, capricious, and not in
15 accordance with law, in violation of 5 U.S.C. § 706(2).

16 CLAIM TWO

17 (Failure to Provide a Reasoned Explanation for the Substantial Curtailment of Public 18 Participation Requirements within the Interim Final Rule)

19 86. Plaintiffs incorporate by reference all paragraphs listed above.

20 87. USDA's rulemaking fails to provide a reasoned explanation for the evisceration
21 of public participation in NEPA reviews, as embodied in the Interim Final Rule.

22 88. Moreover, USDA's rulemaking fails to explain how the Interim Final Rule is
23 consistent with Executive Order 11514 § 2(b), Executive Order 14154 § 2(h), and with NEPA's
24 requirements that federal agencies "to the fullest extent possible," 42 U.S.C. § 4332, (1) "identify
25 and develop methods and procedures ... which will ensure that presently unquantified
26 environmental amenities and values may be given appropriate consideration in decision making
27 along with economic and technical considerations," *id.* § 4332(2)(B); (2) "in cooperation ... with
28 concerned public and private organizations ... use all practicable means and measures ... in a

1 manner calculated to” serve NEPA’s environmental objectives, *id.* § 4331(a), and (3) “use all
2 practicable means ... to improve and coordinate Federal plans, functions, programs, and
3 resources” for NEPA’s environmental protection aims, *id.* § 4331(b).

4 89. USDA’s unexplained evisceration of public participation procedures via the
5 Interim Final Rule was also arbitrary and capricious because USDA’s rulemaking failed to
6 acknowledge and adequately explain the departure from USDA’s longstanding approach to
7 NEPA implementation, and failed to consider the longstanding recognition that public
8 involvement is essential to the proper functioning of NEPA, and that public involvement in
9 NEPA reviews is a necessary and practicable means of achieving NEPA’s aims.

10 90. USDA’s failure to rationally explain its rulemaking is arbitrary, capricious, and
11 not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2) and NEPA, 42 U.S.C. §§
12 4331(a)-(b), 4332(2)(B).

13 **RELIEF REQUESTED**

14 Plaintiffs respectfully request that the Court:

15 (A) Declare that USDA violated the Administrative Procedure Act in the development
16 and issuance of the Interim Final Rule due to its failure to provide public notice and comment on
17 the Interim Final Rule and failure to provide a reasoned explanation for changes to USDA’s
18 public participation procedures adopted in the Interim Final Rule, including its removal of
19 requirements for public notice and comment on draft EISs, public participation in EAs, and
20 public scoping on EAs and CEs for Forest Service projects;

21 (B) Declare that USDA’s Interim Final Rule violated the APA and NEPA, 42 U.S.C.
22 §§ 4331(a)-(b), 4332(2)(B), by failing to consider relevant factors under NEPA;

23 (C) Vacate the Interim Final Rule, including its rescission of regulations at 36 C.F.R.
24 Part 220 and 7 C.F.R. Part 372, as well as its revision of regulations at 7 C.F.R. Part 1b;

25 (D) Issue an injunction ordering that, until and unless they comply with the APA,
26 USDA and its sub-agencies shall operate under the NEPA procedures regarding public
27 participation that USDA applied before the Interim Final Rule took effect;

1 (E) Retain jurisdiction of this matter for purposes of enforcing and effectuating the
2 Court's order;

3 (F) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert
4 fees; and

5 (G) Grant such further relief as the Court deems just and proper.

6
7 Respectfully Submitted,

8 /s/ Wendy Park

9 Wendy Park (Cal. Bar No. 237331)
10 CENTER FOR BIOLOGICAL DIVERSITY
11 2100 Franklin, Suite 375
12 Oakland, CA 94612
13 Tel: 510-844-7138
14 Email: wpark@biologicaldiversity.org

15
16 Brandon Jones-Cobb (AK Bar No. 1610078)
17 (*pro hac vice* pending)
18 CENTER FOR BIOLOGICAL DIVERSITY
19 P.O. Box 1178
20 Homer, AK 99603
21 Phone: 564-397-0830, ext. 478
22 Email: bjonescobb@biologicaldiversity.org

23
24 Hannah Connor (VA Bar No. 74785)
25 (*pro hac vice* pending)
26 CENTER FOR BIOLOGICAL DIVERSITY
27 1411 K St. NW, Suite 1300
28 Washington, DC 20005
Phone: 202-681-1676
Email: hconnor@biologicaldiversity.org

*Attorneys for Plaintiffs Center for Biological
Diversity and Sierra Club*

Nathaniel Shoaff (Cal. Bar No. 256641)
Elizabeth Benson (Cal. Bar No. 268851)
SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612
Phone: 415-977-5610
Email: nathaniel.shoaff@sierraclub.org
Email: elly.benson@sierraclub.org

Attorneys for Sierra Club

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