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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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PUTATIVE INTERVENORS' BRIEF  
IN SUPPORT OF THEIR MOTION  
TO INTERVENE

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## INTRODUCTION

The Town of Paradise, California, Butte County, California, Plumas County, California, the Rural County Representatives of California, American Forest Resource Council, National Alliance of Forest Owners, Federal Forest Resource Coalition, California Forestry Association, Montana Wood Products Association, Oregon Forest Industry Council, Washington Forest Protection Association, California Farm Bureau, California Women for Agriculture, and National Wildfire Suppression Association (collectively, Putative Intervenor(s)), move to intervene as defendants in this case, which broadly seeks to enjoin the U.S. Forest Service (Forest Service) from nationwide aerial application of fire retardant. Putative Intervenor(s)' interests in this litigation are unique and of fundamental importance: they represent the communities and industries impacted by wildfires that have spread across national forests before decimating homes, businesses, private timberlands, and other non-federal interests. The aerial application of fire retardant is part of Forest Service's firefighting strategy, and it unquestionably reduces fire's rate of spread, intensity, and danger to the public. An injunction that removes this critical tool is certain to undermine health and safety and cause economic harm to communities and businesses navigating the constant threat of wildfire.

While the Forest Service ably defends the aerial deployment of fire retardant, which is consistent with the federal government's management goals, Putative Intervenor(s) represent the human and business interests on the front lines. In addition to communities recently devastated by wildfires, Putative Intervenor(s) also include trade associations of forest products companies that own lands

adjacent to national forests or purchase timber from the Forest Service and other federal agencies, as well as organizations that support farming communities and an organization of private firefighters that contract with federal and state agencies. Putative Intervenor's common concern is that significant human and economic losses experienced in recent fires will compound exponentially if the Court enjoins the Forest Service from using retardant when necessary to protect human life, homes, private lands, and the environment.

Plaintiff Forest Service Employees for Environmental Ethics (FSEEE) recently moved for summary judgment seeking a nationwide injunction against the aerial application of fire retardant by the Forest Service. (Pl. Mot. for Summ. J., Doc. 6.) Plaintiff contends that aerial deployment of fire retardant *sometimes* results in fire retardant being discharged into waters of the United States, and that this violates the Clean Water Act because the Forest Service lacks a National Pollutant Discharge Elimination System (NPDES) permit for such discharges. (Pl. Br. in Supp. of Mot. Summ. J. (Pl. Br.), Doc. 7 at 2–3.)

The Forest Service opposes summary judgment. (Forest Serv. Resp. in Opp'n to Pl. Mot. for Summ. J. (Forest Serv. Opp'n), Doc. 11.) On the facts, the Forest Service explains that, of the fire retardant dropped from aircraft to stop the spread of dangerous and rapidly moving wildfire, only a small fraction of it reaches waters. Additionally, the Forest Service is actively working with the Environmental Protection Agency (EPA) and state agencies on a general permit for such discharges. (*Id.* at 5.) Because the processing time for these permits is approximately two and a half years, the Forest Service has entered into a Federal

Facility Compliance Agreement “to address the Forest Service’s discharge of pollutants during aerial fire retardant applications and to require the Forest Service to obtain NPDES permit coverage for discharges to waters.” (*Id.*, Perez Decl., Attach. C-1 at 13.) The Forest Service is thus working toward the permit coverage that Plaintiff seeks. Yet Plaintiff—on the eve of fire season—demands an injunction prohibiting the aerial application of retardant, despite the risks to communities and no matter how much destruction to private and public lands would follow from removing this tool from the Forest Service’s toolbox. Retardant is critical to suppressing fast-moving fires in areas close to communities and where the topography may limit, delay, or preclude ground-based attack.

When filing this lawsuit, Plaintiff acknowledged that any injunction must be consistent with the public interest. (Compl., Doc. 1 at 10 (asking the Court to grant injunctive relief “to compel the Forest Service to comply with applicable environmental statutes, prevent irreparable harm, and *satisfy the public interest*” (emphasis added)).) Although Plaintiff recognized as much in its complaint, it omits further mention of the public interest and equities in its motion. The reason is clear: the public interest plainly does not support compromising the Forest Service’s ability to save human lives, protect natural resources, and protect significant property interests. As the Forest Service explains, it is actively pursuing the NPDES permit through federal and state processes and, in the meantime, the Federal Facilities Compliance Agreement requires that the Forest Service comply with the 2011 Record of Decision. (Forest Serv. Opp’n at 14.) The agency further explains that any injunction must consider *all* factors for injunctive relief,



including the significant public interest and the hardships that will befall the people and businesses that live, work, and prosper in fire country.

Putative Intervenors intervene to ensure the Court has a complete accounting of the severe hardships born by the communities, property owners, and businesses devastated by catastrophic wildfires that spread across National Forest System lands before threatening non-federal lands. To be sure, the Forest Service is adamant that fire retardant “alleviate[s] threats to human life,”<sup>1</sup> but Putative Intervenors provide specific details about the unfortunate tragedy that results when wildfires are not contained. For example, the 2018 Camp Fire began and spread across a portion of the Plumas National Forest in Butte County, California, before burning 18,804 structures and killing 85 people in the Town of Paradise. (Decl. of Kevin Phillips [Paradise] ¶¶ 7, 12.) Paradise was devastated by this fire; it destroyed over 11,000 homes, hundreds of businesses, and five schools. (*Id.* ¶ 8.) For its part, Plumas County, California, was impacted by the second largest wildfire in California history—the 2021 Dixie Fire—which burned almost 1 million acres. (Decl. of Greg Hagwood [Plumas County] ¶¶ 4–5, 8.) Critically, the Forest Service has responsibility for initial attack of wildfires across much of the public *and* private lands within Plumas County. (*Id.*)

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<sup>1</sup> (*Id.* at 28–29 (discussing how use of fire retardant created a buffer between hikers and fire and “had a direct impact on the successful evacuation of the hikers).) *See generally* U.S. FOREST SERV., NATIONWIDE AERIAL APPLICATION OF FIRE RETARDANT ON NATIONAL FOREST SYSTEM LAND, FINAL ENVIRONMENTAL IMPACT STATEMENT (Oct. 2011).

Because wildfires know no jurisdictional boundaries, Putative Intervenor rely on the Forest Service’s firefighting efforts to protect their loved ones and their properties and are directly affected by Plaintiff’s request for a nationwide injunction. Such a drastic remedy, if granted—just months before fire season—would prevent the aerial deployment of fire retardant, notwithstanding the real danger to public safety and private property. Firefighters are doing critical work in fighting wildfires: fires that wreak destruction and cause the tragic and avoidable loss of life and livelihood. Plaintiff’s myopic focus on form over substance ignores this public interest. But the Court must balance the speculative benefits Plaintiff alleges against the substantial hardship that would follow from eliminating effective tools to fight wildfires.

To ensure that this Court is presented with information about the true scope of the public interest, the severe costs suffered by people, communities, and businesses when the fight against wildfires is lost, and the dangers and costs to the public that would result from enjoining the aerial application of fire retardant, Putative Intervenor seek to intervene as defendants under Federal Rule of Civil Procedure 24(a)(2) or, alternatively, Rule 24(b).

### **BACKGROUND ON THE PUTATIVE INTERVENORS AND THEIR INTERESTS**

The **Town of Paradise** (Paradise) is a town in Butte County, California, near the western portion of the Plumas National Forest. An estimated 95 percent of Paradise was destroyed in the 2018 Camp Fire, leading to the loss or damage of 11,000 housing units, 450 commercial buildings, five schools, and thousands of

utility structures. (Phillips Decl. ¶ 8.) Over 600 businesses were reported as damaged or destroyed by the fire and 85 residents died. (*Id.* ¶ 9.) Before the devastating Camp Fire, the population of Paradise was 26,256; as of January 1, 2020, the population was only 4,631. (*Id.* ¶ 4.)

**Butte County, California** is a County in California in which the Forest Service is a major landowner. (Decl. of Joshua Jimerfield [Butte County] ¶ 4.) Land owned by the Forest Service and the U.S. Bureau of Land Management (BLM) are “checkerboarded” in much of eastern Butte County, meaning that parcels managed by these federal agencies are interspersed with private lands, which makes the residents of Butte County uniquely reliant on the Forest Service’s and BLM’s wildfire suppression efforts. (*Id.* ¶¶ 6, 7.) Butte County was affected by two of the five deadliest and destructive wildfires in California history, both of which occurred in the last five years and spread across federal lands adjacent to private lands within Butte County. (*Id.* ¶ 8.)

**Plumas County, California** is a County in California where over 80 percent of the land base is owned by the Forest Service. (Hagwood Decl. ¶ 4.) Plumas County has been affected by two of the top fifteen largest and most destructive fires in California history, both of which occurred in the last three years and started on or spread across National Forests adjacent to private lands within Plumas County. (*Id.* ¶ 6.) One of these fires, the North Complex Fire started in August 2020, burned 318,935 acres in Plumas, Butte, and Yuba Counties, destroyed 2,352 structures, and caused 15 deaths. (*Id.* ¶ 7.)

**Rural County Representatives of California (RCRC)** is a service organization made up of 40 rural counties in California. RCRC represents its member counties by advocating on behalf of rural issues at the state and federal levels, particularly the unique challenges that rural counties face in California. These issues include land use, water and natural resources, housing, transportation, wildfire protection policies, and health and human services. The core of RCRC's mission is to improve the ability of small, rural California county governments to provide services to their smaller populations, including marshalling limited local resources to respond to catastrophic wildfires.

**American Forest Resource Council (AFRC)** is a regional trade organization representing over 50 forest product businesses and forest landowners whose purpose is to advocate for projects on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. AFRC does this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. AFRC works to improve federal and state laws, regulations, policies, and decisions regarding access to and management of public forest lands and protection of all forest lands.

**National Alliance of Forest Owners (NAFO)** is a national advocacy organization committed to advancing federal policies that ensure working forests provide clean air, clean water, wildlife habitat and jobs through sustainable practices and strong markets. NAFO member companies own and manage more than 46 million acres of private working forests—forests that are managed to

provide a steady supply of timber. NAFO's membership also includes state and national associations representing tens of millions of additional acres.

**Federal Forest Resource Coalition** (FFRC) is a coalition of small and large companies and regional trade associations whose members harvest and manufacture wood products, paper, and renewable energy from federal timber resources. FFRC's members operate in more than two dozen states and employ over 350,000 people in over 650 mills. FFRC offers a national voice for sound management of federal forests, which includes educating the public on the vital role that the forest products industry plays in the Forest Service's effort to restore forest health, reduce hazardous fuels, and protect communities.

**California Forestry Association** (Calforests) is a trade association representing forest landowners; most of the remaining sawmills and veneer mills and several biomass powerplants in California; and natural resource professionals committed to environmentally sound policies, responsible forestry, and sustainable use of natural resources. (Decl. of Matt Dias [Calforests] ¶ 4.) Calforests' members own primary manufacturing facilities in California, which process over 70 percent of the forest products manufactured in the state. (*Id.* ¶¶ 4–5.) Calforests' members own approximately 3.5 million acres of forest land in California, including private lands within the Forest Service's "Direct Protection Area," where the agency is the primary first responder in the event of wildfire. (*Id.* ¶¶ 6, 9.) Calforests members rely on the effectiveness of the federal government's response to wildfire because within much of Northern California, the Forest Service holds primary responsibility for fire protection across more than one million acres of privately

owned timberland, including several surrounding communities, along with millions of acres of federally managed land. (*Id.* ¶ 9.)

**Montana Wood Products Association** (MWPA) is a trade association that promotes long-term management of Montana’s forests, furnishes opportunities for open discussion and appropriate interchange of information concerning all facets of the forest products industry, and accumulates and disseminates information regarding the forest products industry to foster the best interests of the industry and public. (Decl. of Julia Altemus [MWPA] ¶ 4.) MWPA’s membership includes a diverse group of companies and individuals involved in Montana’s forest products industry. (*Id.* ¶ 5.) This includes sawmills, manufacturers of plywood, particle board, fiberboard, pulp and paper, posts and poles, log homes, as well as timberland owners and managers and logging contractors. (*Id.*) National forests in Montana have been increasingly affected by wildfire. (*Id.* ¶ 7.) Cumulatively, major wildfire years have occurred in Montana in three-to-five year cycles since 2000 and have impacted 7.7 million acres or roughly 30 percent of the entire forested area of Montana and—unfortunately—the data shows forest health conditions continue to worsen. (*Id.*)

**Oregon Forest Industries Council** (OFIC) is a trade association representing more than 50 Oregon forestland owners and forest products manufacturers. OFIC’s members combine sustainable forest management practices with the latest science and technology to continuously improve the environmental, social, and economic value of healthy working forests. OFIC’s members protect and manage more than three million acres of Oregon forestlands, protect

employment of over 60,000 Oregonians, and make Oregon the nation's largest state producer of softwood lumber, plywood, and engineered wood. OFIC works to ensure the multi-generational survival of healthy forests and successful communities through collaborative partnerships with policymakers, community leaders, and advocacy organizations.

**Washington Forest Protection Association (WFPA)** is a trade association representing private forest landowners in Washington State. Its members are large and small companies, individuals, and families who grow, harvest, and regrow trees on approximately 4 million acres. WFPA members are committed to advancing sustainable forestry in Washington State to provide forest products and environmental benefits for the public.

**California Farm Bureau (CFB)** is a nonprofit association representing California's diverse farming and ranching interests. (Decl. of Jim Houston [CFB] ¶¶ 1, 3.) CFB is comprised of 53 county Farm Bureaus representing more than 28,000 agricultural, associate, and collegiate members in 56 counties. (*Id.* ¶ 3.) CFB's membership of family farmers and ranchers own or operate enterprises that rely on access to federal land for grazing, federal programs for certain conservation, and timber products. (*Id.* ¶ 4.) CFB's members support the varied uses of national forests, including pasture for livestock during the crucial summer months when ranchers must use lower elevation private lands to grow hay and other crops to sustain their operations. (*Id.* ¶ 5.) Wildfires on national forests during the grazing season can threaten—and even kill—livestock, disrupt operations, and harm CFB's members that hold Forest Service grazing permits. (*Id.*

¶ 7.) Additionally, many members own farm and ranch lands adjacent to the 18 national forests in California or live in rural communities in which the federal government has primary responsibility for responding to wildfires. (*Id.* ¶¶ 8–9.)

**California Women for Agriculture (CWA)** is a membership organization made up of 20 chapters (from Butte County to California’s southern border) representing 1,300 stakeholders in the agriculture industry. CWA is the most active, all volunteer agricultural organization in the state, and includes farmers, ranchers, bankers, lawyers, accountants, marketing professionals, support services, and consumers. CWA advocates for the economic sustainability of the state’s diverse agriculture community, which includes advocating for wildfire protection.

**National Wildfire Suppression Association (NWSA)** is a nonprofit comprised of approximately 250 member organizations throughout the United States, representing 10,000 private wildland firefighting professionals. When the magnitude of a fire event exceeds federal and state agency resources, these agencies contract with professional wildland fire contractors. More than 420 crews and approximately 14,000 pieces of specialized equipment are available for dispatch from private wildland fire services across the country. Due to budget cuts and increased fire activity, private contractors are increasingly called to the front lines and they have an acute interest in the firefighting resources available to the Forest Service, including aerial discharge of fire retardant.



## ARGUMENT

Rule 24 provides two avenues for a non-party to intervene in a pending lawsuit: as a matter of right under Rule 24(a)(2), and as a matter of permission under Rule 24(b). Both avenues broadly favor intervention. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *Smith v. Los Angeles Unified School Dist.*, 830 F.3d 843, 853 (9th Cir. 2016).

Putative Intervenors should be permitted to intervene as defendants under Rule 24(a)(2) or, alternatively, under Rule 24(b).

### **I. Putative Intervenors Are Entitled to Intervene As of Right.**

The “starting point” is Rule 24(a)(2), which “provides that a ‘court must permit anyone to intervene’ who, (1) ‘[o]n timely motion,’ (2) ‘claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest,’ (3) ‘unless existing parties adequately represent that interest.’” *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2200–01 (2022); *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177–78 (9th Cir. 2011) (en banc). In evaluating these factors, “[c]ourts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001) (*Southwest Center*). Putative Intervenors satisfy each Rule 24(a)(2) requirement.

**A. Putative Intervenor’s motion is timely.**

Although summary judgment briefing is pending, this case is very much in its infancy. The complaint was filed less than five months ago, on October 11, 2022. (*See* Compl.) The Forest Service only filed its answer on December 12, 2022. (*See* Forest Serv. Answer, Doc. 5.) Less than two months ago, Plaintiff moved for summary judgment, and the Forest Service responded on February 17, 2023. (Pl.’s Mot.; Forest Serv. Opp’n.) When determining the timeliness of a motion to intervene, courts consider the totality of the circumstances, including “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *W. Watersheds Project v. Haaland*, 22 F.4th 828, 836 (9th Cir. 2022).

The “crucial date for assessing the timeliness of a motion to intervene is when Putative Intervenor should have been aware that their interests would not be adequately protected by the existing parties.” *Id.* at 836; *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) (“Delay is measured from the date the proposed intervenor should have been aware that its interests would no longer be protected adequately by the parties, not the date it learned of the litigation.”). Putative Intervenor only recently became aware that their interests are not adequately protected when the Forest Service filed its response to Plaintiff’s motion for summary judgment. As evidenced by their backgrounds and varied interests, Putative Intervenor represent a diverse coalition of local governments and trade associations, representing both large and small businesses across the United States. While the Forest Service ably defends its firefighting mission, the

Service lacks the resources and time to fully represent Putative Intervenor’s interests, especially the harm communities, landowners, and businesses will bear if Plaintiff is awarded nationwide injunctive relief. (*Cf.* Forest Serv. Opp’n at 20 (explaining Plaintiff’s requested injunction “seriously affect[s]” “many parties and their interests that are not before this Court”).)

Plaintiff’s complaint obscured its desire—recently made manifest in Plaintiff’s briefing—to eliminate a critical tool available to the Forest Service while it completes the NPDES permitting process. True, Plaintiff’s complaint requested that the Court grant injunctive relief. But Plaintiff’s request for injunctive relief only vaguely sought “to compel the Forest Service to comply with applicable environmental statutes, prevent irreparable harm, and satisfy the public interest.” (Compl. at 10.) Yet now Plaintiff demands that “th[e] Court must enjoin the Forest Service from aerial application of retardants into navigable waters unless and until it obtains an NPDES permit to do so.” (Pl. Br. at 8; *see also id.* at 9.) Plaintiff’s initial silence on its quest to seek a nationwide injunction on aerial application of fire retardant—notwithstanding the harm to communities and landowners already suffering the impacts of recent fire seasons and with no health and safety exceptions—supports Putative Intervenor’s timeliness argument.

Plaintiff’s January 10 motion for summary judgment clarified Plaintiff’s goals, and the need to intervene became clear after the Forest Service filed its response to the motion. That response emphasizes that courts must apply certain requirements before granting injunctive relief, including whether such relief would harm the public interest and the balance of hardships between the plaintiff and

defendant. A complete analysis of the injunctive relief requirements, as it concerns Plaintiff's effort to eliminate a critical resource for fighting wildfires that would affect communities across the country for at least two fire seasons, must consider the interests and hardships of those who will be most impacted. Putative Intervenor's represent those interests who face devastation in the wake of wildfires and will provide a valuable—and necessary—voice in this litigation.

Again, this case is at an early stage. The Court has not set a date for oral argument on summary judgment or entered any substantive decisions or rulings for that matter. In evaluating timeliness, the Ninth Circuit has explained that courts are “mindful of the balance of policies underlying intervention.” *Kalbers v. U.S. Dep’t of Just.*, 22 F.4th 816, 823 (9th Cir. 2021). To achieve that balance, courts favor intervention in general because it “serves both efficient resolution of issues and broadened access to the courts.” *Id.* (quoting *Wilderness Soc’y*, 630 F.3d at 1179). And courts avoid interpreting timeliness requirements in a way that would encourage premature intervention, which might squander judicial resources and increase litigation costs, instead allowing parties to intervene even after a case has proceeded for years in situations where the proposed intervenor reasonably believed that intervention at an earlier stage was not necessary because its interests were fully protected by the existing parties.

Here, Putative Intervenor's, representing a broad coalition of interests, promptly responded after determining their interests are central to the litigation and not adequately represented by the existing parties. Not only that, but Putative Intervenor's were deliberate in not burdening the Court with countless intervention

motions. Rather, the group took the time to organize, hire counsel, and present a single motion, to avoid undue delay and complication. Putative Intervenors' motion is consistent with Rule 24's timeliness requirement and courts' recognition that it takes time to evaluate respective interests and whether they are properly represented by existing parties. *See Native Ecosystems Council v. Marten*, No. CV 18-87-M-DLC, 2018 WL 5620658, at \*1 (D. Mont. Oct. 30, 2018) (finding no unreasonable delay and granting intervention in case five months after the complaint was filed and after a preliminary injunction had been granted). The Ninth Circuit has also approved intervention at much later stages of the litigation. *See, e.g., United States v. Carpenter*, 298 F.3d 1122, 1125–26 (9th Cir. 2002) (reversing district court and ordering the court to grant the motion to intervene after months of settlement negotiations resulting in a proposed settlement that environmental group plaintiff intervenors opposed); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding a motion to intervene timely when filed “before any hearings or rulings on substantive matters”).

Not only have Putative Intervenors acted with deliberation and haste, but there will be no prejudice to Plaintiff or the Forest Service. “[P]rejudice must be connected in some way to the timing of the intervention motion—and the fact that including another party in the case might make resolution more difficult does not constitute prejudice.” *Kalbers*, 22 F.4th at 825 (cleaned up). Although Plaintiff has moved for summary judgment, the Forest Service has provided strong reasons for why summary judgment is premature without a trial on certain contested facts. And this Court has not yet issued a single substantive ruling.

In the end, Putative Intervenors have interests that are aligned with—but more concrete—than the policy and resource management interests of the Forest Service. Their participation will ensure that the outcome of this litigation is based on accurate information about the dangers of wildfire and the benefits of the Forest Service’s use of aerially delivered fire retardants in certain circumstances. Putative Intervenors have no interest in delaying resolution of this litigation and agree to work with the parties and the Court to set an efficient briefing schedule. Counsel for Putative Intervenors have suggested a revised schedule for summary judgment that would allow Putative Intervenors to respond to Plaintiff’s motion for summary judgment and to allow Plaintiff to reply. Under the proposed schedule, briefing on summary judgment could be concluded within 35 days of the Court’s order granting intervention. Thus, Putative Intervenors’ motion is timely and may be granted without prejudice to any of the parties.

**B. Putative Intervenors have a significant, protectable interest in the outcome of the litigation as it directly relates to Putative Intervenors’ community and economic interests.**

Intervention is proper when the putative intervenor has a “significantly protectable interest”—that is, an interest “protectable under some law”—that bears a relationship to the claims at issue in the litigation. *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003). A party has a “sufficient interest ... if it will suffer a practical impairment of its interests as a result of the pending litigation.” *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Putative Intervenors meet the “practical impairment” test of Rule 24(a)(2). Through this lawsuit, Plaintiff seeks to enjoin the aerial application of fire retardant by the

Forest Service and deprive the Forest Service of this important firefighting tool. Not only will such relief threaten public safety, but it will imperil resources on private lands near National Forest System lands and protectable interests in timber under contract on National Forest lands and will endanger the communities and businesses that the Putative Intervenors represent.

Putative Intervenors' participation will ensure they have the opportunity to protect their interests and explain the resulting harm to the communities, landowners, and companies that rely on the Forest Service's deliberate and swift action to prevent catastrophic wildfires from intensifying and spreading. The Court will also benefit from Putative Intervenors' insight into the hardships that will result from preventing the Forest Service from the aerial application of fire retardant. The context Putative Intervenors offer is relevant to why a nationwide injunction is against the public interest and cannot survive a balance-of-the-hardships analysis. The interests represented by Putative Intervenors are unquestionably relevant to any relief awarded in this case, and, absent Putative Intervenors' voice, the Court stands to decide a matter impacting those on the frontlines with incomplete information. *See Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1497 (9th Cir. 1995) (finding Arizona's interests in the "environmental health of, and wildfire threats to, state lands adjacent to national forests ... are concrete, plausible interests"), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

**C. Disposition of this action without Putative Intervenor's will impede Putative Intervenor's ability to protect their interests.**

“If an absentee would be substantially affected in a practical sense by the determination made in an action, [it] should, as a general rule, be entitled to intervene.” Rule 24, adv. Comm. notes; *Southwest Center*, 268 F.3d at 822. A legal or practical impact to the Putative Intervenor's interests may suffice, such as that of stare decisis. *See id.*; *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993), *abrogated on other grounds by Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (holding precedential effect of ruling regarding city's wastewater permit satisfied third factor of intervention test in favor of permitting the city to intervene). Putative Intervenor's satisfy this standard.

Here, Putative Intervenor's would plainly be “substantially affected in a practical sense” if the Court entertains Plaintiff's broad request for injunctive relief and enjoins the Forest Service from applying fire retardant using aerial means, notwithstanding the risk to human life, property, and valuable forest resources. Given the sheer quantity of land in proximity to national forest lands that the Putative Intervenor's own or manage, there is a high likelihood that if Plaintiff is successful in obtaining the relief it seeks, Putative Intervenor's will be damaged by fire that could otherwise have been prevented by appropriate use of fire retardant by the Forest Service. In that way, Putative Intervenor's' unique interests include:

- Representing local communities in areas where the federal government has the primary responsibility for initial attack of wildfires;
- Protecting residents and visitors from the impacts of wildfires that burn on national forests before threatening the public health, human lives,



- businesses, and infrastructure, including schools and water systems, in communities adjacent to national forests;
- Ensuring the Forest Service has tools to save lives, including the lives of firefighters;
  - Avoiding billions of dollars of devastating losses to private property, including timberlands that provide jobs, recreation opportunities, and ecosystem services including clean air and clean water;
  - Preserving the valuable wildlife habitat provided by private forestlands, which is threatened by the spread of catastrophic wildfire from adjacent national forests;
  - Preserving the private forests and communities that are closest to National Forest System lands and therefore rely on effective Forest Service firefighting efforts; and
  - Protecting National Forest timber resources under contract to members of the Putative Intervenor’s associations.

(See generally Decls. of Hagwood, Phillips, Dias, Joseph, Altemus, Jimerfield, and Houston.) To be clear, any relief that would limit the use of fire retardant—or other tools available to the Forest Service—would negatively impact Putative Intervenor, which rely on swift and effective initial attack by the Forest Service.

**D. The current parties do not adequately represent Putative Intervenor’s interests.**

Neither Plaintiff nor the Forest Service adequately represents Putative Intervenor’s unique and fundamental interests. “The burden of showing inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate that representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). This standard adopts a liberal policy in favor of granting intervention: in determining the adequacy of representation, courts

consider whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; whether the present party is capable and willing to make such arguments; and whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect. *Forest Conservation Council*, 66 F.3d at 1498–99.

When an existing party is a government agency, inadequacy of representation “is most likely to be found when the applicant asserts a personal interest that does not belong to the general public.” *Id.* at 1499. Indeed, federal agencies are “required to represent a broader view than the more narrow, parochial interest of [proposed intervenors a State and County].” *Id.* Thus, “a federal agency ... cannot be expected under the circumstances presented to protect these private interests.” *Southwest Center*, 268 F.3d at 823; *see also Native Ecosystem Council v. Marten*, No. CV 17-153-M-DWM, 2018 WL 2364293, at \*2 (D. Mont. May 24, 2018) (noting that while both the Forest Service and intervenors sought to defend the regulatory process followed in the case because their goals are different).

Putative Intervenors easily meet the standard for showing inadequacy of representation by the Forest Service. Unlike the Forest Service, with its general goals of managing public lands for multiple use, the Putative Intervenors include a coalition of entities that, because of where they are located, are especially vulnerable to the potential devastation of wildfires and are uniquely reliant on the federal government's quick and effective response to wildfires. The communities among Putative Intervenors are vulnerable to suffer from loss of life, loss of housing, loss of livelihoods for their citizens, and loss of needed infrastructure

from wildfire. Likewise, forest landowners and forest products companies can see their carefully managed timber lands and investment literally go up in smoke. The Putative Intervenor will help to develop facts that are relevant to the disposition of this case and that the existing parties would otherwise likely neglect: the actual community-level and economic impacts of hamstringing the Forest Service's ability to fight wildfires. *See generally Capitol Indem. Corp. v. Reflections Acad., Inc.*, No. CV 21-57-DLC, 2021 WL 5329936, at \*1 (D. Mont. Nov. 16, 2021) (finding that "any burden resulting from delay is outweighed by the interest in resolving this case on a complete factual record").

Consequently, the Forest Service does not adequately represent Putative Intervenor's interests that may be impaired by this lawsuit. Because Putative Intervenor satisfies Rule 24(a)(2)'s requirements, Putative Intervenor must be permitted to intervene as a defendant in this litigation.

## **II. Alternatively, Putative Intervenor Should Be Granted Permissive Intervention.**

Rule 24(b) grants courts broad discretion to permit intervention where: (1) the applicant for intervention shows independent ground for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense and the main action share a common question of law or fact. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997); *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). Only the second and third

requirements are at issue.<sup>2</sup> If Rule 24(b) grounds are satisfied, courts may also consider whether intervention will unduly delay or prejudice the parties, whether intervenors will introduce complex or novel legal issues, whether intervenors are adequately represented by the parties to the litigation, and whether the intervenors will contribute to the development of underlying factual issues in the suit. *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989); *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Here, even if intervention as a matter of right is not granted, permissive intervention is most certainly warranted.

*First*, courts apply the same timeliness analysis discussed under Rule 24(a)(2) to permissive intervention under Rule 24(b). As discussed above, Putative Intervenor’s motion is timely because it was filed within two weeks of the Forest Service’s opposition to Plaintiff’s motion for summary judgment. Plaintiff’s complaint did not reveal that it was seeking a nationwide injunction; this is the primary aspect of the case that makes it of great concern to Putative Intervenor. The case is at an early stage, with no substantive rulings from this Court, and lack

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<sup>2</sup> The “independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-question cases when the proposed intervenor is not raising new claims.” *Freedom from Religion Found.*, 644 F.3d at 844. Plaintiff alleges that the Forest Service is violating the Clean Water Act. Putative Intervenor are not seeking to add new claims to the litigation; they only seek to protect their interests in the Forest Service’s ability to adequately respond to and prevent wildfires (including by using fire retardants) that threaten their interests. Assuming Plaintiff has standing and has alleged a federal question, the Court’s jurisdiction will not change by allowing Putative Intervenor to intervene.

of agreement between the parties regarding whether summary judgment is appropriate. The timing of this motion does not prejudice any party.

*Second*, Plaintiff's claims and Putative Intervenor's defenses for the Forest Service's policy of using aerial means to deliver fire retardant in appropriate circumstances concern common questions of law and fact. (*See generally* Putative Intervenor's Proposed Answer in Intervention.) Indeed, an injunction against the use of fire retardants would pose a significant hardship Putative Intervenor. The communities, property owners, and businesses that Putative Intervenor represent live and operate on the frontlines near federal forest lands and will experience a drastic increase in fire risk if Plaintiff prevails. So, the interests that Putative Intervenor seek to protect are *the* human and economic interests that could be decimated by any relief granted to Plaintiff, even if such relief is more targeted than the nationwide injunction Plaintiff now seeks. For these reasons, Putative Intervenor should be allowed to participate in this case.

### **CONCLUSION**

Putative Intervenor request that this Court grant them intervention as of right in this lawsuit as defendants under Rule 24(a)(2), or in the alternative, permissive intervention under Rule 24(b).

Dated: March 9, 2023.

Respectfully submitted,



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***Attorneys for Putative Intervenors***

## CERTIFICATE OF COMPLIANCE

I certify **Putative Intervenor's Brief in Support of Their Motion to Intervene** complies with the type-volume limitation of Local Rule 7.1(d)(2)(A). The brief contains 6,173 words in a proportionally spaced font style, excluding caption, certificate of compliance, tables of contents and authorities, signature block, and any certificate of service.



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W. Adam Duerk

## CERTIFICATE OF SERVICE

I certify that on March 9, 2023, a copy of **Putative Intervenor's Brief in Support of Their Motion to Intervene** was hand delivered to the Clerk of Court, U.S. District Court for the District of Montana, 201 E. Broadway Street, Missoula, Montana 59802. A courtesy copy was also emailed to all counsel of record.



---

W. Adam Duerk



**EXHIBIT 1**

**Declaration of Kevin Phillips [Town of Paradise] in Support of  
Putative Intervenors' Motion to Intervene**

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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF KEVIN  
PHILLIPS [TOWN OF PARADISE]  
IN SUPPORT OF PUTATIVE  
INTERVENORS' MOTION TO  
INTERVENE

I, Kevin Phillips, declare:

1. I am the Town Manager of the Town of Paradise, California (Paradise), Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I have served as the Town Manager of Paradise since August 2020, and came to this position after serving as District Manager of Paradise Irrigation District (PID). As District Manager, I led PID through the difficult period of water restoration after the Camp Fire. Prior to serving as District Manager, I served as the Chief Financial Officer for PID for 10 years. I have been part of the Camp Fire response and recovery since the date of the fire.

3. I make this declaration in support of Putative Intervenor's Motion to Intervene filed concurrently herewith.

### **Introduction**

4. Originally settled during the Gold Rush era, Paradise and the area surrounding the community grew slowly during the first half of the 20th century. In 1970, the Paradise area population was 14,539. The Town of Paradise was incorporated in 1979; the population of the area that was incorporated increased by approximately 50 percent between 1970 and 1980, from 14,539 to 22,571. Paradise's population was 25,401 in 1990. The population grew to 26,408 in 2000, and to 26,218 in 2010.

5. In 2018, the population was estimated to be 26,256 prior to the devastating November 2018 Camp Fire, which destroyed nearly 14,000 housing

units total, including more than 11,000 in the Town of Paradise, which led to a significant population decline in the town. As of January 1, 2020, the population was estimated as only 4,631.

### **The Camp Fire**

6. On November 8, 2018, a faulty electric transmission line sparked a fire in the unincorporated Butte County community of Pulga, located about 10 miles north of the Town of Paradise. Due to a confluence of drought conditions and wind gusts of up to 35 miles per hour, the Camp Fire spread rapidly and in approximately six hours devastated significant portions of the unincorporated communities of Concow, Yankee Hill, and Magalia, and the Town of Paradise.

7. According to the California Department of Forestry and Fire Protection (“CalFire”), the Camp Fire is the deadliest and most destructive fire in California history, burning across 153,336 acres, destroying 18,804 structures and resulting in 85 civilian fatalities and several firefighter injuries, most of which were in or around the Town of Paradise.

### **Impacts**

8. An estimated 95 percent of the Town of Paradise was burned in the Camp Fire, leading to the loss or damage of 11,000 housing units, 450 commercial buildings, 5 schools, and thousands of utility structures. Of the schools that were destroyed, there were two elementary schools, Paradise Elementary and Ponderosa Elementary, a secondary school, Honey Run Academy, a high school, Ridgeview High School, and an Adult Learning Center.

9. Over 600 businesses were reported as damaged or destroyed by the Camp Fire, including the loss of many buildings of the Feather River Hospital, multiple gas stations, fast-food restaurants, and other retail establishments, a hotel, and a large, Safeway-anchored retail shopping center.

10. Recent wildfires have taken a staggering toll on the economy of Paradise. In just the first year after the Camp Fire, the Gross Regional Product (GRP), declined between 64 and 81 percent within the fire footprint; most of these losses were felt directly within the community of Paradise.

11. The Camp Fire also wrought unseen impacts on community members. A recent study of 725 individuals affected by the Camp Fire found significantly greater chronic symptoms of post-traumatic stress disorder, anxiety, and depression than control individuals not exposed to the fires.

12. Nearly all the 85 people that lost their lives in the Camp Fire were residents of Paradise. The oldest victim, age 99, was found on the front porch of her home with her wheelchair nearby. The youngest victim, age 20, was found in a bathtub with two family members. According to reports, the three generations of women had called 911 as the fire approached and, somehow, the phone line remained open as the house, and the three women, burned as helpless fire dispatchers listened to their screams.

### **Paradise's Interest in Intervention**

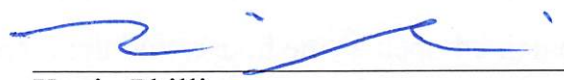
13. As illustrated by the Camp Fire, during fire season, the lives of the citizens of Paradise are in the hands of Forest Service firefighters.

14. The Forest Service deployed fire retardant from aircraft within Paradise in responding to the Camp Fire. Had federal firefighters been unable to use this important tool, I believe the terrible losses described above would have been substantially worse and more devastating.

15. Paradise has a critical interest in this case. Based on its geographic location adjacent to federal lands, our citizens are directly impacted by Forest Service fire suppression efforts and their lives and livelihoods would be threatened by any increase in wildfire that would result from the Forest Service being limited in its ability to deploy fire retardant from aircraft.

16. The Forest Service does not adequately represent Paradise or the people that call it home. Although Paradise and the Forest Service share the same ultimate goal of defending the aerial deployment of fire retardant, Paradise and its residents, visitors, and businesses have at stake the unique safety, property, and economic interests described above.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 8th, 2023.

  
Kevin Phillips

**EXHIBIT 2**

**Declaration of Joshua Jimerfield [Butte County, California] in Support of  
Putative Intervenors' Motion to Intervene**



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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF JOSHUA  
JIMERFIELD [BUTTE COUNTY,  
CALIFORNIA] IN SUPPORT OF  
PUTATIVE INTERVENORS'  
MOTION TO INTERVENE

I, Joshua Jimerfield, declare:

1. I am the Deputy Administrative Officer for the Butte County Office of Emergency Management in Butte County, California (Butte County), Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I have held the position of Deputy Administrative Officer for the Butte County Office of Emergency Management for the past 1.5 years. Prior to working in the County I was a Debris Subject Matter Expert (SME) specializing in fire debris for the U.S. Army Corps of Engineers (USACE) out of the Sacramento District (SPK). I worked for SPK in Emergency Management as part of their debris Preparedness and Response Team for 9 years. As a Debris SME I was tasked with evaluating the scope of the debris resulting from wildfire events, working with toxicological experts and chemists to determine potential hazards in the soil and air, and working with the State to develop a plan for safely removing contaminated debris without further spreading hazardous fire waste.

3. I make this declaration in support of Putative Intervenor's Motion to Intervene filed concurrently herewith.

### **Introduction**

4. Within Butte County, a significant portion of the land base is owned by the United States. Therefore, the management of wildfires by the federal government has a direct impact on the health, welfare, and economic prosperity of the residents of Butte County.

5. The U.S. Forest Service (Forest Service), in particular, is a major landowner in Butte County. Its holdings total 134,840 acres of federally owned National Forest System lands, including portions of Plumas National Forest and Lassen National Forest. The U.S. Bureau of Land Management (BLM) also owns 15,590 acres in Butte County.

6. The federal ownerships held by the Forest Service and BLM are “checkerboarded” in much of eastern Butte County, meaning that parcels managed by these federal agencies are interspersed with private lands.

7. Given this land ownership pattern, the residents of Butte County are uniquely reliant on—and impacted by—the Forest Service and BLM’s wildfire suppression efforts.

8. Butte County has been affected by two of the top five deadliest and destructive wildfires in California history, both of which occurred in the last five years and started on or spread across federal lands adjacent to private lands within Butte County.

### **Recent Fire History**

9. The Camp Fire in Butte County started the morning of November 8, 2018 and burned a total of 153,336 acres, destroying 18,804 structures and resulting in 85 civilian fatalities and several firefighter injuries. According to the California Department of Forestry and Fire Protection (“Cal Fire”), the Camp Fire is the deadliest and most destructive fire in California history. It devastated the Town of Paradise, California, and severely damaged nearby communities, including Pulga, Concow, and Magalia, and areas of the Plumas National Forest.

10. The North Complex Fire started in August 2020, burned 318,935 acres in Butte, Plumas, and Yuba Counties, destroying 2,352 structures and causing 15 deaths.

11. Butte County was also impacted by the second largest wildfire in California history, the July 2021 Dixie Fire, which burned 963,309 acres, destroying 1,311 structures and causing one death. The Dixie Fire started in Butte County before burning across Lassen, Plumas, Shasta, and Tehama Counties—and across parts of the Plumas National Forest, Lassen National Forest, and Lassen Volcanic National Park. The Dixie Fire was the first fire known to cross the crest of the Sierra Nevada.

### **Public Health and Safety Impacts**

12. The 2018 Camp Fire generated public health and safety impacts that extended beyond the 85 individuals that lost their lives in the deadliest fire in California history. The fire generated a large plume of heavy smoke that traveled thousands of miles, causing dangerously high levels of air pollution for a period of approximately two weeks within Butte County and beyond, including in the Sacramento Valley and San Francisco Bay Area.

13. Staff at the California Air Resources Board (“CARB”) studied air quality data from the Camp Fire. CARB found that the fire generated a range of harmful and toxic substances, including elevated levels of particulate matter and metals including lead, zinc, calcium, iron, and manganese, some of which traveled hundreds of miles.

14. During the August Complex fire, a fire that burned from August 18, 2020 to November 12, 2020 and consumed over one million acres, the air quality in California contained dangerously high levels of pollutants. In the Bay Area, a record 30 consecutive “Spare the Air” days were a direct result of one of the largest wildfires ever.

15. Particulate matter (PM) is typically the biggest health concern from wildfire smoke because particles from smoke tend to be very small and therefore can be inhaled into the deepest recesses of the lung, and even pass directly into the bloodstream, affecting the heart and the body’s other organs. During the Camp Fire, maximum PM2.5 levels from November 8 through November 22, 2018, were reportedly over three times the average levels seen during the same time period from 2010 to 2017. According to CARB, this is a public health concern because short-term exposure over the course of days or weeks to PM2.5 and wildfire smoke has been strongly linked to increasing severity of asthma, other respiratory disease, inflammation and infections, including bronchitis and pneumonia, emergency department visits, and hospital admissions. Long-term exposure is linked to a wide range of other human health effects, including premature death. Similar studies have been done for firefighters showing similar if not worse effects of wildfire smoke.

16. According to CARB, the Camp Fire also produced concerning emissions of other pollutants, including elevated levels of lead detected in Butte County’s largest city, Chico. Lead exposure, in particular, has been linked to high blood pressure, reproductive effects and cancer in adults. Infants and young

children are especially sensitive to low levels of lead that are known to cause behavioral changes and learning deficits.

### **Economic Damage/Losses**

17. Recent wildfires have taken a staggering toll on the economy of Butte County. In just the first year after the Camp Fire, the Gross Regional Product (GRP), a measure of whether the economy is expanding or shrinking, declined between 64 and 81 percent within the fire footprint.

### **Butte County's Interest in Intervention**

18. Butte County has a keen interest in the instant case because our citizens are directly impacted by Forest Service fire suppression efforts and their lives and livelihoods would be threatened by any increase in wildfire that would result from the Forest Service being limited in its ability to deploy fire retardant from aircraft.


19. Because federal lands are interspersed with private landownerships in Butte County, citizens living in the county are directly affected by the federal government's wildfire suppression efforts. The Camp Fire, for example, was ignited in the community of Pulga, which is nestled in between lands managed by the Forest Service.

20. From the time of ignition, it took only approximately six hours for the Camp Fire to devastate significant portions of the both the Plumas National Forest and the unincorporated communities of Concow, Yankee Hill, and Magalia, and the Town of Paradise. This demonstrates how quickly first responders must act and the importance of every minute—and every tool in the initial attack toolbox.

21. The Forest Service deployed fire retardant from aircraft on each of the recent major fires described above. Had federal firefighters been unable to use this important tool, the losses described above would likely have been substantially worse and more devastating.

22. The Forest Service does not adequately represent Butte County or its people and businesses. Although Butte County and the Forest Service share the same ultimate goal of defending the aerial deployment of fire retardant, Butte County and its residents, visitors, and businesses have at stake the unique safety, property and economic interests described above.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 7th, 2023.



---

Joshua Jimerfield  
Deputy Administrative Officer  
Office of Emergency Management  
County of Butte, California



**EXHIBIT 3**

**Declaration of Greg Hagwood [Plumas County, California] in Support of  
Putative Intervenors' Motion to Intervene**

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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

---

DECLARATION OF GREG  
HAGWOOD [PLUMAS COUNTY,  
CALIFORNIA] IN SUPPORT OF  
PUTATIVE INTERVENORS'  
MOTION TO INTERVENE

I, Greg Hagwood, declare:

1. I am County Supervisor of District 4 for Plumas County, California (Plumas County), Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I have been a resident of Plumas County since 1975. Before I was elected as County Supervisor of District 4 for Plumas County, I spent 31 years at the Plumas County Sheriff's Office, including 10 years as the elected Sheriff. I began my career in law enforcement as a Patrol Deputy in 1988, and over the years went on to become a Field Training Officer, Patrol Sergeant, SWAT team member, Investigations Sergeant, Chief Deputy Coroner, Under Sheriff and finally Sheriff-Coroner. In my career as a first responder, I worked closely with local, state, and federal governmental agencies, including on wildfire response and recovery efforts. Wildfire response and recovery continues to be an important part of my work as County Supervisor because Plumas County has been recently affected by some of the largest and most devastating wildfires in California history.

3. I make this declaration in support of Putative Intervenor's Motion to Intervene filed concurrently herewith.

### **Introduction**

4. Within Plumas County, over 80 percent of the land base is owned by the Forest Service. Therefore, the management of wildfires on National Forest System lands has a direct impact on the health, welfare, and economic prosperity of the residents of Plumas County.

5. A significant portion of the private land base in Plumas County, including the county seat of Quincy, is in the federal government’s Direct Protection Area, in which the federal government—led primarily the U.S. Forest Service—assumes the responsibility of maintaining a wildland fire protection system. A true and correct copy of a map showing the Direct Protection Areas in Plumas County, downloaded from <https://gacc.nifc.gov/oscc/cwcc/gis.php>, is attached hereto as **Exhibit A**.

6. Plumas County has been affected by two of the top fifteen largest and most destructive fires in California history, both of which occurred in the last three years and started on or spread across National Forests adjacent to private lands within Plumas County.

### **Recent Fire History**

7. The North Complex Fire started in August 2020, burned 318,935 acres in Plumas, Butte, and Yuba Counties, destroyed 2,352 structures, and caused 15 deaths. According to the California Department of Forestry and Fire Protection (“CalFire”), the North Complex fire was the fifth deadliest and seventh largest wildfire in California history.

8. Plumas County was also ravaged by the second largest wildfire in California history, the July 2021 Dixie Fire, which burned 963,309 acres across Plumas, Butte, Lassen, Shasta, and Tehama Counties, destroying 1,311 structures and causing one death.

## **Economic and Infrastructure Damage and Losses**

9. The economic impacts of recent wildfires have been diverse and wide-ranging.

10. Recent wildfires have exacerbated Plumas County's existing housing shortage, causing economic impacts to local residents and the County as a whole. Fire impacts include 779 damaged or destroyed residences and 144 damaged or destroyed commercial buildings, causing 609 newly vacant parcels and contributing to a 46 percent increase in average home sale prices from 2019 to 2022 and an 18 to 28 percent increase in average fair market rent rates (2017-2023).

11. Along with the losses to homes and businesses, Plumas County has suffered over \$500,000 in reduced property tax revenue in fiscal year 2022-2023. Public water and sewer agencies have also suffered revenue losses.

12. Recent fires have also resulted in an estimated 1,611 net job losses and an estimated 68 net businesses closed across Plumas County. The highest employment losses have been experienced in Public Administration (~45%), Transportation (~26%), Finance (~36%), and Healthcare (~25%) sectors. According to the Small Business Administration, over \$15 million in business losses have been verified in Plumas County.

13. Finally, Plumas County has experienced staggering infrastructure losses that have impacted residents in both tangible and intangible ways. In the communities of Greenville and Indian Falls alone there were 15,000 cubic feet of public road damages, according to a FEMA report dated 2023. The heart of historic

Greenville was severely damaged, with losses of public buildings including the Justice Court, Library, Town Hall, and Sheriff Substation, in addition to many more private homes and businesses. Residents also suffered extended power outages caused by recent fire impacts, including the loss of 1,000 power poles.

### **Natural Resources Impacts**

14. The recent wildfires have caused catastrophic natural resources impacts in Plumas County. Of the 768,130 acres recently burned in Plumas County, over 600,000 of those acres have experienced moderate-to-high soil burn severity.

15. Additionally, recent wildfires have caused public safety issues associated with tens of thousands of hazard trees along roads and trails, over 20,000 of which have already been removed at the expense of taxpayers.

### **Insurance Impacts**

16. From 2015-2018, the number of new and renewed policies in the voluntary insurance market fell by 8,700 in the 10 counties with the most homes in high or very high-risk areas, which included Plumas County.

17. The insurance problem has only gotten worse since 2018, in the wake of the recent wildfires.

### **Public Health and Social Services Impacts**

18. Wildfires, including the fires described above, are a public health concern because they can cause dangerously high levels of air pollution, including elevated levels of particulate matter and metals. These pollutants can cause increase the severity of asthma, other respiratory disease, inflammation, and

infections such as bronchitis and pneumonia, emergency department visits, and hospital admissions.

19. Beyond this, wildfires in Plumas County have caused impacts to the ability of County residents to access critical medical and dental services. For example, in 2021, the Dixie Fire impacted Greenville Rancheria's medical and dental facilities, resulting in patients driving four hours roundtrip to facilities in Red Bluff, California.

20. The recent wildfires have also impacted Plumas County's schoolchildren. During the 2021 fire season, at least 350 elementary school children and their families were impacted by the delayed beginning of the school year caused by wildfires.

### **Economic Damage/Losses**

21. Recent wildfires have taken a staggering toll on the economy of Plumas County. In just the first year after the Camp Fire, the Gross Regional Product (GRP), a measure of whether the economy is expanding or shrinking, declined between 64 and 81 percent within the fire footprint.

### **Plumas County's Interest in Intervention**

22. Plumas County has an important interest in this case because our County and its citizens are directly impacted by Forest Service fire suppression efforts. The lives and livelihoods of each resident and visitor to Plumas County would be threatened by any increase in wildfire that would result from the Forest Service being limited in its ability to deploy fire retardant.



23. As depicted in the map attached as Exhibit A, the federal government is responsible for maintaining a wildland fire protection system across the vast majority of the public and private land in Plumas County.

24. Residential fire protection on private lands in Plumas County may also be provided by one of approximately 20 local fire departments, many of which are strictly volunteer. There are no fire stations operated by CalFire in Plumas County.

25. Because the vast majority of the land base in Plumas County is managed by the federal government and most of the private lands within Plumas County are within the federal government's Direct Protection Area, residents of Plumas County are particularly reliant on—and impacted by—the federal government's wildfire suppression efforts on both public and private lands.

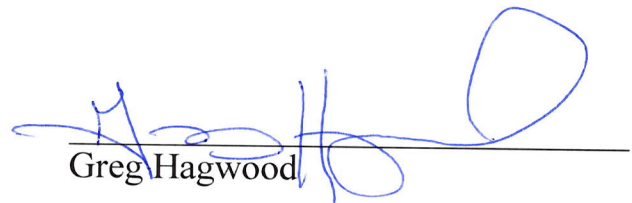
26. If the federal government is unable to rapidly suppress fires that threaten our communities, in many cases, Plumas County does not have the professional and volunteer capacity to engage in the suppression efforts necessary to protect communities. For example, Plumas County does not have aerial resources (e.g., aircraft) that are capable of engaging in initial attack and therefore relies on the federal government for effective initial attack.

27. Under extreme fire conditions, such as those seen in recent years, fires can grow tens of thousands of acres in a single day. It is therefore critical to communities located adjacent to national forests that Forest Service firefighters have every suppression tool available to protect life, public safety, and property.

28. Had federal firefighters been unable to use fire retardant deployed using aircraft as a tool in suppressing major fires in 2021, the losses described above could have been substantially worse and more devastating.

29. The Forest Service does not adequately represent Plumas County or its citizens and businesses. Although the parties share the same ultimate goal of defending the aerial deployment of fire retardant, Plumas County and its residents, visitors, and businesses have unique safety, property and economic interests at stake, which are described above.

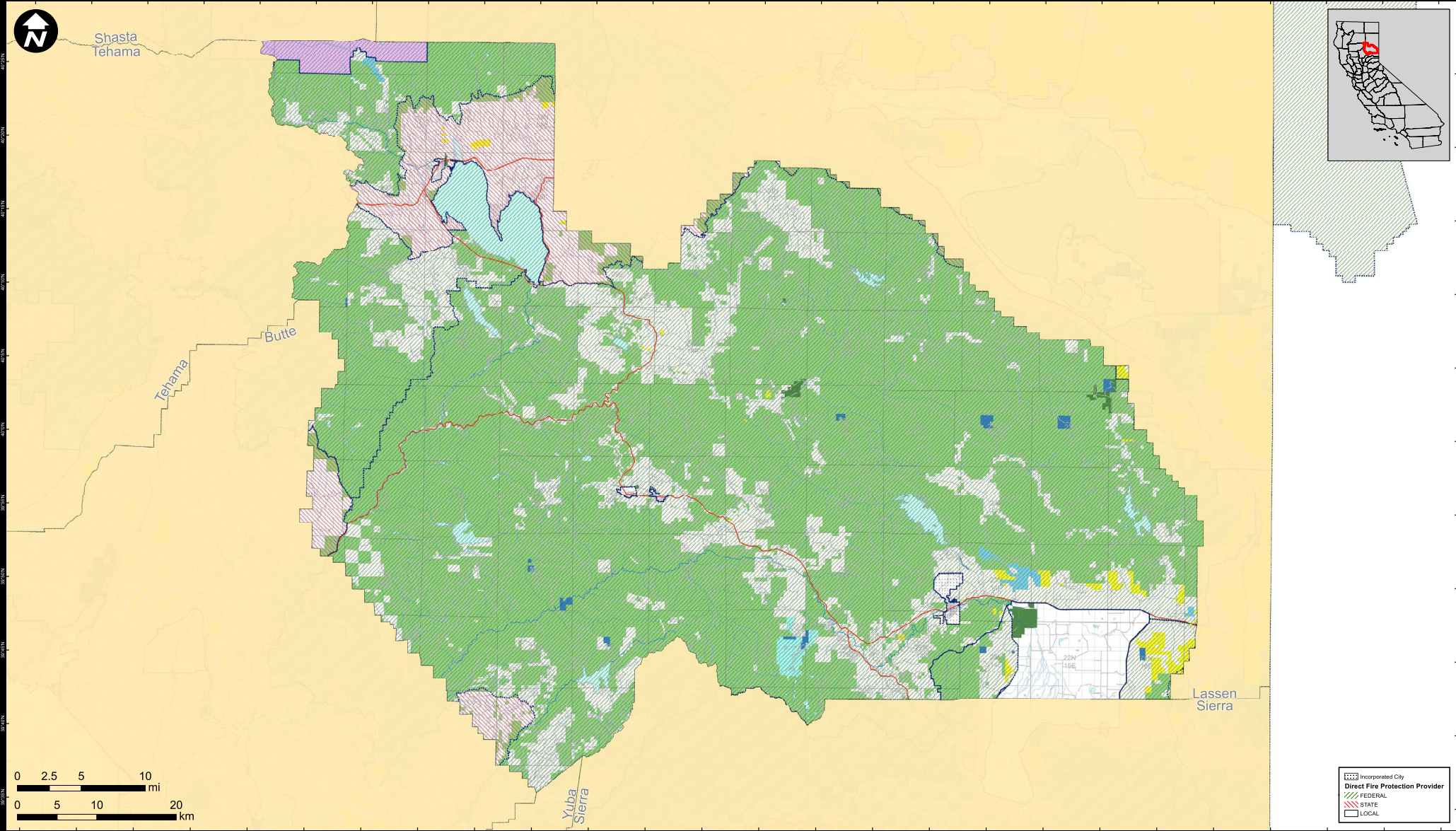
I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 8th, 2023.

  
Greg Hagwood

**EXHIBIT A**

# DIRECT PROTECTION AREAS for WILDLAND FIRE PROTECTION

Produced for the California Wildfire Coordinating Group



# PLUMAS COUNTY

Data Sources:  
 Direct Protection Areas (DirectProtectionAreas\_22\_2)  
 Land Ownership (Ownership\_22\_1)  
 Incorporated Cities (Incorp\_22\_1)  
 DPA2022\_CountyMaps\_ArchD\_Land\_5/16/2022  
 NAD 1983 California Teale Albers

**DIRECT PROTECTION AREA**  
 That area which, by law or pursuant to the terms of a cooperative agreement, is provided wildland fire protection by the State, Local or Federal Agencies. Direct protection areas may include a mixture of State, Federal, and Local responsibility areas.

This map was produced by the USFS Region 5 Fire and Aviation Geospatial Program. GIS data and product accuracy may vary. The Forest Service reserves the right to update, modify, or replace any or all of this data without notifying the users. The most current version of DPA can be found at:  
<https://gacc.mfo.gov/oscawdowcg/gis.php>

	Incorporated City
	FEDERAL
	STATE
	LOCAL



**EXHIBIT 4**

**Declaration of Travis Joseph [American Forest Resource Council] in Support  
of Putative Intervenors' Motion to Intervene**

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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF TRAVIS  
JOSEPH [AMERICAN FOREST  
RESOURCE COUNCIL] IN  
SUPPORT OF PUTATIVE  
INTERVENORS' MOTION TO  
INTERVENE

I, Travis Joseph, declare:

1. I am the President of American Forest Resource Council (AFRC), a trade association based in Portland, Oregon. AFRC is a Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I hold a bachelor's degree from the University of Oregon in History/International Studies and a M.Sc. degree in Environmental Policy and Economic Development from the London School of Economics and Political Science. Prior to joining AFRC, I worked in Congress for Representative Peter DeFazio, for the House Committee on Natural Resources, and as Director of Pacific Northwest Policy and Member Services for the House Committee on Transportation and Infrastructure. While working in Congress, I became very familiar with forest management and with fish and wildlife issues involving the U.S. Forest Service (Forest Service) and focused on developing bipartisan coalitions to support reforms to forest policy.

3. I make this declaration in support of Putative Intervenors' Motion to Intervene filed concurrently herewith.

### **Introduction**

4. AFRC is a regional trade association representing over 50 forest product businesses and forest landowners whose purpose is to advocate for projects on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. AFRC does this by promoting active management to attain productive public forests, protect adjoining private forests, and assure



community stability. AFRC works to improve federal and state laws, regulations, policies, and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC strongly believes that healthy managed forests are essential to the integrity of both ecosystems and communities. Active management helps avoid devastating wildfires such as those that spread through the West. With concerns growing about global climate change, healthy forests and manufactured wood products are a key mechanism to capture and store carbon and to prevent the enormous emissions that occur from wildfires.

5. AFRC and its members actively participate in federal agency decisions that involve the protection, management, allocation, and use of both federal and non-federal forest resources throughout western states (California, Oregon, Washington, Idaho, and Montana)—including wildlife, recreation, and commodity production. AFRC supports sustainable and environmentally responsible management of public lands, sharing the goal of the Forest Service, U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, and other stakeholders to promote recovery of species and sustainability of forest management.

6. AFRC regularly meets with federal land managers from which its members buy timber and disseminates information about those meetings to its membership. AFRC publishes a monthly newsletter, which reviews developments relevant to forest management. Copies of the newsletter are available on AFRC's website at: [www.amforest.org/newsletters](http://www.amforest.org/newsletters).

## **AFRC's Interest in Intervention**

7. AFRC has an interest in this litigation for several reasons. First, our members depend on the health and productivity of public forests. To ensure that our forests are healthy, productive, and resilient, AFRC advocates for management of public lands to mitigate wildfire risk. Throughout the west, megafires have become a more common occurrence. For example, from 2001 to 2022, wildfires burned 11 million acres of California's National Forests, 4.7 million acres of Oregon's National Forests, and 3 million acres of Montana's National Forests.<sup>1</sup> The scale and intensity of burned acres has been substantially increasing. Burned acres in California averaged at 350,817 acres from 2001 to 2019; and averaged 2,178,507 acres from 2020 to 2021. The health, vitality, and stability of the communities within which our members work are reliant on prompt and effective fire suppression efforts by the Forest Service and other federal agencies.

8. Second, many of AFRC's members own private forestlands directly adjacent to or near public forests managed by the Forest Service and the U.S. Bureau of Land Management. For example, AFRC members Sierra Pacific Industries, Murphy Company, Collins, Stimson, Roseburg Forest Products, South Coast Lumber Co., and Freres Engineered Wood Products all own private forestlands directly adjacent to or near national forest lands. The risk of wildfires spreading to AFRC members' lands is not hypothetical. For example, the 2021 Dixie Fire burned 95,300 acres of Collins' private timberlands around Lake

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<sup>1</sup> Historical year-end fire statistics by state available at: <https://www.nifc.gov/fire-information/statistics>.

Almanor in Plumas and Tehama counties in California. The West Fork, South Yaak, and Boulder Mountain Fires burned 2,900, 1,850, and 1,421 acres, respectively, of Stimson's private timberlands in Washington and Montana between 2017 and 2022. The 2017 Chetco Bar fire burned approximately 10,000 acres of South Coast's private timberlands in Oregon.

9. The Forest Service's ability to deploy fire retardant is crucial for the agency to effectively fight wildfires. In 2016, the Forest Service used aerial fire retardant to fight the Sunrise Fire, which burned about 27,000 acres on the Lolo National Forest in western Montana. The Forest Service's use of fire retardant was able to protect numerous homes in the Meadow Creek, Sunrise Creek and Cougar Gulch drainages. The agency's use of fire retardant, along with other firefighting methods, allowed the Forest Service to control the Sunrise Fire without losing a single structure.


10. Although AFRC generally supports the Forest Service's resource management goals, the Forest Service does not adequately represent AFRC or its members in this litigation. AFRC is more narrowly focused on the risks of wildfires to public timber supplies than the federal government.

11. Because the Forest Service does not always adequately represent AFRC's members' interest, AFRC and its members frequently intervene in cases involving fuels reduction projects on national forest lands. For example, AFRC intervened in the following cases: *Los Padres Forestwatch v. U.S. Forest Service*, No. 2:19-cv-05925-FMO-SS (C.D. Cal), involving a challenge to the Tecuya Ridge Shaded Fuelbreak Project, which intends to protect residents adjacent to the

Los Padres National Forest from catastrophic wildfire; *Conservation Congress v. U.S. Forest Service*, No. 2: 16-cv-00864-MCE-AC (E.D. Cal.), which involved a challenge to the Lava Hazardous Fuels Reduction Project located on the Modoc National Forest; *Klamath-Siskiyou Wildlands Center v. Patricia Grantham*, Case No. 2:18-cv-02785-TLN-DMC (E.D. Cal.), involving the Seiad-Horse Risk Reduction Project on the Klamath National Forest in response to the 2017 Abney Fire; and *Karuk Tribe v. Stelle*, 9 No. 3:16-cv-01079-MMC, involving a challenge to the Westside Fire Recovery Project located on the Klamath National Forest; *Alliance for the Wild Rockies v. Gassman, et al.*, No. 21-cv-105-DLC-KLD (D. Mont.), involving a challenge to the Ripley Project on the Kootenai National Forest; *Alliance for the Wild Rockies v. Savage, et al.*, No. 9:15-cv-00054-DLC (D. Mont.), involving a challenge to the East Reservoir Project on the Kootenai National Forest; *Native Ecosystems Council, et al. v. Marten, et al.*, No. No. 9:18-cv-00087-DLC (D. Mont.), involving a challenge to the North Hebgen Multiple Resource Project on the Custer Gallatin National Forest.

12. AFRC has also participated in cases involving the Clean Water Act. AFRC, along with a coalition, participated as *amici curiae* in *Decker v. Northwest Environmental Defense Center*, Nos. 11-338, 11-347 (U.S.), a case before the United States Supreme Court involving whether runoff from forest roads required a National Pollutant Discharge Elimination System permit under the Clean Water Act.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 6th, 2023.



---

Travis Joseph

**EXHIBIT 5**

**Declaration of Matt Dias [California Forestry Association] in Support of  
Putative Intervenors' Motion to Intervene**

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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
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Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

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v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF MATT DIAS  
[CALIFORNIA FORESTRY  
ASSOCIATION] IN SUPPORT OF  
PUTATIVE INTERVENORS'  
MOTION TO INTERVENE



I, Matt Dias, declare:

1. I am the President and CEO of the California Forestry Association (“Calforests”), Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I have worked in the field of forestry for my entire career. Shortly after graduating from Humboldt State University in 1999, I began working for the former Pacific Lumber Company. In 2005, I moved to Davenport, California, where I was employed with Big Creek Lumber Company for over seven years. In 2012, I was appointed as the Licensing Officer with the California Board of Forestry and Fire Protection. In 2015, I was appointed the Executive Officer for the California State Board of Forestry and Fire Protection—a position I held until my appointment as the President and CEO of Calforests in July 2021. I am a California Registered Professional Forester.

3. I make this declaration in support of Putative Intervenor’s Motion to Intervene filed concurrently herewith.

### **Introduction**

4. Calforests is a trade association, with members derived of forest landowners and the majority of the remaining sawmills, veneer mills, and several biomass powerplants in California. Calforests’ members also include natural resource professionals committed to environmentally sound policies, responsible forestry, and sustainable use of natural resources. Maintaining healthy forests is an economic driver throughout northern California and beyond and is critical in

safeguarding communities at risk from catastrophic wildfire. Calforests is dedicated to working with its members and the industry in promoting high environmental standards and thriving forest practices in the forest products sector.

5. Calforests' members own primary manufacturing facilities and process over 70 percent of the forest products manufactured in California. Many of these facilities have cogeneration powerplants using mill residuals, urban and agricultural wood waste, and forest biomass to generate electricity to run their entire manufacturing facility and sell electricity back into the power grid.

6. Calforests' members own approximately 3.5 million acres of forest land in California.

7. Management of vegetation on the national forests in California is primarily driven by disturbance agents, namely wildfire, insects, and disease. Extended statewide drought has ravaged forestlands across California. From 2010 to 2017 these extended drought conditions led to a beetle kill epidemic across national forests in California that is noted for historic levels of mortality of upwards of 129 million trees across 8.9 million acres of the State. Most recently, 2022 aerial surveys conducted by the United States Forest Service ("USFS") identified that an additional 36.3 million trees over 2.6 million acres have perished due to biotic pressures associated with drought. Dense and hazardous fuel loading, along with continued pressure of millions of acres of overly dense forests are pervasive across the State, continually putting private timberland and communities at risk.

8. The top seven largest wildfires in recorded history of California have occurred since 2018, burning cumulatively 3,913,754 acres, with much of these acres burning at high intensity. In total, between 2018 and 2022, the State has experienced over nine million acres burned. Additionally, during 2018–2022, California lost nearly 150 lives and over 40,000 residential and commercial structures due to wildfire.

9. California’s fire protection system is derived of federal, state and local fire protection resources. During times of crisis, these resources often combine available assets under the mutual aid system to collectively battle wildfire events under the Unified Command that is shared by both the California Department of Forestry and Fire Protection (“CAL FIRE”) and the USFS. Prior to deployment of Unified Command, each respective agency holds predesignated jurisdictions that determine responsibility for initial attack on ignitions. In California, these areas of responsibility are denoted as Direct Protection Areas (“DPA”), and uniquely apply to CAL FIRE or the USFS. In California, particularly within the northern portion of the State, the USFS holds the responsibility for fire protection across over a million of acres of privately owned timberland, including several surrounding communities, along with millions of acres of federally managed land. The establishment of Federal DPA elevates the importance of the USFS maintaining full initial and extended attack capabilities for the protection of both private and publicly managed assets that are at risk from wildfires.

### **Calforests' Interest in Intervention**

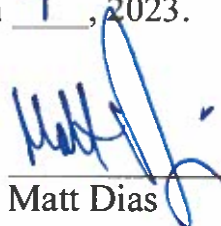
10. Calforests has an interest in the instant case because our members would be threatened by any increase in wildfire activity that would result from the USFS being limited in its ability to use aerial instruments to deploy fire retardant.

11. The USFS does not adequately represent Calforests or its members in this litigation. Although the parties share the same ultimate goal of defending the aerial deployment of fire retardant, Calforests and its members have distinct property and economic interests at stake. These are different interests than those of the USFS and EPA, which are responsible for administering the Endangered Species Act (ESA) and the Clean Water Act (CWA), among other statutes, in national forests in a manner that at times conflicts with Calforests members' interests.

12. Because the USFS' interests do not always align with Calforests members' interests, Calforests has participated as an intervenor in cases that had the potential to negatively impact Calforests members. For example, Calforests intervened in *Los Padres Forestwatch v. U.S. Forest Service*, No. 2:19-cv-05925-FMO-SS (C.D. Cal), involving a challenge to the Tecuya Ridge Shaded Fuelbreak Project, intended to protect residents adjacent to the Los Padres National Forest from catastrophic wildfire, and *Center for Biological Diversity v. Skalski*, 1:14-cv-01382-GSA (E.D. Cal.), involving the Rim Fire Recovery Project on the Stanislaus National Forest, where Calforests' members were engaged in the harvesting and processing of the dead timber from the Rim Fire and were potential purchasers of the associated salvage sales. In addition, Calforests intervened in

*Center for Biological Diversity et al. v. U.S. Fish and Wildlife Service*, 15-cv-05754-JST (N.D. Cal.), involving the listing of the Humboldt marten as an endangered or threatened species under the ESA. Calforests also intervened in *Center for Biological Diversity et al. v. U.S. Fish & Wildlife Service*, 16-cv-06040-WHA (N.D. Cal.), involving the U.S. Fish and Wildlife Service's withdrawal a proposed rule listing the West Coast distinct population segment of the fisher as a threatened species under the ESA.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 7, 2023.



---

Matt Dias

**EXHIBIT 6**

**Declaration of Julia Altemus [Montana Wood Products Association] in  
Support of Putative Intervenors' Motion to Intervene**

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***Attorneys for Putative Intervenors***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

Forest Service Employees for  
Environmental Ethics,

*Plaintiff,*

No. 9:22-CV-168-DLC

v.

United States Forest Service,

*Defendant,*

Town of Paradise, California, Butte  
County, California, Plumas County,  
California, Rural County  
Representatives of California,  
American Forest Resource Council,  
National Alliance of Forest Owners,  
Federal Forest Resource Coalition,  
California Forestry Association,  
Montana Wood Products Association,  
Oregon Forest Industry Council,  
Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF JULIA  
ALTEMUS [MONTANA WOOD  
PRODUCTS ASSOCIATION] IN  
SUPPORT OF PUTATIVE  
INTERVENORS' MOTION TO  
INTERVENE



I, Julia Altemus, declare as follows:

1. I make this declaration based on my personal knowledge. I am over the age of 18, and if called as a witness, would competently testify as follows.

2. I am the Executive Director of the Montana Wood Products Association (MWPA), a position I have held for 11.5 years. Prior to joining MWPA, I worked for the U.S. Senate for 12 years and the U.S. House of Representatives for two years focusing on energy and natural resource policy and legislation. After leaving Congress in March of 2003, I worked for the Montana Logging Association as the governmental affairs director. I then accepted a position working with the state forester from 2008 to June of 2011, when I was then selected as the executive director of MWPA.

3. I make this declaration in support of Putative Intervenor's Motion to Intervene filed concurrently herewith.

### **Introduction**

4. MWPA was founded in 1972, and has served as a major voice for the forest products industry in the State of Montana while actively dealing with timber, logging, and wood products manufacturing issues in the public area, and with the state and federal government. MWPA is a voluntary non-profit trade association whose purpose is to promote long-term management of Montana's forests, furnish opportunities for open discussion and appropriate interchange of information concerning all facets of the forest products industry, and accumulate and disseminate information regarding the forest products industry in order to foster the best interests of the industry and public.

5. MWPA's membership includes a diverse group of companies and individuals involved in all facets of Montana's forest products industry. This includes sawmills, manufacturers of plywood, particle board, fiberboard, pulp and paper, posts and poles, log homes, as well as timberland owners and managers and logging contractors. They produce value-added products through manufacturing and provide over 7,000 direct jobs for Montana families. All major sawmill companies in Montana are members of MWPA.

6. MWPA works to support a positive business climate for the forest products industry and its suppliers. In addition, MWPA promotes the positive contributions the forest products industry makes to Montana's economy and environment to the public. We work with federal agencies, tribes, non-industrial private timberland owners, and the State of Montana to ensure a steady, reliable timber supply for our mills.

7. National forests in Montana have been increasingly affected by wildfire. Cumulatively, major wildfire years have occurred in Montana in 3-5 year cycles since 2000 and have impacted 7.7 million acres or roughly 30 percent of the entire forested area of Montana. The 2020 Montana Forest Action Plan identified over 9 million acres at risk to catastrophic wildfire with over 3.4 million of those acres in Montana's wildland urban interface. Unfortunately, forest stand conditions only continue to worsen as recent a Forest Inventory and Analysis report shows average annual growth of all live trees >5.0 in diameter totaled 887.6 million cubic feet while average net mortality (due to natural causes) of trees >5.0

diameter totaled 931.6 million cubic feet or a net growth of -54.0 million cubic feet.

### **MWPA's Interest in Intervention**

8. MWPA has an interest in the instant case because its members rely on the health and productivity of public forests. Many of MWPA's members own property and wood products facilities adjacent to public forests managed by the U.S. Forest Service (Forest Service) and the U.S. Bureau of Land Management. The health, vitality, and stability of the communities within which MWPA's members work are reliant on prompt and effective fire suppression efforts by the Forest Service and other federal agencies.

9. Moreover, MWPA's members would be threatened by any increase in wildfire that would result from the Forest Service being limited in its ability to use deploy fire retardant from aircraft.

10. MWPA's members purchase timber from national forests to supply their mills, and many of our members rely heavily on federal timber since they do not own their own forestland and the government is the dominant owner of forestland in the region. MWPA members are vital to the health and stability of Montana's economy, as they make up many of the top private employers in the state. The MWPA and its members have a strong interest in maintaining the economic vitality of our State and the availability of family-wage jobs the forest products industry provides.

11. The Forest Service does not adequately represent MWPA or its members in this litigation. Although the parties share the same ultimate goal of

defending the deployment of fire retardant from aircraft, MWPA and its members have specific property and economic interests at stake. These are different and more specific interests than those of the Forest Service.

12. Because the Forest Service's interests do not always align with MWPA members' interests, MWPA has participated as an intervenor in cases that had the potential to negatively impact MWPA's members. For example, MWPA intervened in *Native Ecosystems Council et al. v. Marten et al.*, 9:17cv153 (D. Mont.), a case concerning challenges to two Forest Service decisions designating approximately five million acres in Montana under the Farm Bill Amendment to the Healthy Forests Restoration Act, and approval of the Moose Creek Vegetation Project via categorical exclusion.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 6, 2023.

  
\_\_\_\_\_  
Julia Altemus

**EXHIBIT 7**

**Declaration of Jim Houston [California Farm Bureau] in Support of  
Putative Intervenors' Motion to Intervene**

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Washington Forest Protection  
Association, California Farm Bureau,  
California Women for Agriculture, and  
National Wildfire Suppression  
Association,

*Putative Intervenor-Defendants.*

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DECLARATION OF JIM HOUSTON  
[CALIFORNIA FARM BUREAU] IN  
SUPPORT OF PUTATIVE  
INTERVENORS' MOTION TO  
INTERVENE

I, Jim Houston, declare:

1. I am the Administrator for the California Farm Bureau Federation (“California Farm Bureau”), an association of California farmers, ranchers, students, and supporters of the agricultural industry that is based in Sacramento, California. California Farm Bureau is a Putative Intervenor in this action. The statements herein are based on my own personal knowledge and are true and correct. If called to testify to their accuracy, I could and would do so.

2. I make this declaration in support of Putative Intervenor’s Motion to Intervene filed concurrently herewith.

3. California Farm Bureau is a non-profit, California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. California Farm Bureau is California’s largest farm organization and is comprised of 53 county Farm Bureaus representing more than 28,000 agricultural, associate, and collegiate members in 56 counties. California Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s and the nation’s resources. To that end, California Farm Bureau is involved in efforts to protect the resources of the state and nation, including the preservation of land for agricultural purposes.

4. California Farm Bureau has a direct and important interest in this case because its membership of family farmers and ranchers own or operate enterprises



that rely on access to federal land for grazing, federal programs for certain conservation, and timber products.

5. California Farm Bureau supports the multiple uses that the national forests provide, including pasture lands for livestock during the crucial summer months when ranchers must use their private lower elevation lands to grow hay and other crops to sustain their livestock during the remainder of the year, industrial and private forestry activities, and rural communities where members both live and work.

6. California Farm Bureau has an interest in this litigation for several reasons.

7. First, numerous California Farm Bureau members hold Forest Service grazing permits which allow them to utilize National Forest System lands to sustain their livestock. Wildfires on national forests during the grazing season can threaten—and even kill—livestock, disrupt grazing operations, and cause our members grave physical and financial harm.

8. Second, many California Farm Bureau members own farm and ranch lands adjacent to the eighteen national forests in California. Our members are therefore routinely threatened by wildfires that ignite on national forests and spread to adjacent private lands. Some of our members are also located in rural areas where the federal government has the responsibility to respond to wildfire on private lands and communities.

9. California Farm Bureau's members are therefore directly interested in and affected by the U.S. Forest Service's response to wildfires. We are interested

in this action because our members' safety, health, properties, and businesses are at stake if the Forest Service is precluded from deploying fire retardant from aircraft in response to wildfires that threaten national forests and adjacent private lands and rural communities.

10. Although California Farm Bureau generally supports the Forest Service's resource management goals, the Forest Service does not adequately represent California Farm Bureau or its members in this litigation because as a public agency, the Forest Service's mission is much broader than that of California Farm Bureau. Although the parties share the same ultimate goal of defending the aerial deployment of fire retardant, California Farm Bureau members have unique safety, property and economic interests at stake, as described above.

11. Because the Forest Service does not always adequately represent California Farm Bureau members' interest, California Farm Bureau and its members regularly intervene in cases involving management of national forests. For example, California Farm Bureau intervened in *Central Sierra Environmental Resource Center, et al. v. U.S. Forest Service, et al.*, No. 1:17-cv-00441-LJO-SAB (E.D. Cal.), involving a challenge under the Clean Water Act and other environmental laws to the Forest Service's authorization of cattle grazing on the Stanislaus National Forest. Likewise, California Farm Bureau intervened in *Western Watersheds Project v. United States Forest Service*, No. 08-CV-1460 PJH (N.D. Cal.), involving challenges under the National Environmental Policy Act to the Forest Service's decisions to permit grazing across forty-seven grazing allotments in California.

the Forest Service's decisions to permit grazing across forty-seven grazing allotments in California.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on March 7th, 2023.

  
\_\_\_\_\_  
Jim Houston