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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 SPRAWLDEF and SIERRA CLUB, non-profit
12 corporations,

13 Plaintiffs,

14 vs.

15 FEDERAL EMERGENCY MANAGEMENT
16 AGENCY, a federal government entity, and KAREN
ARMES, in her official capacity,

17 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

VIOLATION OF NATIONAL ENVIRON-
MENTAL POLICY ACT (NEPA)

[42 USC §§ 4321 *et seq.* (NEPA); 5 USC §§
701-706 (APA) ; Executive Order 13112]

18
19 **I. INTRODUCTION**

20 1. In its final Environmental Impact Statement (EIS) for funding fire-prevention in the East
21 Bay Hills of Alameda County, defendant Federal Emergency Management Agency (FEMA) dropped
22 controversial plans and discussion around restoring native Hills habitat by removing the highly
23 flammable, non-native eucalyptus tree “over-story.”

24 2. Instead FEMA’s final EIS adopts an undefined “unified methodology” which fails entirely
25 to describe and weigh “thinning” the eucalyptus versus long-term restoration of native East Bay Hills
26 shrubs and plant communities with more manageable fire behavior characteristics. The “unified
27 methodology” was not analyzed in the draft EIS and therefore fails the primary public disclosure
28 purpose of the EIS under the National Environmental Policy Act (NEPA).

1 3. Plaintiffs SPRAWLDEF (Sustainability, Parks, Recycling and Wildlife Legal Defense
2 Fund) and Sierra Club file this action to require forthright environmental review of FEMA’s plans to
3 fund fire protection at the East Bay lands of local grant applicants, the state California Department of
4 Emergency Services, the East Bay Regional Park District, City of Oakland and University of
5 California, Berkeley (“local agencies” or “applicants”).

6 4. Under NEPA, FEMA was required to conduct environmental review of the project, titled
7 “Hazardous Fire Risk Reduction, East Bay Hills, California” (the “Project”).

8 5. A key fire prevention goal of the draft EIS involved replacing the highly flammable
9 eucalyptus and pine “overstory” with natural plant community restoration. “Torching” and long-
10 distance embers associated with the eucalyptus overstory create high fire risk to homes and life, such as
11 that which resulted in the disastrous 1991 Oakland Hills fire.

12 6. A Biological Opinion produced by the U.S. Fish & Wildlife Service makes clear that
13 removal of the eucalyptus overstory and native species restoration is required not only to prevent long-
14 term fire hazard and save public funds, but also to compensate for habitat impacts to several at-risk
15 species by restoring their native environment.

16 7. After a highly charged period of public comment on the draft EIS, the final document
17 obscured good-faith disclosure behind the undefined “unified methodology” that appears to adopt
18 thinning instead of native restoration in arbitrarily selected locations of the project areas.

19 8. The final EIS also failed to consider alternatives to creating 1,187 acres of new weedy
20 annual grassland along “fuel breaks” at the interface with development. Restoration to native perennial
21 grassland with low-growing, native forbs would provide reliable whipsnake habitat, and, when
22 established, reduce long-term maintenance costs.

23 9. FEMA instead selected an un-analyzed project alternative not identified in the DEIS, not
24 addressed in the USFWS Biological Opinion, and not subjected to the public review NEPA requires.

25 10. Finally FEMA has used the environmental review process to arbitrarily remove UCB’s
26 grant funding for work at Frowning Ridge. Withdrawing funding for fuel management in that area
27 increases overall fire risk to residential areas, and reduces habitat restoration potential. But the EIS
28 failed to evaluate the impact of removing Frowning Ridge upon the overall project objectives.

1 **II. PARTIES**

2 11. Plaintiff SPRAWLDEF (Sustainability, Parks, Recycling and Wildlife Legal Defense
3 Fund), is a California public benefit corporation dedicated to parks and preservation. Its directors, all
4 East Bay residents, regularly utilize the East Bay Hills for recreation. SPRAWLDEF legal action has
5 promoted sustainable waste management and recycling, enhanced Bay Area public park use and
6 preserved wildlife habitat in Northern California.

7 12. Plaintiff Sierra Club is a national nonprofit organization of approximately 625,000
8 members, roughly 147,000 of whom live in California. The Sierra Club is dedicated to exploring,
9 enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of
10 the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the
11 quality of the natural and human environment; and to using all lawful means to carry out these
12 objectives. The Sierra Club's concerns encompass protection of the natural plant communities and
13 native habitats of the East Bay Hills project area. Its members frequently visit and enjoy recreation in
14 the East Bay Hills. It brings this action on behalf of itself and its members.

15 13. With other mainstream environmental groups, plaintiffs maintain that urban wildfire risk
16 reduction can be achieved while establishing native vegetation compatible with habitat-conserving
17 goals, as documented in a 2009 Environmental Green Paper prepared by the San Francisco Bay Chapter
18 of the Sierra Club, East Bay Chapter of the California Native Plant Society and the Golden Gate
19 Audubon Society.

20 14. Defendant Federal Emergency Management Administration (FEMA) is a federal agency
21 with Oakland offices, charged with emergency response which includes fire protection. FEMA acted as
22 lead agency for EIS preparation here, and for project funding under grants to the sub-applicants.

23 15. Defendant Karen Armes, serving as the Acting Regional Administrator for Region IX of
24 FEMA, signed the EIS Record of Decision for the East Bay Hills project and EIS on February 26,
25 2015. She is sued here in her official capacity.

1 **III. JURISDICTION AND VENUE**

2 16. Federal court jurisdiction of the federal law questions herein is founded upon Title 28
3 USC sections 1331 and 1343, and the Administrative Procedure Act (“APA”), 5 USC §§ 701-706. An
4 actual controversy exists between the parties within the meaning of 28 USC §2201(a). This Court may
5 grant declaratory relief and additional relief, including an injunction, pursuant to 28 USC §§ 2201-2202
6 and 5 USC §§ 705-706.

7 17. The failure of respondent FEMA to prepare a proper EIS and to otherwise comply with
8 NEPA was arbitrary, capricious, and not in accordance with the procedures required by law, and is thus
9 subject to judicial review under the APA. 5 USC §§ 701-706.

10 18. Plaintiffs’ claims herein arose in Alameda and Contra Costa counties, California.
11 Plaintiffs, their members or officers, live in the San Francisco Bay area or conduct their activities there.
12 FEMA’s Region IX Headquarters is located at 1111 Broadway, Suite 1200, Oakland. The project site is
13 in Alameda County. Therefore, venue lies in the Northern District of California pursuant to 28 USC
14 §1391(b)(2).

15
16 **IV. FACTUAL BACKGROUND**

17 19. Plaintiffs make the following allegations based upon information and belief. The para-
18 graphs below will refer to information in numerous documents relating to this lawsuit, all of which will
19 be duly filed with this court as part of the record of proceedings, here incorporated by reference.

20 20. Residential development in the “East Bay Hills” along the east side of the San Francisco
21 Bay is subject to grave and unique fire threats, due to a very long urban-wildland interface, steep
22 topography, accumulation of very low-moisture fuels during the prolonged rainless season, and
23 periodic, recurring conditions of extremely hot, dry “Diablo” winds causing extreme fire behavior.
24 Thousands of homes adjoin undeveloped natural areas which have repeatedly and disastrously been
25 engulfed in fires.

26 21. Section 5.2 of the EIS states that one of the project’s objectives is to reduce torching and
27 crown fire in canopy groups of trees such as eucalyptus and Monterey pine because these non-native
28 trees can cast off burning embers capable of being carried up to 2,000 feet in distance.

1 22. A second objective in the FEMA EIS is to reduce flame lengths to below eight feet in
2 project areas near homes. The EIS considers residential-edge fuel breaks of sufficient width in
3 combination with homeowner defensible space to provide safe access for firefighters defending ember
4 resistant homes.

5 23. The fuel break areas include more than 1,500 acres to protect 5,081 homes. The proposed
6 fuel break lands would be converted to a mosaic of native shrubs and grass along the residential
7 interface. In all cases, the homes at risk are at the leading edge to wildfires that would spread further in
8 residential areas, as did the 1991 fire.

9 24. In response to that threat, the local agency applicants owning those undeveloped lands
10 sought federal disaster money for activities to mitigate wildland fire hazards on public lands. Those
11 efforts are inextricable from the environment where they would take place.

12 25. The resulting environmental conditions are the issue undertaken by the Environmental
13 Impact Statement (EIS) which is the subject of this action.

14 **1. The East Bay Hills environmental setting.**

15 26. The East Bay Hills rise behind the heavily-developed Bay Plain, the lower lands
16 adjoining the San Francisco Bay. The undeveloped Hills include lengthy areas along gusty ridges
17 where fire can spread between residential development and nearby open space.

18 27. Early in the last century, the natural conditions through much of the undeveloped Hills
19 were altered by the introduction of non-native eucalyptus and Monterey pine trees. Millions of
20 eucalyptus were planted for logging under the profit visions of speculators. Because of the invasive
21 nature of the eucalyptus and their height dominance over the native species, the eucalyptus has
22 increased in density and spread prolifically, choking out much of the native understory. The highly
23 flammable eucalyptus tops are subject to torching; its constantly shed bark provides a ubiquitous fire
24 tinder.

25 28. The 45 varied project areas involved in the grant funding administered by FEMA for the
26 subject project have individual features and different owners, the various local agency applicants.

27
28

1 **2. The environmental impacts.**

2 29. Environmental groups, including SPRAWLDEF and the Sierra Club, urged a place-by-
3 place restoration of native plant communities and their natural more-manageable fire behavior and fuel
4 characteristics.

5 30. Environmentalists strongly encouraged the protection of threatened species—especially
6 the threatened California red-legged frog, the Alameda whipsnake and the pallid manzanita
7 (*Arctostaphylos pallida*). The California red-legged frog is the largest native frog in the western United
8 States, ranging from 1.5 to 5.1 inches in length. The very limited East Bay native scrub is critical
9 habitat for the Alameda whipsnake. The pallid manzanita is limited entirely to maritime chaparral in
10 Alameda and Contra Costa counties in California, growing naturally nowhere else in the world. Nearly
11 75 percent of all pallid manzanitas and their natural habitat are located within East Bay Regional Park
12 District lands covered by the FEIS (USFWS BO, page 56).

13 31. The biological effects of the project are detailed beginning at page 88 of the Service’s
14 Biological Opinion. They include short-term threats to the red-legged frog during project activity, but
15 enhancement of the species’ habitat by removal of eucalyptus in certain project areas (page 92).
16 “Removal of eucalyptus would also benefit California red-legged frogs by increasing the amount of
17 time that aquatic habitats within the action area remain wet.” Page 95.

18 32. Another effect of the project, according to the Biological Opinion, is adverse impact
19 upon the threatened Alameda whipsnake. Again, while the actual project will be detrimental to the
20 whipsnake, its habitat will benefit in proportion to the removal of eucalyptus. (See BO, table 19 at page
21 112.)

22 33. A third effect of the project, according to the Biological Opinion, is that the fuel
23 management actions proposed in the FEMA EIS are “likely to adversely affect” the pallid manzanita
24 (see BO, page 4) due to direct loss of individuals, habitat alteration, mortality from herbicide use,
25 spread of pathogens, and altered competition with other nearby vegetation.

26 **3. The unified methodology**

27 34. FEMA stated in its February 2015 Record of Decision that the “unified methodology”
28 employed the following major points:

1 35. “The fuels reduction methodology presented in the draft EIS was revised in the final EIS
2 for portions of the four UCB and Oakland treatment areas, and extended to those treatment areas the
3 methods and approaches described for EBRPD. This ‘unified methodology’ was developed to more
4 closely align implementation of the project with the purpose and need for the project, and responded to
5 a number of public comments on the draft EIS. The wildfire hazard reduction in the unified
6 methodology is equivalent in effectiveness to the methodologies described in the draft EIS.

7 36. “The unified methodology would be applied to portions of four high fire risk treatment
8 areas that are in close proximity to structures: Strawberry Canyon (UCB), Claremont Canyon (UCB),
9 North Hills-Skyline (Oakland), and Caldecott Tunnel (Oakland). The emphasis in these areas under the
10 unified methodology focuses on temporary thinning rather than natural restoration, and by the end of 10
11 years complete removal to achieve both fire risk reduction and whipsnake mitigation goals.”

12 37. While the “unified methodology” term is used to explain a plan to thin rather than
13 remove the flammable overstory, the term is never adequately described. The closest the EIS comes to
14 describing how the “unified methodology” works is found at page 3-26 (Section 3.4.2.1.1) of the EIS:
15 “The unified methodology would result in removal of most of the eucalyptus canopy in the first 5 years
16 of the 10-year project timeframe of the project to be conducted with FEMA funding.”

17 38. After the 10-year project period: “Additional tree removal after year 5 would be
18 implemented based on the results of monitoring under the MMP.”

19 39. Thus, under the “unified methodology,” the presence of flammable eucalyptus and
20 overstory would be evaluated at five years, but no consideration is given for assuring that the overstory
21 hasn’t returned at the end of the 10-year project period. Nothing is mentioned at all about what would
22 be done if the overstory returns by the end of the 10-year period. The EIS “unified methodology”
23 would allow project areas to revert to the highly flammable overstory, again shading out the native
24 habitat.

25 40. Despite the vagueness of the “unified methodology,” the Record of Decision concludes
26 that it is not an EIS change significant enough to warrant supplementing the EIS descriptions and
27 analysis.

28

1 41. According to the FEMA Decision: “Implementation of the unified methodology does not
2 trigger the need for a supplemental EIS because the proposed action is not substantially changed and no
3 significant new circumstances are created by its implementation. Specifically, implementation of the
4 unified methodology does not change the areas or acreage treated, and it does not change the final out-
5 comes where applied. The final EIS concluded that no increase in the described effects would result
6 from the unified method.”

7 **4. The USFWS Biological Opinion**

8 42. Because of the potential impact to protected species, pursuant to Section 7 of the federal
9 Endangered Species Act, FEMA formally consulted with the U.S. Fish & Wildlife Service.

10 43. FEMA and the local applicant agencies had reserved any final mitigation pending the
11 Biological Opinion forthcoming from the USFWS. The Biological Opinion was provided May 10,
12 2013, after completion of the draft EIS, released May 3, 2013. (See page 2 of the Record of Decision.)

13 44. The Biological Opinion, at page 16, declares the pre-“unified methodology” to be: “The
14 priority of the proposed project within EBRPD is to reduce fuel load and sources by suppressing the
15 density of undesirable invasive plant species within the disturbed treatment areas. Such actions would
16 take place through implementation and long term maintenance of tree and brush removal (mechanical
17 and hand), herbicide treatment, and although not funded by FEMA, animal grazing and pile burning.”

18 45. The Biological Opinion, produced before incorporation of the “unified methodology”
19 into the EIS, clearly requires eucalyptus and pine removal, not merely thinning, to foster the native
20 scrub species which have more manageable fire behavior and fuel characteristics. Thus at page 17, the
21 Opinion states: “Brush habitat would be maintained as viable species habitat, increasing the quality of
22 the habitat where possible by removing invasive species, and connecting existing brush habitat with
23 viable wildlife corridors.”

24 46. The Biological Opinion does not consider the apparent one-time, limited activity implicit
25 in the “unified methodology.”

26 47. Furthermore, the Fish & Wildlife Service, in its Opinion, recognized that thinning of the
27 eucalyptus cover does nothing to promote the native habitat beneath. Thus the Opinion states, at page
28

1 115, that “the Service does not believe that any suitable Alameda whipsnake habitat will be created
2 where eucalyptus forest is only thinned.”

3 48. Further, at page 125, the Opinion states: “Thinning of eucalyptus by EBRPD may
4 provide some minimal benefit to Alameda whipsnake critical habitat in the short-term; however, the
5 remaining eucalyptus trees in the area would continue as a seed source and would likely encroach upon
6 Alameda whipsnake critical habitat unless continuously maintained by herbicides and logging.”

7 49. An essential element of the East Bay Regional Parks Pallid Manzanita Management Plan
8 is to remove non-native vegetation and other vegetation that threaten to outcompete pallid manzanita
9 (USFWS BO, page 126).

10
11 **CLAIM FOR RELIEF**

12 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT AND APA**

13 (42 U.S.C. §§ 4321 et seq, 5 U.S.C. §§ 701 et seq)

14 50. Plaintiffs incorporate all previous allegations as if fully set forth, and for a claim for
15 relief, allege as follows:

16 51. Defendants violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321
17 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, by failing to properly
18 describe and evaluate alternatives associated with the invasive, non-native overstory species and the
19 creation of long-term, stable native plant communities.

20 52. NEPA requires federal agencies to examine “to the fullest extent possible” proposed
21 major federal actions that will “significantly affect the quality of the human environment.” 42 U.S.C.
22 §4332. Environmental Impact Statements, under NEPA, must provide a “full and fair discussion of
23 significant environmental impacts” expected from the proposed project. 40 C.F.R. §1502.1.

24 53. The EIS prepared by defendant Federal Emergency Management Agency failed to
25 provide a “full and fair discussion” of the environmental implications of its federal grant funding to the
26 California Office of Emergency Services on behalf of the University of California, the City of Oakland,
27 and the East Bay Regional Parks District (“Park District”) and its decision should therefore be vacated
28 and voided. Such failure includes but is not limited to the following shortcomings:

1 **1. The vague and arbitrary “unified methodology” fails to describe and analyze alternatives.**

2 54. Because of the EIS’s sudden adoption of the vague “unified methodology,” it fails to
3 directly evaluate—head-to-head—the alternative benefits and consequences between merely thinning
4 eucalyptus versus complete removal followed by long-term re-establishment of native plant
5 communities with less extreme fire behavior.

6 55. Since the USFWS Biological Opinion was finalized in May of 2013, the information of
7 the 2010 Park District EIR—which the “unified methodology” explicitly adopts—should have been
8 supplemented with the Opinion’s significant new information and project description resulting from the
9 three following USFWS Biological Opinion Conservation recommendations:

10 56. “FEMA, UCB, Oakland, and EBRPD should promote the eradication of non-native
11 eucalyptus, Monterey pine, Monterey cypress, and French broom within and near suitable habitat for
12 the Alameda whipsnake and Presidio clarkia.

13 57. “FEMA, UCB, Oakland, and EBRPD should encourage or require the use of appropriate
14 California native species in revegetation and habitat enhancement efforts.

15 58. “FEMA, UCB, Oakland, and EBRPD should manage scrub, grassland, and oak
16 woodland habitats for the benefit of the Alameda whipsnake.”

17 59. The final EIS fails to recognize such mandates from the Biological Opinion. And the
18 final EIS, lacking description of the “unified methodology,” omits analysis of this vaguely-described
19 thinning alternative.

20 60. NEPA requires all federal agencies supply draft or final EISs if there are “significant new
21 circumstances or information relevant to environmental concerns and bearing on the proposed action or
22 its impacts.” *Marsh v. Oregon Natural Res. Council* (1989) 490 U.S. 360, 372.

23 61. FEMA failed to meet its duty here by ignoring the significant new information generated
24 by the Biological Opinion. Instead, FEMA’s final EIS failed to discuss the differences between over-
25 story “thinning” versus complete removal and native restoration and the clearly different and significant
26 potential impacts of these alternatives, which the Biological Opinion identified in the above paragraphs.

27 62. FEMA also failed to analyze alternatives in light of the Biological Opinion where it
28 vaguely sets out “fuel break” areas in the final EIS. Native species alternatives are ignored.

1 **2. Failure to consider the full period and area affected by the project.**

2 63. The EIS review by FEMA, the USFWS, and the Park District was confused by disjointed
3 project time periods and the action’s acreage limits. The FEMA grant timeline for project establishment
4 is only 10 years, the Park District 2010 Plan EIR is viewed as a 25-year program plan, while USFWS
5 interest in habitat and species recovery is not time-limited.

6 64. The stated acreage for the Park District 2010 Plan EIR is for only 3,500 acres scattered
7 through 13,819 acres found in nine different regional parks. FEMA analyzed 998 proposed action
8 acres, and 1,060 connected action acres. The USFWS analyzed 998 project acres and 2,374
9 interconnected acres. The final EIS also failed to evaluate omitting the Frowning Ridge area.

10 65. The 2010 Park District EIR also failed to discuss a unified approach. Moreover, it did
11 not discuss the vital question of “fuel breaks” which was added in the FEMA EIS.

12 66. Time and acreage limits resulted in an incomplete analysis for fire hazard reduction,
13 long-term vegetation management to create habitat for three federally protected species, and for
14 undeveloped lands that are dedicated in perpetuity as parkland. While called a “unified” approach, it is
15 not. Whatever it might be called, the final EIS is a significant, unanalyzed departure from the project
16 analyzed by the Park District in its 2010 EIR for its activities, and from the earlier draft EIS.

17 67. Failure to consider the project impacts beyond the 10-year funded window ignored rea-
18 sonably likely natural evolution after the 10 years, during which time native communities will again be
19 subject to the invasive overstory. Fire risk is certain to be altered for better or worse depending upon
20 which never-presented alternatives are chosen for maintaining or not maintaining the project area.

21 **3. Failure to identify inconsistencies with the Executive Order on Invasive Species.**

22 68. A federal EIS must comply with the Executive Order on Invasive Species. Executive
23 Order 13112, February 3, 1999 (EO). This order is intended to prevent the introduction of invasive
24 species and provide for their control and to minimize the economic, ecological, and human health
25 impacts that invasive species cause.

26 69. The order directs federal agencies to expand and coordinate their efforts to combat the
27 introduction and spread of plants and animals not native to the United States. It applies to all federal
28 agencies whose actions may affect the status of invasive species.

1 70. Furthermore, 40 C.F.R. §1502.16 and §1506.2, require agencies to “discuss” project
2 alignment with other environmental laws. Thus 40 C.F.R. § 1502.16(c), states that an EIS shall discuss
3 possible conflicts “between the proposed action and the objectives of Federal, regional, State, and local
4 (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area
5 concerned.”

6 71. “Where an inconsistency exists, the statement should describe the extent to which the
7 agency would reconcile its proposed action with the plan or law.” 40 C.F.R. §1506.2(d).¹

8 72. The EIS for FEMA’s East Bay fire protection funding does not demonstrate compliance
9 with the Executive Order on Invasive Species that it analyze the project implications to the invasive
10 eucalyptus overstory.

11 73. Under the EO, federal agencies cannot authorize, fund, or carry out actions that they
12 believe are likely to cause or promote the introduction or spread of invasive species in the United States
13 or elsewhere unless all reasonable measures to minimize risk of harm have been analyzed and con-
14 sidered. Federal funds cannot be used for construction, revegetation, or landscaping activities that
15 purposely include the use of known invasive species.

16 74. Determinations of the likelihood of introducing or spreading invasive species and a des-
17 cription of measures being taken to minimize their potential harm should be part of any process
18 conducted to fulfill agency responsibilities under NEPA. Considerations of invasive species should
19 occur during all phases of the environmental process to fulfill the requirements of NEPA.

20 75. Under the Executive Order, NEPA analysis should rely on each state’s noxious weed list
21 to define the invasive plants that must be addressed and the measures to be implemented to minimize
22 their harm.

23 76. Eucalyptus is listed as a “moderately” invasive species in California. [http://www.cal-
24 ipc.org/ip/inventory/eucalyptus.php](http://www.cal-ipc.org/ip/inventory/eucalyptus.php).

25 77. The “unified methodology” considered in the EIS, promotes the spread of eucalyptus
26 because it allows its re-growth throughout “unified” project areas after the 10-year FEMA period.

27
28 ¹ See “A ‘Full and Fair’ Discussion of Environmental Impacts in NEPA EISs: The Case for Addressing the Impact of Substantive Regulatory Regimes,” Sarah Langberg, Yale Law Journal, Vol. 124, No. 716, December 2014.

1 Along with future native habitat degradation, the dangerous fire conditions arising from eucalyptus will
2 return.

3 78. A proper area-by-area comparison between thinning versus restoration of the native
4 understory is necessary to comply with the Executive Order, including in the fuel break areas where
5 nonnative grasses would proliferate.

6 79. FEMA’s decision to award grants to the local agency applicants was arbitrary,
7 capricious, and an abuse of discretion, not in accordance with law, and without observance of
8 procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2). Therefore, the EIS
9 Record of Decision should be vacated and FEMA ordered to remedy the final EIS defects, with the
10 grant awards to the local agency applicants enjoined until then.

11
12 **PRAYER**

13 WHEREFORE, Plaintiffs pray:

14 1. That the Court declare the FEMA Record of Decision and its supporting EIS to be a
15 violation of NEPA and enjoin the grant funding until the EIS is corrected to directly describe and
16 evaluate the invasive eucalyptus and Monterey pine and the impacts of alternatives, including native
17 restoration and overstory thinning;

18 2. For such injunctive and declaratory relief as in the Court’s judgment is necessary to assure
19 the Project EIS fully evaluates the project’s compliance with the Executive Order on Invasive Species,
20 including the requirement that the NEPA analysis comply with the Executive Order’s mandate to
21 maximize eucalyptus reduction in the project areas;

22 3. For costs of the suit and attorney’s fees; and

23 4. For other and further relief as the court finds proper.

24
25 DATE: May 26, 2015

_____ /s/ _____
KELLY T. SMITH
Attorney for Plaintiffs
SPRAWLDEF and SIERRA CLUB