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13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF TEHAMA

15 BATTLE CREEK ALLIANCE, an
16 unincorporated association; and MARILY
17 WOODHOUSE, an individual,

18 Petitioners and Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF
21 FORESTRY and FIRE PROTECTION, a
22 California agency; and
23 DOES 1 through 20, inclusive,

24 Respondents and Defendants;

25 SIERRA PACIFIC INDUSTRIES, a
26 California corporation; and DOES 21 through
27 40, inclusive,

28 Real Parties in Interest and
Defendants.

Case No.:

Filed Under the California Environmental Quality
Act (“CEQA”)

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

(CEQA, Pub. Res. Code § 21000, *et seq.*; Z’berg-
Nejedly Forest Practice Act of 1973, Pub. Res.
Code § 4511, *et seq.*; Code of Civil Procedure §
1094.5 and 1085)

1. Petitioners Battle Creek Alliance and Marily Woodhouse (“Petitioners”) challenge the decision of Respondent California Department of Forestry and Fire Protection (“Cal Fire”) to approve the Rio Gatito Timber Harvest Plan (“Rio Gatito THP”, “THP” or “Project”), No. 2-19-00180-TEH, submitted by Real Party in Interest Sierra Pacific Industries (“SPI”). In approving this

1 THP, Cal Fire failed to comply with the California Environmental Quality Act (“CEQA”), the
2 Z’berg-Nejedly Forest Practice Act of 1973 (“FPA”), and applicable implementing regulations.
3 Petitioners seek an order setting aside approval of this THP because Cal Fire’s approval constitutes
4 an abuse of discretion and is contrary to law. (Code Civ. Proc. §§ 1094.5; 1085; Pub. Resources
5 Code § 21168.5.)

6 2. Petitioners challenge the Rio Gatito THP due to the failures of Cal Fire and SPI to
7 adequately study, assess and mitigate the THP’s cumulative impacts to water quality and aquatic
8 habitat within Panther Creek and Battle Creek downstream of the Project.

9 3. Petitioners further allege that Cal Fire has engaged in a pattern and practice of failing
10 to adequately study, assess and mitigate THPs’ cumulative impacts to water quality and aquatic
11 habitat within the Battle Creek watershed by adhering to a de facto policy to only address potential
12 cumulative water quality and aquatic habitat impacts associated with a particular THP that are
13 discernable within a single planning watershed in which the THP is located and failing to address
14 downstream watercourses where relevant cumulative impacts are or would be present. This de facto
15 policy is not supported by substantial evidence, errs as a matter of law, and ignores the realities that
16 logging activities and their accompanying roads in the upper part of the Battle Creek watershed
17 contribute to water quality and aquatic habitat impacts that accumulate downstream in the watershed.

18 4. Petitioners also allege that Cal Fire has engaged in a pattern and practice of failing to
19 adequately study, assess and mitigate THPs’ cumulative impacts to water quality and aquatic habitat
20 within the Battle Creek watershed by applying a de facto policy that if a THP proposes to comply
21 with the minimum required management practices identified in the Forest Practice Rules, the THP
22 would by definition not contribute to any downstream cumulative water quality and aquatic habitat
23 impacts. This de facto policy is not supported by substantial evidence, errs as a matter of law and
24 assumes a level of effectiveness of the FPR’s management practices that precludes any meaningful
25 assessment of cumulative water quality and aquatic habitat impacts from logging activities in the
26 Battle Creek watershed.

27 5. Petitioners respectfully request that this Court vacate and set aside the approval of
28

1 the Rio Gatito THP and order Respondent CalFire to comply with CEQA and the FPA in any further
2 review of the Rio Gatito THP as well as future THPs in the Battle Creek watershed.

3 **PARTIES**

4 6. Petitioner BATTLE CREEK ALLIANCE (“Alliance”) is a Northern California-based
5 regional alliance of residents and groups whose lives are adversely affected by unsustainable logging
6 practices, including cumulative sediment and turbidity impacts to creeks and rivers and destruction
7 of wildlife and their habitat. Battle Creek Alliance was formed in 2008. The Alliance is based in
8 Manton, California, immediately downstream of the project. Since its formation, the Alliance has
9 sought to raise public awareness regarding unsustainable logging practices through information
10 distribution, volunteer water quality monitoring within the Battle Creek Watershed, water quality
11 data assessment and publication, and tracking and commenting on THPs of concern proposed in and
12 near the Battle Creek watershed.

13 7. In 2009, the Alliance began a long-term water quality monitoring program at strategic
14 locations throughout the Battle Creek watershed. To date, the Alliance has collected over 12,000
15 water samples from established sampling locations in creeks in the watershed. The sampling
16 locations include creek locations above SPI’s industrial logging areas as well as below those logged
17 areas. The Alliance’s sampling methodology has been reviewed and determined to be reliable. The
18 records of the samples are maintained in a database maintained by the California State Water
19 Resources Control Board. A research paper discussing and relying upon the Alliance’s data was
20 published in the scientific journal, *Environmental Management*, in 2019.

21 8. Petitioner MARILY WOODHOUSE is a member and the director of the Battle Creek
22 Alliance. Petitioner Woodhouse resides in Manton, California. Petitioner Woodhouse has resided in
23 the Battle Creek watershed for 31 years, downstream of the Rio Gatito THP. Ms. Woodhouse
24 frequently travels throughout the Battle Creek watershed where she engages in observing and
25 rescuing wildlife and conducting water quality monitoring in creeks throughout the watershed.
26 Petitioner Woodhouse coordinates the Alliance’s sampling program in the Battle Creek watershed.

27 9. Petitioner Woodhouse and members of the Alliance have environmental, educational,
28 recreational, scientific, and aesthetic interests in areas downstream of and in the Project area and the

1 of the Project that are the subject of this lawsuit would occur in Tehama County, and the Project
2 would impact the interests of Tehama County residents.

3 17. Petitioners have complied with the requirements of Public Resources Code § 21167.5
4 by serving on April 30, 2020 a written notice of Petitioners' intention to commence this action
5 against Respondents pursuant to CEQA. A copy of the written notice is attached hereto as **Exhibit A**.

6 18. This action is timely filed in accordance with all applicable statutes of limitations
7 including Public Resources Code § 21167, as modified by the California Judicial Council's
8 Emergency Rule 9 adopted April 6, 2020.

9 19. Petitioners have complied with the requirements of Public Resources Code § 21167.6
10 by filing a notice of their election to prepare the record of administrative proceedings relating to this
11 action. A copy of the notice is attached hereto as **Exhibit B**.

12 20. Petitioners will comply with the requirements of Public Resources Code § 21167.7
13 and Code of Civil Procedure § 388 by sending a copy of this Petition and Complaint to the California
14 Attorney General within the required time period.

15 21. Petitioners have exhausted all available administrative remedies in that Respondent's
16 approval of the Plan is final and not subject to further administrative appeal procedures.

17 22. In accordance with Public Resources Code § 21177, subdivisions (b) and (c),
18 Petitioners objected to the approval of the project in writing during the public comment period for
19 the Project.

20 23. In accordance with Public Resources Code § 21177, subdivision (a), all grounds for
21 non-compliance with CEQA, the Forest Practice Act, and the Forest Practice Rules alleged herein
22 were presented to Cal Fire during the public-comment period for or prior to the close of the public
23 hearing on the Plan; or in the alternative, there was no opportunity for members of the public to raise
24 the grounds of noncompliance alleged in this Petition prior to Cal Fire's decision to approve the Plan.

25 24. Petitioners bring this action as private attorneys general pursuant to Code of Civil
26 Procedure § 1021.5 to enforce important rights affecting the public interest. Issuance of the relief
27 requested in this Petition will confer a significant benefit on a large class of persons by ensuring that
28 Cal Fire does not approve the THP without complying with CEQA, the Forest Practice Act and the

1 Forest Practice Rules. The necessity and financial burden of enforcement are such as to make an
2 award of attorney’s fees appropriate in this proceeding. Absent this timely enforcement action by
3 Petitioners, the THP, as well as other future THPs, might otherwise be deemed lawfully approved,
4 despite Cal Fire’s failure to comply with CEQA, the Forest Practice Act, and the Forest Practice
5 Rules.

6 25. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law
7 unless this Court grants the requested writ of mandate to require Respondents to set aside approval of
8 the THP and approval of the Project. In the absence of such remedies, Respondents’ approval will
9 remain in effect in violation of state law.

10 **LEGAL BACKGROUND**

11 **The Forest Practices Act and CEQA**

12 26. A THP is evaluated under a certified regulatory program, meaning that it is exempt
13 from Chapters 3 and 4 of CEQA. When forming a THP, state or local agencies are not required to
14 prepare a full Environmental Impact Report (“EIR”), nor are they subject to the statutes of
15 limitations for EIRs, negative declarations and notices of exemption. (Pub. Res. Code § 21080.5.)

16 27. As a functional equivalent of a CEQA document, the THP must pass muster as a
17 standalone document that meets the requirements of both the FPA and the CEQA document it is
18 taking the place of. (*Ebbetts Pass Forest Watch v. California Dep’t of Forestry & Fire Protection*
19 (2008) 43 Cal. 4th 936, 943-44.)

20 28. The substantive requirements of the THP are governed by the FPA and the Forest
21 Practice Rules (“FPRs”). The THP must, among other information, adopt feasible mitigation
22 measures and/or alternatives which would lessen or avoid an activity’s significant adverse impacts on
23 the environment; and provide sufficiently clear and detailed information to enable effective review
24 by responsible agencies and the public so that individual and cumulative impacts can be avoided or
25 reduced. (14 Cal. Admin. Code §§ 896(a), 897(b)(3).)

26 29. CEQA mandates that “the long-term protection of the environment...shall be the
27 guiding criterion in public decisions” throughout California. (PRC § 21001(d).) The foremost
28 principle under CEQA is that it is to be “interpreted in such a manner as to afford the fullest possible

1 protection to the environment within the reasonable scope of the statutory language.” (*Citizens of*
2 *Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 563-64.) An agency’s action violates
3 CEQA if it “thwarts the statutory goals” of “informed decisionmaking” and “informed public
4 participation.” (*Kings Co. Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

5 30. Under CEQA, the lead agency bears a burden to investigate potential environmental
6 impacts. (*Cty. Sanitation Dist. No. 2 v. Cty. of Kern* (2005) 127 Cal.App.4th 1544, 1597.) “[A]n
7 agency must use its best efforts to find out and disclose all that it reasonably can.” (14 Cal. Admin.
8 Code § 15144; *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91
9 Cal.App.4th 1344, 1370.) Only “*after thorough investigation*” may a lead agency conclude that a
10 particular impact is too speculative for evaluation. , the agency should note its conclusion and
11 terminate discussion of the impact.” (14 Cal. Admin. Code § 15145; *Berkeley Keep Jets*, 91
12 Cal.App.4th at 1370-71.)

13 31. “‘Cumulative impacts’ refer to two or more individual effects which, when
14 considered together, are considerable or which compound or increase other environmental impacts.”
15 (14 Cal. Admin. Code § 15355.) “The individual effects may be changes resulting from a single
16 project or a number of separate projects.” (§ 15355(a).) “The cumulative impact from several
17 projects is the change in the environment which results from the incremental impact of the project
18 when added to other closely related past, present, and reasonably foreseeable probable future
19 projects.” (§ 15355(b).) “Cumulative impacts can result from individually minor but collectively
20 significant projects taking place over a period of time.” (*Id.*)

21 32. CEQA requires that an EIR or its equivalent “shall discuss cumulative impacts of a
22 project when the project’s incremental effect is cumulatively considerable, as defined in [CEQA
23 Guidelines] section 15065(a)(3).” (14 Cal. Admin. Code § 15130(a).) CEQA Guidelines section
24 15065(a)(3) provides that an EIR must address whether:

25 The project has possible environmental effects that are individually limited but
26 cumulatively considerable. “Cumulatively considerable” means that the incremental
27 effects of an individual project are significant when viewed in connection with the
28 effects of past projects, the effects of other current projects, and the effects of probable
future projects.

1 (14 Cal. Admin. Code § 15065(a)(3).) “[A] cumulative impact consists of an impact which is created
2 as a result of the combination of the project evaluated in the EIR together with other projects causing
3 related impacts.” (§ 15130(a)(1).) “Where a lead agency is examining a project with an incremental
4 effect that is not “cumulatively considerable,” a lead agency need not consider that effect significant,
5 but shall briefly describe its basis for concluding that the incremental effect is not cumulatively
6 considerable.” (§ 15130(a).) Where an EIR, or in this case a THP, determines that a project’s
7 contribution to a significant cumulative impact will be rendered less than cumulatively considerable
8 and thus not significant, “[t]he lead agency shall identify facts and analysis supporting its conclusion
9 that the contribution will be rendered less than cumulatively considerable.” (§ 15130(a)(3).)

10 33. An agency may include as an element of its cumulative impacts analysis, “[a] list of
11 past, present, and probable future projects producing related or cumulative impacts, including, if
12 necessary, those projects outside the control of the agency....” (14 Cal. Admin. Code §
13 15130(b)(1)(A).) When utilizing a list of projects, “factors to consider when determining whether to
14 include a related project should include the nature of each environmental resource being examined,
15 the location of the project and its type.” (§ 15130(b)(2).) “Location may be important, for example,
16 when water quality impacts are at issue since projects outside the watershed would probably not
17 contribute to a cumulative effect.” (*Id.*) The types of projects included on the list would be important
18 to address, for example, a particular pollutant. (*Id.*) In defining the geographic scope of the area
19 affected by a project’s cumulative effects, the lead agency must “provide a reasonable explanation
20 for the geographic limitation used.” (§ 15130(b)(3).) A summary of the expected environmental
21 impacts from each of the listed projects with specific reference to additional information must be
22 provided. (§ 15130(b)(4).) Lastly, “[a] reasonable analysis of the cumulative impacts of the relevant
23 projects” must be included in the EIR or its equivalent. (§ 15130(b)(5).)

24 **STATEMENT OF FACTS**

25 34. The THP proposes to harvest 822 acres of timber land within the Panther Creek
26 subwatershed. Panther Creek is a Class II tributary stream within the Battle Creek Watershed. The
27 Battle Creek Watershed includes about 222,367 acres of land. The Panther Creek subwatershed
28 covers an area of 10,991 acres within the southeastern portion of the Battle Creek watershed. Panther

1 Creek flows into the South Fork of Battle Creek approximately 1.5 miles west of the THP area. The
2 South Fork of Battle Creek then flows approximately 20 miles west where it merges with the North
3 Fork of Battle Creek. Battle Creek includes cold-water habitat for threatened and endangered runs of
4 Chinook salmon.

5 35. Petitioners are informed and thereupon allege that 67 THPs covering over 61,000
6 acres have been filed in the Battle Creek watershed between 1997 and 2016. (*See* Exhibit C.) The
7 prior THPs are concentrated in the middle of the watershed where 75,874 contiguous acres of land
8 are identified as industrial timberland, extending from the watershed’s northern to southern edge.
9 (*Id.*) In 2012, a large fire – the Ponderosa Fire – also occurred in this area. An additional 27,000
10 acres of post-fire salvage logging occurred in this portion of the Battle Creek watershed under
11 emergency or other types of exemptions from CEQA.

12 36. Water quality monitoring in the watershed has measured increased levels of turbidity
13 and temperature in the Battle Creek watershed. The Alliance’s data collected at a sampling site on
14 the South Fork of Battle Creek downstream of the Rio Gatito THP shows exceedances of turbidity,
15 temperature, and pH standards. A published study reviewing water quality data collected from 2009
16 to 2015 from 13 stream locations in the Battle Creek watershed indicates that the sampling locations
17 with the most harvest areas and highest road densities had the highest turbidity before the 2012
18 Ponderosa Fire as well as after the fire. (Lewis, Jack, et al., “Turbidity Responses from Timber
19 Harvesting, Wildfire, and Post-Fire Logging in the Battle Creek Watershed, Northern California.”
20 (Environment Management, April 11, 2018).) The study further concludes that:

21 Despite site-specific application of BMPs [Best Management Practices], ground-based
22 logging with high road densities was strongly associated with the magnitude of turbidity
23 and sediment-related aquatic impacts, apparently forestalling the post-fire recovery of
24 water quality. These findings suggest that adverse cumulative impacts on water quality
25 may not be completely avoidable using current BMPs without also limiting the rate and
total area affected by logging operations.

26 (*Id.*)

27 37. Clearcut harvesting will comprise 80% of the area logged under the Rio Gatito THP.
28 Very small areas of about 0.1 acres in size totaling two to four percent of the THP area will retain
some of the existing vegetation. Two stands that were planted in 1973 and 1993 and comprising

1 about four percent of the THP are earmarked for commercial thinning. 15% of the THP area to be
2 logged will be as a fuel break that will run between the clearcut areas.

3 38. 8,000 feet of new, unpaved road will be constructed as part of the THP. 7,500 feet of
4 the new road will take the place of three existing roads that currently are located in poor locations or
5 adjacent to Class III watercourses. 5,700 feet of those existing roads will be abandoned as part of the
6 THP. Another 500 feet of new road construction includes two short spur roads.

7 39. The THP area includes Class II and III watercourses as well as springs. The THP
8 estimates that there are approximately 34 miles of classified watercourses in the Panther Creek
9 subwatershed. Within that area are located 1.4 miles of Class I watercourse and 9 miles of Class II
10 watercourses. The remaining 23.6 miles of watercourses within that area are classified as Class III
11 watercourses. Petitioners are informed and believe and thereupon allege that all of the Class III
12 watercourses in the drainage flow to Panther Creek. Although the areas adjacent to the Class III
13 watercourse are equipment exclusion zones (“ELZ”), there are no restrictions on cutting timber in
14 these areas.

15 40. SPI submitted the Plan to Cal Fire on or about November 1, 2019. Cal Fire conducted
16 its “First Review” and accepted the Plan for filing on November 27, 2019. Cal Fire, with several
17 other agency representatives, conducted an on-site Pre-Harvest Inspection on December 12, 2019
18 and issued its Pre-Harvest Inspection Report on December 19, 2019. The agency representatives
19 spent only one day in the field for the pre-harvest inspection for this plan. Cal Fire started its
20 “Second Review” of the Plan on January 10, 2020, and concluded the “Second Review” on January
21 30, 2020.

22 41. On February 4, 2020, Petitioners submitted extensive comments on the Plan.
23 Petitioners’ comments identified numerous concerns, including but not limited to, significant
24 shortcomings in the THP regarding the evaluation of cumulative water quality and aquatic habitat
25 impacts, the use of an overly restrictive watershed assessment area that precluded the identification
26 of cumulative impacts that manifest downstream of the Project area, the absence of substantial
27 evidence to support the THP’s assumptions that the Plan would not contribute to significant impacts
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1 to water quality – including high turbidity and temperature levels – and downstream salmonid habitat
2 from increased temperature and sedimentation, and the absence of substantial evidence to support the
3 THP’s assumption that compliance with the Forest Practice Rules would prevent any downstream
4 cumulative impacts to water quality or aquatic habitat.

5 42. Cal Fire approved the Plan and issued its Official Responses to Public Comments on
6 April 1, 2020.

7
8 **FIRST CAUSE OF ACTION**

9 **(Violation of CEQA, the Forest Practice Act, and Forest Practice Rules)**

10 43. Petitioners hereby reallege and incorporate the preceding paragraphs of this Petition
11 by reference as if set forth again in full.

12 44. In approving the Plan, Respondent prejudicially abused its discretion in violation of
13 CEQA, the Forest Practice Act, and the Forest Practice Rules. These violations are described in the
14 comment letters submitted by Petitioners and the public during Cal Fire’s review of the Plan,
15 including, without limitation, Petitioners’ letter dated February 4, 2020.

16 45. In particular, but without limitation, Respondent prejudicially abused its discretion by
17 failing to lawfully assess the THP’s cumulative impacts on water quality and the beneficial uses of
18 Panther Creek and Battle Creek as required by 14 CCR § 15130; failing to lawfully assess the Plan’s
19 cumulative impacts on threatened salmonids and their habitat from habitat modification by timber
20 operations; failing to meet the agency’s duty to investigate under CEQA or identify pursuant to 14
21 CCR § 936.9 the pre-plan adverse cumulative watershed effects downstream of the Project; failing to
22 identify a complete list of THPs, salvage logging projects, and other timber harvest projects,
23 including those project’s associated road lengths, that are contributing sediment and heat to
24 watercourses in the Battle Creek watershed, and failing to address whether the THP will add to
25 existing significant adverse cumulative watershed effects downstream of the Project area.

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27 46. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of
28 law and will suffer irreparable injury unless this Court issues the relief requested in this Petition.

1 **SECOND CAUSE OF ACTION**

2 **(Declaratory Relief Against Respondents)**

3 47. Petitioners hereby reallege and incorporate the preceding paragraphs of this Petition
4 by reference as if set forth again in full.

5 48. There is a real and actual controversy between Petitioners and Respondent regarding
6 whether Cal Fire systematically avoids the legally required evaluation of cumulative impacts for
7 THPs proposed within the Battle Creek watershed.

8 49. Petitioners contend that Cal Fire has engaged in a pattern and practice of failing to
9 adequately study, assess and mitigate THPs' cumulative impacts to water quality and aquatic habitat
10 within the Battle Creek watershed by adhering to a de facto policy that Cal Fire need only address
11 such cumulative impacts of a particular THP that are discernable within a single planning watershed
12 in which the THP is located. This de facto policy attempts to justify Cal Fire's persistent refusal to
13 address downstream watercourses where relevant cumulative impacts may be or are present. This de
14 facto policy is not supported by substantial evidence, errs as a matter of law, and ignores the realities
15 that logging activities and their accompanying roads in the upper part of the Battle Creek watershed
16 contribute to water quality and aquatic habitat impacts that accumulate downstream in the watershed.

17 50. Petitioners also contend that Cal Fire has engaged in a pattern and practice of failing
18 to adequately study, assess and mitigate THPs' cumulative impacts to water quality and aquatic
19 habitat within the Battle Creek watershed by applying a de facto policy that if a THP proposes to
20 comply with the minimum required management practices identified in the Forest Practice Rules, the
21 THP would by definition not contribute to any downstream cumulative water quality and aquatic
22 habitat impacts. This de facto policy is not supported by substantial evidence, errs as a matter of law
23 and assumes a level of effectiveness of the FPR's management practices that precludes any
24 meaningful assessment of cumulative water quality and aquatic habitat impacts from logging
25 activities in the Battle Creek watershed.

26 51. Petitioners are informed and believe that Respondents deny that their analysis of
27 cumulative water quality and aquatic habitat impacts for THPs in the Battle Creek watershed is
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1 deficient under CEQA, the FPA or the FPRs. Petitioners believe Cal Fire's pattern and practice of
2 avoiding a legally sufficient analysis of cumulative impacts to water quality and aquatic habitat in the
3 Battle Creek watershed has occurred by Cal Fire in approving prior THPs in the watershed.
4 Petitioners fear Cal Fire's lack of reasonable consideration of cumulative water quality and aquatic
5 habitat impacts of THPs will continue to occur for future THPs in the Battle Creek watershed.
6 Accordingly, Petitioners seek a judicial declaration that Respondent's de facto policy dismissing
7 cumulative water quality and aquatic habitat impacts in evaluating THPs within the Battle Creek
8 watershed is unlawful and an abuse of discretion under CEQA, the FPA and the FPRs.
9

10 **PRAYER**

11 WHEREFORE, Petitioners and Plaintiffs pray for the following relief:

- 12 1. For a writ of mandate compelling Respondent to void its approval of the Rio Gatito
13 THP and Real Party in Interest to suspend all timber operations, as defined in Public
14 Resources Code § 4527, subject to the THP;
- 15 2. For interim and permanent injunctive relief enjoining Real Parties in Interest and their
16 agents or employees from engaging in any timber operations, as defined in Public
17 Resources Code § 4527, subject to the Rio Gatito THP until the THP complies with
18 California regulations and statutes;
- 19 3. For a declaratory judgment declaring that Respondents have engaged in a pattern and
20 practice of violating CEQA, the FPA, and the FPRs by failing to lawfully assess the
21 cumulative water quality and aquatic habitat impacts of THPs within the Battle Creek
22 watershed;
- 23 4. For permanent injunctive relief compelling Respondents to assess cumulative water
24 quality and aquatic habitat impacts of THPs within the Battle Creek watershed based
25 on logging projects within the entire contiguous block of industrial timberland within
26 the Battle Creek watershed and consistent with the cumulative impacts analysis
27 required by CEQA, the FPA and the FPRs;
- 28 5. For an order compelling Respondent and Real Party in Interest to pay Petitioners'

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costs of suit;

6. For an order compelling Respondent and Real Party in Interest to pay Petitioners' reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5; and
7. For such other and further relief as the Court deems just and proper.

Dated: May 1, 2020

LOZEAU DRURY LLP



Michael R. Lozeau
Attorneys for Petitioners

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VERIFICATION

I, Michael R. Lozeau, am an attorney for Petitioners in this action. I am verifying this Petition pursuant to California Code of Civil Procedure section 446. Petitioners are absent from the County of Alameda, in which I have my office. I have read the foregoing petition and complaint. I am informed and believe that the matters in it are true and on that ground allege that the matters stated in the complaint are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 1, 2020


Michael R. Lozeau

EXHIBIT A



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Oakland, CA 94612

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April 30, 2020

Via U.S. Mail

Thom Porter, Director
California Department of Forestry and Fire
Protection (Cal Fire)
1300 U Street
P.O. Box 944246
Sacramento, CA 94244-2460

Mike Bradley, Region Chief
John Ramaley
Department of Forestry and Fire Protection
Northern Region Headquarters – Redding
6105 Airport Rd.
Redding, CA 96002

Sierra Pacific Industries
P.O. Box 496014
Redding, CA 96049

**Re: Notice of Intent to File Suit Under the California Environmental Quality Act
Regarding the Rio Gatito Timber Harvest Plan (THP No. 2-19-00180-TEH)**

Dear Director Porter, Region Chief Bradley, Mr. Ramaley, and Sierra Pacific Industries:

I am writing on behalf of the Battle Creek Alliance and Marily Woodhouse (“Petitioners”) regarding Cal Fires’ approval of the Rio Gatito Timber Harvest Plan (THP No. 2-19-00180-TEH) (“Project”) submitted by Sierra Pacific Industries.

Please take notice, pursuant to Public Resources Code (“PRC”) § 21167.5, that Petitioners intend to file a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”), under the provisions of the California Environmental Quality Act (“CEQA”), PRC § 21000 *et seq.*, against Respondent and Defendant California Department of Forestry and Fire Protection (“Respondent”) in the Superior Court for the County of Tehama, challenging the April 1, 2020 decision of Respondent to approve the Project.

The Petition being filed will request, inter alia, that the Court grant the following relief:

1. For a writ of mandate compelling Respondent to void its approval of THP No. 2-19-00180-TEH and Real Party in Interest to suspend all timber operations, as defined in Public Resources Code § 4527, subject to THP No. 2-19-00180-TEH;
2. For interim and permanent injunctive relief enjoining Real Party in Interest and its agents or employees from engaging in any timber operations, as defined in Public Resources Code § 4527, subject to THP No. 2-19-00180-TEH until the THP complies with California regulations and statutes;

3. For a declaratory judgment declaring that Respondents have engaged in a pattern and practice of violating CEQA, the Forest Practice Act (“FPA”), and the Forest Practice Rules (“FPRs”) by failing to lawfully assess the cumulative water quality and aquatic habitat impacts of THPs within the Battle Creek watershed;
4. For permanent injunctive relief compelling Respondents to assess cumulative water quality and aquatic habitat impacts of THPs within the Battle Creek watershed based on logging projects within the entire contiguous block of industrial timberland within the Battle Creek watershed and consistent with the cumulative impacts analysis required by CEQA, the FPA and the FPRs;
5. For an order compelling Respondent and Real Party in Interest to pay Petitioners’ costs of suit;
6. For an order compelling Respondent and Real Party in Interest to pay Petitioners’ reasonable attorneys’ fees pursuant to Code of Civil Procedure § 1021.5; and
7. For such other and further relief as the Court deems just and proper.

Sincerely,



Michael R. Lozeau
Lozeau | Drury LLP

PROOF OF SERVICE

I, Toyer Grear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1939 Harrison Street, Suite 150, Oakland, CA 94612. On May 30, 2020, I served a copy of the following documents:

- **Notice of Intent to File Suit Under the California Environmental Quality Act Regarding the Rio Gatito Timber Harvest Plan (THP No. 2-19-00180-TEH)**

- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pittsburg, California addressed as set forth below.
- By e-mailing the document(s) listed above to the addresses set forth below.

Thom Porter, Director
California Department of Forestry and Fire
Protection (Cal Fire)
1300 U Street
P.O. Box 944246
Sacramento, CA 94244-2460

Mike Bradley, Region Chief
John Ramaley
Department of Forestry and Fire Protection
Northern Region Headquarters – Redding
6105 Airport Rd.
Redding, CA 96002

Sierra Pacific Industries
P.O. Box 496014
Redding, CA 96049

I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed April 30, 2020 at Pittsburg, California.



Toyer Grear

EXHIBIT B

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12 Attorneys for Petitioners and Plaintiffs

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF TEHAMA

15 BATTLE CREEK ALLIANCE, an
16 unincorporated association; and MARILY
17 WOODHOUSE, an individual,

18 Petitioners and Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF
21 FORESTRY and FIRE PROTECTION, a
22 California agency; and
23 DOES 1 through 20, inclusive,

24 Respondents and Defendants;

25 SIERRA PACIFIC INDUSTRIES, a
26 California corporation; and DOES 21 through
27 40, inclusive,

28 Real Parties in Interest and
Defendants.

Case No.:

Filed Under the California Environmental Quality
Act (“CEQA”)

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

(CEQA, Pub. Res. Code § 21000, *et seq.*; Z’berg-
Nejedly Forest Practice Act of 1973, Pub. Res.
Code § 4511, *et seq.*; Code of Civil Procedure §
1094.5 and 1085)

Pursuant to Public Resources Code §21167.6(b)(2), Petitioners and Plaintiffs Battle Creek Alliance and Marily Woodhouse notify all parties that Petitioners elect to prepare the administrative record relating to the claims brought pursuant to the California Environmental Quality Act alleged in the above-captioned action challenging the April 1, 2020 decision of Respondent California

1 Department of Forestry and Fire Protection approving the Rio Gatito Timber Harvest Plan (THP No.
2 2-19-00180-TEH). Respondent and Real Party in Interest are directed not to prepare the
3 administrative record for this cause of action and not to expend any resources to prepare the
4 administrative record.

5 Dated: May 1, 2020

LOZEAU DRURY LLP

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8 Michael Lozeau

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EXHIBIT C

Battle Creek THPs

-  Battle Creek watershed
-  Subwatershed boundaries
-  Ponderosa Fire Perimeter 8/25/12
-  2-19-00180-TEH (Proposed)
-  2-17-070-SHA (Withdrawn)

THPs within the Battle Creek Watershed since 1997

-  Approved
-  Completed

