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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIERRA NEVADA FOREST PROTECTION  
CAMPAIGN, et al.,

Plaintiffs,

v.

WEINGARDT, et al.,

Defendants.

CIV-S-04-2727 DFL KJM

MEMORANDUM OF OPINION  
AND ORDER

CONSERVATION CONGRESS, et al.,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,

Defendant.

CIV-S-05-0093 DFL JFM

MEMORANDUM OF OPINION  
AND ORDER

1  
2 Plaintiffs in these two cases allege that the defendant  
3 United States Forest Service<sup>1</sup> violated the National Environmental  
4 Policy Act ("NEPA") by failing to circulate a draft environmental  
5 assessment ("EA") or otherwise involve the public "to the extent  
6 practicable" in the preparation of the EA. The parties in both  
7 cases have filed cross-motions for summary judgment. Although  
8 these cases are not consolidated, they raise the same legal  
9 issues and the court finds it expedient to issue a joint  
10 opinion.<sup>2</sup>

11 I.

12 A. The North 49 Project

13 Plaintiffs Sierra Nevada Forest Protection Campaign (the  
14 "Sierra Nevada Campaign"), Sierra Club, and Lassen Forest  
15 Preservation Group ("Lassen Group") allege that the Forest  
16 Service violated NEPA, the Appeals Reform Act ("ARA"), and the  
17 Administrative Procedure Act ("APA") in approving the North 49  
18 project in the Lassen National Forest. The North 49 project  
19 involves the logging of approximately 14,000 acres. (Sierra AR

20 \_\_\_\_\_  
21 <sup>1</sup> The defendants in Sierra Nevada v. Weingardt are Deputy  
22 Regional Forester Bernard Weingardt, the United States Forest  
23 Service, and the United States Department of Agriculture. The  
24 United States Forest Service is the sole defendant in  
Conservation Congress v. United States Forest Service. All  
defendants will be collectively referred to as the "Forest  
Service."

25 <sup>2</sup> Sierra Nevada v. Weingardt, No. 04-2727, was submitted on  
26 June 1, 2005; Conservation Congress v. United States Forest  
Service, No. 05-0093, was submitted on June 22, 2005. All  
parties ask the court to rule by June 30, 2005 because of pending  
timber contracts.

1 416-417.) The stated "purpose and need" for the North 49 project  
2 is to restore fire-adapted forest ecosystems and reduce the risk  
3 of wildfires. (Id.)

4 The Sierra Nevada Campaign and the Lassen Group notified the  
5 Forest Service of their interest in the North 49 project by  
6 letter in February 2004. (Sierra Pls.' Mot. at 7.) As a result,  
7 both organizations received a March 16, 2004 mailing from the  
8 Forest Service, which stated that the North 49 project was under  
9 consideration, generally described the project, and invited  
10 "input" on the proposed action. (Sierra AR 1.) The thirteen-  
11 page document accompanying the letter, referred to as a "scoping  
12 notice," included a description of the proposed action and  
13 approximately two and one-half pages of discussion of anticipated  
14 mitigation measures that would reduce impacts to wildlife,  
15 cultural resources, and watersheds. (Id. at 2-14.) The Sierra  
16 Nevada Campaign and Lassen Group both submitted timely comments  
17 in response to this mailing suggesting certain topics that should  
18 be covered by any environmental review of the project and  
19 requesting a copy of any draft EA or environmental impact  
20 statement ("EIS"). (Id. at 39-50.)

21 On May 11, 2004, the Forest Service sent another letter to  
22 plaintiffs stating that it was initiating a second public comment  
23 period as required by 36 C.F.R. § 215.6.<sup>3</sup> (Id.) After the close  
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25 <sup>3</sup> The "Appeals Rule," 36 C.F.R. § 215 et seq, requires  
26 notice and comment periods for certain Forest Service actions.  
Specifically, the Rule provides that, for Forest Service actions  
that will be analyzed in an EA, "[c]omments on the proposed  
action shall be accepted for 30 days following the date of

1 of public comment, the Forest Service prepared a series of  
2 internal reports, totaling more than three hundred pages, that  
3 evaluated the potential impacts of the proposed North 49 project,  
4 including impacts on silvicultural resources, wildlife,  
5 hydrology, sensitive plants, aquatic species, and visual  
6 resources. (Id. 95-413.) From these reports, the Forest Service  
7 prepared a fifty-page EA discussing the impacts of the project,  
8 including the cumulative impacts, as well as alternatives to the  
9 project in light of the information in the reports.

10 The EA was released to the public on August 20, 2004.  
11 (Sierra Pls.' Mot. at 9.) At the same time, the Forest Service  
12 issued a "Finding of No Significant Impact" ("FONSI") under NEPA  
13 and a Decision Notice approving the project. (Id.; Sierra AR  
14 464-73.) On October 4, 2004, plaintiffs filed an administrative  
15 appeal of the decision to approve the North 49 project. (Sierra  
16 AR at 483-965.) The appeal was dismissed without review by  
17 defendant Weingardt on the ground that none of the plaintiffs  
18 submitted substantive comments during the § 215.6 public comment  
19 period, even though plaintiffs had submitted comments before the  
20 beginning of the comment period. (Id. at 966.)

21 Plaintiffs filed this action on December 28, 2004, making  
22 the following two claims against the Forest Service: (1) the  
23 failure to circulate a draft EA for public comment violated NEPA  
24 and the APA; and (2) dismissal of plaintiffs' appeals violated

25 \_\_\_\_\_  
26 publication of the legal notice." 36 C.F.R. § 215.6 (2004).

1 the APA and the ARA. (FAC ¶¶ 37-48.) Plaintiffs seek  
2 declaratory and injunctive relief.

3 B. The Eagle Ranch, Edson, and Powder Projects

4 Plaintiffs Conservation Congress, Klamath Forest Alliance,  
5 and Citizens for Better Forestry challenge the Forest Service  
6 approvals of three timber projects in the Shasta-Trinity National  
7 Forest: the Eagle Ranch, Powder, and Edson projects.

8 1. The Eagle Ranch Project

9 \_\_\_\_\_ The Eagle Ranch project is located in Trinity County and  
10 involves logging of 117 acres. (Conservation AR 140.) The  
11 stated purpose and need for the project is to maintain and  
12 improve the health and vigor of forested areas and reduce the  
13 risk of wildfires. (Id. at 137.) The project was originally  
14 proposed in 1998, and it was initially planned that the EA would  
15 be circulated for public comment in July 1999. (Id. at 11-14.)  
16 The project was evidently delayed for reasons not in the record  
17 and a public scoping notice for the project was not distributed  
18 until March 19, 2004. (Id. at 21.) The notice contained three  
19 pages of information about the project and a map, but no analysis  
20 of the environmental impacts of the project. (Id. at 21-24.)  
21 Conservation Congress submitted five pages of comments in  
22 response to the notice, suggesting issues that should be  
23 addressed in an EA or EIS. (Id. at 29-35.) Three expert reports  
24 were subsequently prepared to analyze the impacts of the project.  
25 (Id. at 47-134.) The EA was completed on July 2, 2004. (Id. at  
26 135-169.) The Forest Service initiated a second public comment

1 period, pursuant to 36 C.F.R. § 215.6, on July 6, 2004 with a  
2 one-page letter requesting comments. However, the Forest Service  
3 did not make the already-completed expert reports or EA available  
4 to the public. Instead, the § 215.6 letter contained only a one-  
5 sentence description of the project. (Id. at 171.) Additional  
6 expert reports were completed during the 30-day public comment  
7 period, but none of these reports was released to the public  
8 during the comment period. (Id. at 180-358.) Conserva-tion  
9 Congress submitted additional comments on July 16, 2004. (Id. at  
10 175-79.) Finally, on September 2, 2004, the EA, with supporting  
11 expert reports, the FONSI, and the Decision Notice for the Eagle  
12 Ranch project were released to the public. (Id. at 359-64.)  
13 Conservation Congress appealed the decision. (Id. at 400-13.)  
14 The appeal was denied by the Forest Service on December 2, 2004.  
15 (Id. at 416-23.)

## 16 2. Powder Project

17 \_\_\_\_\_The Powder Vegetation and Fuels Management Project was  
18 initially proposed in 1998. (Id. at 100001-10.) The Powder  
19 project involves timber harvesting and fuels treatment on  
20 approximately 3,655 acres of National Forest for the purpose of  
21 improving forest health and preventing wildfires. (Id. at  
22 100081-82.) A Biological Assessment was completed on April 11,  
23 2003, and reports on the cultural and archeological impacts of  
24 the project were prepared during the summer and fall of 2003.  
25 (Id. at 100019-30; 100034-53; 100059-77.) On December 2, 2003,  
26 the Forest Service sent out a two-page public scoping letter for

1 the Powder project, with a brief description of the proposed  
2 action and its purpose and need. (Id. at 100081-83.) The stated  
3 purpose for the project is to thin the timber to reduce inter-  
4 tree competition, reduce wildfire risk, and maintain habitat for  
5 the northern spotted owl and northern goshawk. (Id.) The letter  
6 did not refer to any of the environmental reports already  
7 prepared for the project, and none of these reports was released.  
8 The Klamath Forest Alliance submitted comments in response to  
9 this scoping letter. (Id. at 100089-90.) On April 15, 2004, the  
10 Forest Service initiated the \$ 215.6 public comment period with a  
11 two-page letter, including a one paragraph description of the  
12 project. (Id. at 100107-21; 100127-39.) Both Klamath Forest  
13 Alliance and Conservation Congress submitted comments during this  
14 second public comment period. (Id. at 100136-46.) By the end of  
15 the second public comment period, another four expert reports  
16 were completed, but not released to the public, and,  
17 subsequently, another three expert reports were prepared. (Id.  
18 at 10096-104; 100107-21; 100127-34; 10036-39; 10058-84; 10087-88;  
19 100189-207.) The EA, FONSI, and Decision Notice for the Powder  
20 project were released to the public on September 3, 2004. (Id.  
21 at 100283-91.) Conservation Congress and Klamath Forest Alliance  
22 appealed the Forest Service decision, but that appeal was denied  
23 on December 8, 2004. (Id. at 100302-29.)

### 24 3. The Edson Project

25 \_\_\_\_\_The Edson project was initiated on August 8, 2003 with a  
26 two-page public scoping letter that generally described the

1 project but provided no information about its environmental  
2 impacts. (Id. at 200011-12.) The Edson project involves timber  
3 harvesting on slightly more than 2,000 acres. (Id.) The stated  
4 purpose of the project is to maintain forest health and  
5 diversity, provide habitat, reduce the risk of wildfires, and  
6 produce a yield of wood products. (Id.) One component of the  
7 project is to remove diseased and infected trees. (Id.) The  
8 Klamath Forest Alliance submitted comments in response to the  
9 scoping notice on August 19, 2003. (Id. at 200014-15.) The  
10 soils report and biological evaluation for the project were  
11 completed in March 2004 but were not released to the public.  
12 (Id. at 200031-44; 200050-70.) The § 215.6 comment period was  
13 initiated on March 25, 2004, and both the Klamath Forest Alliance  
14 and Conservation Congress submitted comments. (Id. at 200072-  
15 77.) The letter initiating the § 215.6 comment period was  
16 somewhat more comprehensive than the letters sent out for the  
17 other projects and included a description of proposed mitigation  
18 measures and alternatives, although the letter did not refer to  
19 the expert environmental reports already completed and did not  
20 discuss cumulative impacts. (Id.) Nine more expert reports were  
21 completed for the Edson project during the spring and summer of  
22 2004. (Id. at 200101-04; 200120; 200125-97; 200213-17; 200232-  
23 45.) On August 13, 2004, the Forest Service issued an EA, FONSI,  
24 and Decision Notice for the project. (Id. at 200246-87.)  
25 Conservation Congress appealed the project approval, but the  
26 appeal was denied on October 22, 2004. (Id. at 200292-305.)



1 Plaintiffs Conservation Congress, Klamath Forest Alliance,  
2 and Citizens for Better Forestry filed this action on January 13,  
3 2005, alleging that the Forest Service violated NEPA by approving  
4 the three projects without providing adequate public  
5 participation in the environmental review process. (Conservation  
6 Compl. ¶¶ 30-37.) Plaintiffs seek: (1) a declaration that the  
7 Forest Service violated NEPA in approving the three projects; (2)  
8 an order requiring the Forest Service to provide a meaningful  
9 opportunity for public comments on the EAs; and (3) an injunction  
10 against implementation of the projects until the Forest Service  
11 complies with the requirements of NEPA.

12 II.

13 A. NEPA

14 Plaintiffs in both cases allege that the Forest Service  
15 violated NEPA by failing to adequately involve and inform the  
16 public in the preparation and consideration of the EA for each of  
17 the projects.<sup>4</sup> Defendants counter that NEPA does not require  
18 circulation of a draft EA and that the Forest Service complied  
19 with NEPA's public notice and participation requirements by: (1)  
20 distributing a scoping letter and inviting comment; and (2)  
21 disclosing the EA after it was finalized. To prevail, plaintiffs  
22 must show that the agency's action was "arbitrary and capricious,  
23 an abuse of discretion, or contrary to law." 5 U.S.C. §  
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25 <sup>4</sup> Klamath Forest Alliance did not exhaust administrative  
26 remedies as to the Eagle Ranch and Edson projects. (Conservation  
Def.'s Reply at 10-11.) Therefore, the claims of Klamath Forest  
Alliance as to the Eagle Ranch and Edson projects are DISMISSED.

1 706(2) (A). An agency decision taken without the required  
2 procedure is "contrary to law." Idaho Sporting Cong. Inc. v.  
3 Alexander, 222 F.3d 562, 567 (9th Cir. 2000).

4 NEPA is designed to ensure a process and not to produce a  
5 particular result. See, e.g., Inland Empire Pub. Lands Council  
6 v. United States Forest Serv., 88 F.3d 754, 758 (9th Cir. 1996).  
7 NEPA seeks informed agency decision-making through informed  
8 public participation. Id.; Robertson v. Methow Citizens Council,  
9 490 U.S. 332, 349, 109 S.Ct. 1835 (1989); Citizens for Better  
10 Forestry v. USDA, 341 F.3d 961, 970-71 (9th Cir. 2003) ("CBF"),  
11 quoting Okanogan Highlands Alliance v. Williams, 236 F.3d 468,  
12 473 (9th Cir. 2000) ("[T]he very purpose of NEPA . . . is to  
13 'ensure [] that federal agencies are informed of environmental  
14 consequences before making decisions and that the information is  
15 available to the public.'").

16 The Council on Environmental Quality ("CEQ") is charged with  
17 promulgating regulations to ensure that the policies and  
18 requirements of NEPA will be carried out by federal agencies. 42  
19 U.S.C. § 4344. These regulations require give and take between  
20 an agency and members of the public. See 40 C.F.R. §§ 1500.1(b)  
21 ("public scrutiny [is] essential"), 1500.2(d) (the agency must  
22 "encourage and facilitate public involvement"), 1501.4 (the  
23 agency must "involve the public, to the extent practicable, in  
24 preparing [EAs]"), 1506.6 (the agency must "make diligent efforts  
25 to involve the public" in preparing environmental documents, give  
26 "public notice of . . . the availability of environmental

1 documents so as to inform those persons . . . who may be  
2 interested or affected," and "solicit appropriate information  
3 from the public.") (2004). The CEQ Regulations are mandatory,  
4 not hortatory. CBF, 341 F.3d at 970. They require that an  
5 agency give environmental information to the public and then  
6 provide an opportunity for informed comments to the agency. See  
7 40 C.F.R. §§ 1501.4, 1506.6. This process of disclosing  
8 information to the public must occur before the agency has  
9 reached its final decision on whether to go forward with the  
10 project. Id. § 1500.1(b).

11 There are two kinds of environmental documents contemplated  
12 by NEPA and the CEQ regulations: an EA and an EIS. An EIS must  
13 be prepared for "major federal actions significantly affecting  
14 the quality of the human environment." 42 U.S.C. § 4332(2)(c).  
15 "An EIS is a thorough analysis of the potential environmental  
16 impacts that 'provide[s] full and fair discussion of significant  
17 environmental impacts and . . . informs[s] decisionmakers and the  
18 public of the reasonable alternatives which would avoid or  
19 minimize adverse impacts or enhance the quality of the human  
20 environment.'" Klamath-Siskiyou Wildlands Ctr. v. BLM, 387 F.3d  
21 989, 993 (9th Cir. 2004), quoting 40 C.F.R. § 1502.1 (2004). The  
22 regulations require that a draft EIS be circulated to the public  
23 for comment before it is adopted as the decision of the agency.  
24 40 C.F.R. §§ 1503.1-1503.4 (2004).

25 The EA is a more concise document whose purpose is to  
26 "[b]riefly provide sufficient evidence and analysis for

1 determining whether to prepare an environmental impact  
2 statement." Id. § 1508.9. The EA has become the predominant  
3 environmental document under NEPA; in a typical year, 45,000 EAs  
4 are prepared, compared to just 450 EISs. Native Ecosystems  
5 Council v. Dombeck, 304 F.3d 886, 896 (9th Cir. 2002). Under the  
6 CEQ regulations, an EA must contain a discussion of the need for  
7 the proposed action, potential alternatives to the project, a  
8 discussion of the environmental impacts of the project and the  
9 alternatives, and a list of agencies and persons consulted. Id.  
10 Under the case law, an EA that is followed by a FONSI must  
11 provide sufficient information and detail to demonstrate that the  
12 agency took the required "hard look" at the environmental  
13 consequences of the project before concluding that those impacts  
14 were insignificant. Save the Yaak Comm. v. Block, 840 F.2d 714,  
15 717 (9th Cir. 1988). To be adequate, an EA, like an EIS, must  
16 analyze cumulative impacts and respond to public comments  
17 concerning the project. Found. for North Am. Sheep, 681 F.2d at  
18 1178; Native Ecosystems, 304 F.3d at 896. Furthermore, the  
19 conclusions in the EA must be supported by "some quantified or  
20 detailed information," and the underlying environmental data  
21 relied upon to support the expert conclusions must be made  
22 available to the public. Klamath-Siskiyou, 387 F.3d at 993, 996.  
23 In contrast to an EIS, the CEQ regulations do not expressly  
24 require that a draft EA be circulated to the public for comment  
25 before the agency adopts it as its final decision.

26 The question presented here is whether the Forest Service's

1 actions -- issuing an initial scoping notice for public comment  
2 and releasing a final EA to the public -- satisfy the mandatory  
3 public involvement requirements. The parties are at the extreme  
4 ends of the spectrum on this question. According to plaintiffs,  
5 nothing short of circulation of a draft EA will satisfy the  
6 regulations. According to the Forest Service, all that it must  
7 do is to make the public aware that a project is under  
8 consideration, permit public comment, and make the EA available  
9 once it is completed.

10 The court finds that although the CEQ regulations do not  
11 require circulation of a draft EA, they do require that the  
12 public be given as much environmental information as is  
13 practicable, prior to completion of the EA, so that the public  
14 has a sufficient basis to address those subject areas that the  
15 agency must consider in preparing the EA. Depending on the  
16 circumstances, the agency could provide adequate information  
17 through public meetings or by a reasonably thorough scoping  
18 notice. The way in which the information is provided is less  
19 important than that a sufficient amount of environmental  
20 information -- as much as practicable -- be provided so that a  
21 member of the public can weigh in on the significant decisions  
22 that the agency will make in preparing the EA. Of course, to be  
23 on the safe side, the agency can never go wrong by releasing a  
24 draft EA, and supporting documents, as was the practice until  
25 recently. See 36 C.F.R. § 215.5(b)(2)(i) (1994).

26 The court's interpretation of the regulations is consistent

1 with the case law. Two circuit courts have expressly held that  
2 the CEQ regulations do not require circulation of a draft EA.  
3 Greater Yellowstone Coalition v. Flowers, 359 F.3d 1257, 1279  
4 (10th Cir. 2004); Alliance to Protect Nantucket Sound v. United  
5 States Dep't of Army; 398 F.3d 105, 115 (1st Cir. 2005). However,  
6 in both cases it appears that there were considerable efforts  
7 undertaken to inform the public. Greater Yellowstone, 359 F.3d  
8 at 1278, 1279 n. 18 (series of meetings were held with  
9 environmental groups and the proposal was modified as a result);  
10 Alliance, 398 F.3d at 115 (agency provided a five-month comment  
11 period and held two public meetings). Similarly, the Ninth  
12 Circuit has held that the CEQ regulations require the agency to  
13 give the public adequate information to comment on projects. In  
14 CBF, the court held that the CEQ regulations are mandatory,  
15 noting that "[a]lthough we have not established a minimum level  
16 of public comment and participation required by the regulations  
17 governing the EA and FONSI process, we clearly have held that the  
18 regulations at issue must mean something." CBF, 341 F.3d at 970.  
19 The court went on to hold that "a complete failure to involve or  
20 even inform the public about an agency's preparation of an EA and  
21 a FONSI . . . violates" the regulations. Id. While finding that  
22 a complete failure to involve the public violates the  
23 regulations, the court did not hold that the regulations require  
24 that the agency must always circulate a draft EA for public  
25 comment; the court's passing comment to this effect is dicta.  
26 See id. ("[w]e have previously interpreted the[] [CEQ] regulations

1 to mean that "[t]he public must be given an opportunity to  
2 comment on draft EAs and EISs'."). But what seems fairly drawn  
3 from the case law and the CEQ regulations is that the agency must  
4 offer significant pre-decisional opportunities for informed  
5 public involvement in the environmental review process by  
6 releasing sufficient environmental information about the various  
7 topics that the agency must address in the EA, such as cumulative  
8 impacts, before the EA is finalized.

9 In each of the projects under review here, the Forest  
10 Service failed to give the public an adequate pre-decisional  
11 opportunity for informed comment. For the North 49 project, the  
12 thirteen-page project description available at the scoping stage,  
13 with its meager environmental analysis, was not the functional  
14 equivalent of a draft EA or the three-hundred and fifty pages of  
15 environmental documentation ultimately prepared by the Forest  
16 Service. While the "purpose and need" section of the EA was  
17 virtually identical to the information in the scoping notice, the  
18 scoping notice lacked other critical elements included in the EA.  
19 (Sierra AR 2-14; 416-22.) The scoping notice provided no  
20 environmental data concerning impacts to wildlife, cultural  
21 resources, watersheds, soils, fisheries, and aquatics. (Id. at  
22 7-10.) These environmental impacts were only explored in the  
23 nine expert reports and 28 pages of analysis in the EA. (Id. at  
24 435-63.) Moreover, the scoping notice contained no discussion or  
25 analysis of potential cumulative impacts, while the EA contained  
26 eight pages of discussion on this required topic. For these

1 reasons, the scoping notice did not give the public adequate  
2 information to effectively participate in the decision-making  
3 process leading up to the final decision.

4 The scoping notices for the Eagle Ranch, Powder, and Edson  
5 projects similarly contained no analysis of the environmental  
6 impacts of the projects.<sup>5</sup> (Conservation AR 21-24; 100081-83;  
7 200011-12.) For the Eagle Ranch project, eleven expert reports  
8 were eventually prepared in addition to the EA, with a total of  
9 296 pages addressing the potential environmental impacts of the  
10 project. Similarly, for the Powder project, eleven expert  
11 reports were prepared in addition to the EA, with a total of 214  
12 pages of analysis. Finally, for the Edson project, eleven expert  
13 reports were prepared in addition to the EA, for a total of 178  
14 pages of environmental analysis. When compared with the  
15 extensive environmental analysis eventually produced, the two-and  
16 three-page public scoping notices were not adequate to inform the  
17 public of the kinds of data and information that the agency would  
18 rely on in the preparation of the EA.

19 Moreover, what is striking for all three of these projects  
20 is the agency's withholding of already-prepared environmental  
21 documents even though the documents were completed before the end  
22 of the public comment period. The Forest Service had completed  
23

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24 <sup>5</sup> Although the § 215.6 letter for the Edson project did  
25 provide some information about the environmental impacts of that  
26 project, proposed alternatives, and suggested mitigation  
measures, the letter preceded the majority of the expert reports  
for the project and did not provide any of the underlying data to  
support its conclusions.



1 parts of the environmental review for the Eagle Ranch, Powder,  
2 and Edson projects before the public scoping periods were  
3 initiated. In the case of the Eagle Ranch project, the Forest  
4 Service had already completed the EA before the end of the \$  
5 215.6 comment period. Yet the Forest Service provides no  
6 explanation as to why these documents could not have been  
7 released to the public when completed or, at the very least, been  
8 discussed and summarized in the public scoping notice. This  
9 failure to provide essential information, already in the hands of  
10 the agency, does not comply with the agency's requirement of  
11 involving the public "to the extent practicable." 40 C.F.R. §  
12 1501.4.

13 The agency's failure to provide for effective pre-decisional  
14 public involvement in preparation of the EAs for the North 49,  
15 Eagle Ranch, Powder, and Edson projects is "contrary to law"  
16 under the APA. Therefore, plaintiffs' motions for summary  
17 judgment are GRANTED.<sup>6</sup>

18  
19 B. Injunctive Relief

20 The Forest Service requests that the court not enjoin  
21

22  
23 <sup>6</sup> Because the court grants the Sierra Nevada plaintiffs'  
24 motion for summary judgment on the NEPA claim, it need not reach  
25 plaintiffs' second and third claims relating to the Appeals  
26 Reform Act. As the environmental review process will now begin  
anew, the question of whether dismissal of plaintiffs' appeals  
was contrary to law has become moot. In declining to decide  
these claims, the court is proceeding on the assumption that all  
those who participate in the new environmental review process  
will be permitted to appeal.

1 implementation of the Eagle Ranch, Powder, and Edson projects  
2 while an appropriate environmental review is conducted.<sup>7</sup>

3 (Conservation Def.'s Mot. at 35-38.) An injunction is an  
4 appropriate remedy where plaintiffs can demonstrate irreparable  
5 injury and the inadequacy of a legal remedy. Weinberger v.  
6 Romero-Barcelo, 456 U.S. 305, 312, 102 S.Ct. 1798 (1982).

7 Injunctions are a common remedy in environmental cases because of  
8 the often irreparable nature of environmental injuries and the  
9 inadequacy of money damages to remedy such injuries. Amoco Prod.  
10 Co. v. Village of Gamball, 480 U.S. 531, 545, 107 S.Ct. 1396  
11 (1987). While an injunction should not automatically issue with  
12 the finding of a NEPA violation, a NEPA violation supports a  
13 finding of irreparable harm, given the risk to the environment  
14 from uninformed decision-making. High Sierra Hikers Ass'n v.  
15 Blackwell, 390 F.3d 630, 642 (9th Cir. 2004); Idaho Sporting  
16 Cong., 222 F.3d at 569.

17 The Forest Service argues that this case is different  
18 because harm to the environment will result if an injunction is  
19 issued. Where parties make competing claims of injury, the court  
20 must balance the injuries, giving due consideration to the public  
21 interest, if any, at stake. Weinberger, 456 U.S. at 312. The  
22 balance of harms in this case weighs in favor of granting an  
23 injunction. Although defendants argue that the Shasta-Trinity  
24 National Forest will suffer irreparable injury if the projects do

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26 <sup>7</sup> In the Sierra Nevada case, the Forest Service does not  
dispute that an injunction is the appropriate remedy.

1 not go forward, the court's injunction will only delay the  
2 projects temporarily, not permanently, assuming the Forest  
3 Service continues to approve the projects. Even accepting  
4 defendant's proposition that such projects are seasonal, the new  
5 environmental review process would delay the project until next  
6 summer at the latest. Moreover, the record reveals that, until  
7 this point, the Forest Service has not considered these projects  
8 urgent; for instance, the Eagle Ranch project was initially  
9 proposed in 1998. All of the projects are of small scale and  
10 likely would be finished before further environmental review  
11 could be completed. Finally, although one of the goals of the  
12 Edson project is to prevent on-going tree mortality by harvesting  
13 insect infested trees, the Forest Service has not provided any  
14 data, or even a declaration, to substantiate its claim that the  
15 infestation is spreading rapidly or endangering the value of the  
16 timber.

17 If the court permits these projects to go forward without  
18 informed public comment, the new environmental review process  
19 ordered by the court will be a pointless exercise. To afford  
20 plaintiffs any relief and to ensure that the procedural goals of  
21 NEPA are served, these projects must be enjoined.

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1 III.

2 For the foregoing reasons, plaintiffs' motions for summary  
3 judgment are GRANTED, and defendants' cross-motions for summary  
4 judgment are DENIED. Defendants are enjoined from further  
5 implementing the North 49, Eagle Ranch, Powder, and Edson  
6 projects unless and until the Forest Service complies with the  
7 requirements of NEPA, as set forth in this order.

8 IT IS SO ORDERED.

9 Dated: June 30, 2005

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11 \_\_\_\_\_/s/\_\_\_\_\_  
12 DAVID F. LEVI  
13 United States District Judge  
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