Testimony of

Deputy Attorney General Harrison M. Pollak

On behalf of

California Attorney General Edmund G. Brown Jr.

Before

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Management by Exclusion: The Forest Service Use of Categorical Exclusions from NEPA

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I. Introduction

Thank you Chairman Grijalva, Ranking Member Bishop, and the Committee Members for this opportunity to testify before the National Parks, Forests and Public Lands Subcommittee at today's hearing, entitled "Management by Exclusion: The Forest Service Use of Categorical Exclusions from NEPA." My name is Harrison Pollak, and I am a Deputy Attorney General in the Office of the California Attorney General. I am here as a representative of California Attorney General Edmund G. Brown Jr. I am because the Attorney General is deeply concerned over the Forest Service's increased use of so-called "Management by Exclusion," that is, its reliance on categorical exclusions to exempt forest management decisions of every size and scope from environmental review.

My testimony today will focus on three points. First, I will describe the immense importance of national forests to the People of the great State of California, and why the California Attorney General has taken a profound interest in national forest planning issues for more than two decades. Second, I will explain why it is the Attorney General's view that, while categorical exclusions are an important tool for some aspects of forest planning, such as certain fire suppression activities, the Forest Service has gone too far. Its broad use of categorical exclusions to preclude meaningful public participation at all levels of forest planning violates the letter and the spirit of the National Environmental Policy Act ("NEPA") and the National Forest Management Act ("NFMA"). Finally, I will argue that eliminating the type of public participation from the planning process that NEPA guarantees will lead to poor planning and to increased controversy. I will give two examples where public participation has made an important difference in the past and where it can make a difference in the future.

II. National Forests in California and the Attorney General's Involvement in Forest Planning

It is hard to overstate the importance of national forests and how they are managed to the People of California. The 19 national forests in California cover roughly 20 million acres of land, or approximately 20 percent of the total land area in California. National forests supply well over half of our water resources, and they form the watershed of most major aqueducts and more than 2,400 reservoirs throughout the State. National forests in California provide recreational opportunities for hiking, camping, motorized travel, hunting, skiing, and much more. More than 600 of the 800 species of fish and wildlife in California inhabit the national forests, and national forests are home to nearly 4,000 of the 6,500 native plants in California.

The forests are of tremendous economic, recreational, and environmental value to the State. In

addition, decisions about how to manage forests and other federal lands, of which there are approximately 50 million acres in California, have effects far beyond the forest boundaries. Water supplies for agriculture, industry, and human consumption, water and air quality, fisheries, fire hazards, are just a few examples of where forest management decisions make a difference on the lives of the citizens of California and beyond.

Because of this, for more than twenty years the California Attorney General has participated extensively in the forest management process for national forests located in California. Our office has commented on, and where necessary, challenged in court, forest plans and projects in the Plumas, Sequoia, Tahoe, Modoc, Shasta-Trinity, and Lassen National Forests, to name a few, in order to protect forest resources. We also have taken a keen interest in broader planning issues. For instance, most recently the California Attorney General commented on, and then successfully challenged in court, the Forest Service's attempt to rewrite and dilute the NFMA regulations without complying with the Administrative Procedures Act ("APA"), NEPA, or the Endangered Species Act ("ESA"). *Citizens for Better Forestry v. United States Department of Agriculture*, 481 F. Supp. 2d 1059 (N.D. Cal. 2007). And we presently are awaiting a ruling on a challenge to the Bush administration's attempt to replace the 2001 Sierra Nevada Framework Plan – which was the culmination of a decade-long consensus-building process to develop an overarching management plan for the 11 national forests in the Sierra Nevada – with its own version of the document that guts basic wildlife, habitat and riparian protections, increases green timber harvesting by more than four-fold, and authorizes fragmentation of wildlife corridors that were a centerpiece of the 2001 Framework. *People v. United States Department of Agriculture*, No. 05-CV-0211 DFL/GGH (N.D. Cal.).

A consistent theme of the Attorney General's work in this area has been the paramount importance of providing the public with an opportunity to participate in the forest planning process. Eliminating such opportunities, or rendering them meaningless by insulating officials from having to respond meaningfully to issues that the public identifies, deprives decision makers of critical information about the scientific and social effects of management choices, and leads to decisions that are contrary to the best science and that do not reflect an appropriate balancing of interests. And as the actions mentioned above demonstrate, the Forest Service's repeated attempts to eliminate the public from the planning process lead to increased controversy and to delays in the planning process.

This is not what Congress intended when it enacted NFMA in 1976, to guarantee that "land management planning and the formulation of regulations to govern the planning process shall be accomplished with improved opportunity for public participation at all levels." S. Rep. No. 94-893, 94th Cong., 2d Sess, *reprinted in* 1976 U.S.C.C.A.N. 6693 (1976). Nor is it consistent with the primary purposes of NEPA, which are "to allow for informed public participation and informed decision making." *Earth Island Inst. v. United States Forest Service*, 442 F.3d 1147,

1160 (9th Cir. 2006). That is why I am here today, on behalf of Attorney General Brown, to testify against the Forest Service's indiscriminate use of categorical exclusions in the forest planning process.

III. The Legal Argument Against Management by Exclusion

A. The Forest Service's Issuance of New Project Categorical Exclusions Beginning in 2003

It is beyond dispute that categorical exclusions from NEPA play a crucial role in the Forest Service's ability to manage the 192 million acres of federal lands in the United States that it oversees. Every year the Forest Service makes thousands upon thousands of routine decisions that, if required to undergo NEPA review in every case, would bring the organization to a halt – from mowing the lawn at a picnic area, to repairing trails and buildings, to temporarily closing roads, and so on. Categorical exclusions also allow the Forest Service promptly to respond to emergencies and to imminent hazards when necessary. The Attorney General recognizes that categorical exclusions are an appropriate and necessary part of the Forest Service's management activities.

Unfortunately, the Forest Service is abusing this tool. Prior to 2003, the Forest Service had only one categorical exclusion for use in approving projects that involved vegetation management activities, namely, timber stand or wildlife habitat improvement projects of any size that do not use herbicides or involve more than one mile of road construction. *See* Forest Service, Environmental Policy and Procedures Handbook ("Forest Service Handbook") at § 31.2(6). Then, in 2003, the Forest Service introduced four new categorical exclusions for vegetation management activities: 1) hazardous fuels reduction activities using prescribed fire, not to exceed 4,500 acres, and mechanical methods such as thinning, not to exceed 1,000 acres; 2) limited logging of live trees, not to exceed 70 acres; 3) salvage of dead or dying trees, not to exceed 250 acres; and 4) removal of trees to control the spread of insects or disease, not to exceed 70 acres. *Id.* at §§ 31.2(10), (12), (13), (14). In addition, in 2003 the Forest Service issued a categorical exclusion for post-fire rehabilitation activities not to exceed 4,200 acres, which are defined broadly to include various activities that take place in an area within three years following a fire. *Id.* at § 31.2 (11).

If these new categorical exclusions were used sparingly, there would be no issue. But, as this Subcommittee is aware, the Government Accountability Office ("GAO") has reported that from 2003 to 2005, the Forest Service used categorical exclusions for more 70 percent of the 3,018 vegetation management projects that it approved during that period. GAO Report No. 07-99, *Use of Categorical Exclusions for Vegetation Management Projects, Calendar Years 2003*

through 2005 (Oct. 2006) at 12. These projects took place on more than 2.8 million acres of land, or slightly less than half of the total treatment acres the Forest Service approved from 2003 to 2005. *Id.* The Forest Service is thus using categorical exclusions to remove the majority of project-level management decisions about vegetation management activities from public purview.

At the same time, the Forest Service is attempting to overhaul the forest planning process to exclude program-level planning decisions from NEPA review as well. Under NFMA, the Forest Service must develop and maintain for each national forest unit a Land and Resource Management Plan ("LRMP"). 16 U.S.C. § 1604(a). Prior to 2005, the NFMA regulations required the Forest Service to prepare an environmental impact statement every time it developed or revised an LRMP, and for amendments that resulted in a "significant change" to the LRMP. 47 Fed. Reg. 43026, 43043-44 (Sep. 30, 1982) (final rule adopting 1982 NFMA Rule, subsequently published at 36 Code Fed. Regs. §§ 219.10(b), (f), (g)). In 2005, however, the Forest Service issued a revamped set of NFMA regulations. 70 Fed. Reg. 1023 (Jan 5, 2005) ("2005 NFMA Rule"). Under the 2005 NFMA Rule, "[a]pproval of a plan, plan amendment, or plan revision . . . will be done in accordance with the Forest Service NEPA procedures and *may be categorically excluded from NEPA documentation under an appropriate category provided in such procedures*." 70 Fed. Reg. at 1056 (§ 219.4(b) (emphasis added).) To accompany this dramatic loosening of the requirement to prepare an environmental impact statement for program-level planning in the LRMP, the Forest Service issued a new categorical exclusion that excludes from NEPA review "final decisions on proposals to develop, amend, or revise land management plans," except under extraordinary circumstances. 71 Fed. Reg. 75481 (Dec. 15, 2006); *see also* Forest Service Handbook at §§ 30.3, 31.2(16).

In March 2007, Judge Hamilton of the Northern District of California enjoined the Forest Service from implementing the 2005 NFMA Rule, after holding that it violated provisions of the APA, NEPA, and the ESA when it promulgated the rule. *Citizens for Better Forestry, supra*, 481 F. Supp. 2d at 1100. However, the Forest Service recently announced that it will prepare an environmental impact statement for the 2005 NFMA Rule by November 2007, which suggests that it still plans to move forward with the new NFMA procedures. 72 Fed. Reg. 26775 (May 11, 2007).

Therefore, to be absolutely clear, if the Forest Service manages to overcome the legal hurdles to implementing the 2005 NFMA Rule, then, together with the new LRMP categorical exclusion that already is in place, the Forest Service will be positioned to make program-level forest management decisions without any environmental review or public participation under NEPA, just as it has done for the majority of individual forest management projects that it approves.

B. NEPA Requires the Forest Service to Take a "Hard Look" at the Potential Environmental Impacts of Proposed Actions

NEPA is a procedural statute designed to ensure that federal agencies taking major actions affecting the quality of the human environment "will not act on incomplete information, only to regret its decision after it is too late." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). It requires federal agencies to consider and take a "hard look" at the environmental consequences of their actions. 42 U.S.C. § 4332(2)(c); *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 348 (1989). In enacting NEPA, Congress mandated that it is the federal government's responsibility to "use all practicable means and measures" to protect environmental, historic, and cultural values. 42 U.S.C. § 4331(b). An agency cannot simply exempt itself from NEPA through its own regulations. *Calvert Cliffs Coordinating Committee, Inc. v. United States Atomic Energy Committee, Inc.*, 449 F.2d 1109 (D.C. Dir. 1971).

Federal agencies have identified three types of activities receiving varying levels of environmental review: (1) those that require preparation of an environmental impact statement; (2) those for which preparation of an environmental assessment is sufficient; and (3) those that are categorically excluded from further analysis. A federal agency may adopt a categorical exclusion for a "category of actions which do not individually or cumulatively have a significant effect on the human environment." 40 Code Fed. Regs. § 1508.4 (2001); *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000). By definition, categorical exclusions are limited "to situations where there is an insignificant or minor effect on the environment." *Alaska Center for the Env't v. United States Forest Service*, 189 F.3d 851, 859 (9th Cir. 1999).

C. Most Aspects of Forest Planning Require an Environmental Impact Statement or an Environmental Assessment

It is pure fiction that developing and revising LRMPs will not result in significant effects on the environment, as the Forest Service claims in the 2005 NFMA Rule. The national forest system covers 192 million acres of land across the nation. It includes forests of every type, grasslands, rivers, streams, estuaries. Forests in the system are home to abundant plant and animal species, many of which are listed as sensitive or endangered. There are homes in national forests, and forests surround or are adjacent to cities and towns. Developing and amending the guidelines for how each forest unit will be managed may have significant effects on the environment, which means that the Forest Service cannot exclude program-level forest planning from NEPA. Rather, it must take the requisite "hard look" at the environmental consequences of the land-use decisions that it makes when it develops, revises, or amends LRMPs.

At the same time, however, we recognize that some project-level planning properly is exempt from NEPA review because there are no significant impacts. Moreover, categorical exclusions

are a critical tool for the Forest Service to use in its efforts to efficiently and effectively reduce the threat of catastrophic wildfires which, as the fire burning right now near Lake Tahoe so painfully demonstrates, is of the utmost importance. But the Forest Service went too far in 2003, when it adopted four broad categorical exclusions under the guise of fire suppression and restoration activities that allow it to do much more than that. The way in which the exclusions are formulated make them ripe for abuse, and the Attorney General is not aware of anything the Forest Service has done in practice to limit their application. To take one example, "mechanical thinning" is excluded from review for projects that are less than 1,000 acres, but not for bigger projects. Forest Service Handbook at § 31.2(10). In practice, this means that five separate 900-acre projects might not be reviewed, even though a project that is 4,500 acres would require review. There is no rational basis to conclude *a priori* that the five projects will have no impacts, while the larger project may have impacts. Further, parsing projects into smaller units avoids the analysis that NEPA requires of the cumulative impacts that the individual projects, considered together, will produce. *See* 40 Code Fed. Regs. § 1508.27(b)(7) (agency must consider whether a project has "individually insignificant, but cumulatively significant impacts").

Therefore, while categorical exclusions are appropriate for some types of forest management decisions – particularly at the individual project level, and for projects narrowly designed to reduce the threat of catastrophic wildfires – the Forest Service appears to view them in a manner that is contrary to the law.

D. The Forest Service Cannot Avoid NEPA by Defining Land Management Plans as Mere "Strategic Documents"

The Forest Service attempts to exclude LRMPs from NEPA review by casting them under the 2005 NFMA Rule as "strategic in nature," instead of as "prescriptive" documents. 70 Fed. Reg. at 1024-25. In the preamble to the final rule, the Forest Service claims that forest management plans no longer will contain "final decisions that approve projects or activities except under extraordinary circumstances." *Id.* By removing consideration and approval of specific projects from the forest management plans, the Forest Service thus seeks to defer environmental review to the project-planning stage. It explains that "specific projects and activities will be proposed, approved, and implemented depending on specific conditions and circumstances *at the time of implementation*." 70 Fed. Reg. at 1025 (emphasis added). This is echoed in the categorical exclusion that the Forest Service adopted for LRMPs, where it reiterated that "[l]and management plans developed under the 2005 planning rule will typically be strategic and aspirational." 71 Fed. Reg. 25,481, 75,483.

In attempting to redefine LRMPs as mere strategic and aspirational documents, the Forest Service places undue reliance on two Supreme Court decisions: *Ohio Forestry Ass'n v. Sierra*

Club, 523 U.S. 726 (1998), and *Norton v. Southern Utah Wilderness Alliance* ("*SUWA*"), 542 U.S. 55 (2004). In both cases, the Supreme Court acknowledged the strategic nature of management plans. But the Court did not suggest, as the Forest Service maintains, that this removes management plans from the ambit of NEPA review. To the contrary, in both cases it affirmed that the federal agencies must comply with the procedural safeguards in NEPA notwithstanding the strategic nature of management plans.

In *Ohio Forestry*, the Court considered the Sierra Club's legal challenge to a land management plan that allegedly was biased in favor of clear cutting. 523 U.S. 726 (1998). The Court held that the challenge was not ripe, because the plan itself did not "authorize the cutting of any trees." *Id.* at 730. However, the Supreme Court distinguished the Sierra Club's substantive challenge to elements of the plan, which were not ripe, from a hypothetical NEPA challenge to the *procedure* by which the Forest Service adopted the plan, which would be ripe at soon as the plan is adopted: "Hence a person with standing who is injured by a failure to comply with the NEPA procedure may complain of that failure at the time the failure takes place, for the claim can never get riper." *Id*. at 737.

In *SUWA*, the Supreme Court considered an environmental alliance's claim that the Bureau of Land Management ("BLM") failed to comply with certain provisions of its resource management plans, which are similar to LRMPs, by allowing increased use of off-road vehicles in certain parts of BLM lands. *SUWA*, 542 U.S. at 2377-78. The Court held that resource management plans under the Federal Land Policy and Management Act do not create a "binding commitment" to a particular course of action, and it therefore refused to order BLM to take specific actions otherwise contemplated in the plans. *Id.* at 69. The Court described resource management plans as "a preliminary step in the overall process of managing public lands – 'designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.'" *Id., quoting* 43 Code Fed. Regs. § 1601.0-2 (2003). However, as was the case in *Ohio Forestry*, the Supreme Court recognized that adopting a resource management plan triggers NEPA requirements. *SUWA*, 542 U.S. at 74, *citing* 43 Code Fed. Regs. § 1601.0-6 (approval of a land use plan is a major federal action requiring an environmental impact statement). The Court simply declined to order BLM to supplement the environmental impact statement in that instance. *Id.*

In short, neither of these cases provides a legal basis to exclude program-level planning from NEPA review. The Forest Service is incorrect to read these cases as supporting its efforts to turn LRMPs into mere "aspirational" documents that make no firm commitments to a specific course of action and that are exempt from NEPA. The Forest Service cannot shirk its obligation to engage in meaningful project-level planning by pretending that LRMPs have no environmental impacts.

In fact, Judge Hamilton rejected a similar argument when she enjoined the Forest Service from implementing the 2005 NFMA Rule. In *Citizens for Better Forestry*, the Forest Service claimed that the new rules would not "change the physical environment in any way;" that there would be "no direct environmental impacts" from adopting the rule; and that "it is only after new forest plans are adopted and site-specific projects are proposed that effects will become identifiable." 481 F. Supp. 2d at 1084. The court disagreed. It ruled that NEPA does indeed contemplate environmental review at the program level. *Id.* at 1085. "[A]t least in this circuit, NEPA's requirement of an [environmental impact statement] is *not* necessarily limited to site or project-specific impacts or activities, as defendants suggest." *Id.* at 1086 (emphasis in original). While the court acknowledged that evaluating the environmental effects of programmatic actions could be difficult, which is one of the Forest Service's principal reasons for seeking to defer NEPA review to the project level, it concluded that "this does not mean that environmental analysis regarding broad programmatic changes cannot take place." *Id.* at 1089.

Moreover, in spite of the Forest Service's efforts in the 2005 NFMA Rule to reduce LRMPs to vague and nonbinding statements of general management objectives, Congress clearly intends for plans to be substantive documents that guide specific land-use decisions in national forests. *See* 16 U.S.C. § 1604. NFMA's species-diversity provision alone – which requires each LRMP to provide for diversity of plant and animal communities – ensures that the Forest Service cannot develop or revise an LRMP without environmental review. 16 U.S.C. § 1604(g)(3)(B). Even under the Forest Service's reworked description of LRMPs in the 2005 NFMA Rule, each plan must define the "desired conditions" (i.e. the "social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed"); contain "concise projections of intended outcomes of projects and activities"; provide "guidance for the design of projects and activities"; evaluate the suitability of areas for different uses, designate "special areas" such as wilderness or wild and scenic river corridors; and more. 70 Fed. Reg. at 1026-27. An LRMP that contains these elements is not merely "strategic in nature," as the Forest Service claims. 70 Fed. Reg. at 1024. It still would embody substantive decisions that will guide project-level decisions in the future and will thus have potentially significant environmental impacts. *See Ohio Forestry*, 523 U.S. at 731 ("Despite the considerable legal distance between the adoption of the Plan and the moment when a tree is cut, the Plan's promulgation nonetheless makes logging more likely in that it is a logging precondition; in its absence logging could not take place.").

Therefore, the Forest Service cannot, consistent with its statutory mandate, engage in do-nothing land management planning at the program level. Because land management planning does have meaning, it may affect the environment and therefore is not exempt from NEPA.

IV. The Forest Service Should Not Eliminate the Public From the Forest Planning Process

The final point that I will make today is that the Forest Service's increasing reliance on categorical exclusions not only is illegal in many cases, it often will lead to poor planning decisions and increased public controversy over decisions and how they are implemented. This is a bad result for the Forest Service, for the environment, and for the public that the Forest Service serves.

I want to give two examples of how public participation plays an important role in forest planning. Of course, there are countless examples from which to choose. I have selected these two to provide a specific case where public participation has made a significant difference in the past, and to illustrate the type of issue that the Forest Service might not consider in the future if it eliminates NEPA review from the forest planning process.

The first example is the Sequoia National Forest, which is at the southern end of the Sierra Nevada mountain range. Sequoia takes its name from the world's largest tree, which grows in more than 30 groves on the forest's lower slopes. Its landscape is as spectacular as the trees. With elevations ranging from 1,000 to 12,000 feet, visitors experience soaring granite monoliths, glacier-torn canyons, roaring whitewater, spectacular mountain views, and more. *See* http://www.fs.fed.us/r5/sequoia/.

In 1988, the Forest Service completed its LRMP for the Sequoia National Forest. As was the practice then, it issued a final environmental impact statement at the same time. The California Attorney General submitted comments on the LRMP and the environmental impact statement, and, along with several other groups, filed an administrative appeal in order to protect the area's unique and irreplaceable resources. Following nearly two years of mediation, the parties entered into a Mediated Settlement Agreement that resolved the outstanding issues. As part of the mediation agreement, the Forest Service identified groves of old-growth sequoia trees that warranted additional protections. The first President Bush issued a proclamation to afford these groves the necessary protections, Executive Proclamation 6457 (July 14, 1992), and in 2000, President Clinton further protected them by establishing the Giant Sequoia National Monument. Executive Proclamation 7295 (Apr. 15, 2000).

If it were not for NEPA, and the Forest Service's commitment at that time to address public concerns through the planning process, the Sequoia National Forest would not be what it is today. Unfortunately, under the current Bush administration, the Forest Service has attempted to reverse the achievements of past administrations by allowing clearcutting and logging of 100-year-old trees in the Monument and adopting a Fire Plan that contemplates significant timber harvesting of large trees under cover of "fire management." Along with others, the California

Attorney General successfully challenged these actions in court, but they are additional examples of how this administration's efforts to remove the public from the planning process results in delays and controversy, to the detriment of everybody. *Lockyer v. United States Forest Service*, 465 F. Supp. 2d 942 (N.D. Cal. 2006).

The second example of how the Forest Service and the public stand to lose from eliminating meaningful public participation from the forest planning process relates to a subject that is on all of our minds these days – global warming. Just last month, NASA's James Hansen and other scientists published an article in which they warn that "[r]ecent greenhouse gas emissions place the Earth perilously close to dramatic climate change that could run out of our control, with great dangers for humans and other creatures." James Hansen et al., *Climate Change and Trace Gases*, Phil. Trans. R. Soc. A (published on-line May 18, 2007). There is increasing evidence that forests are affected by climate change, and that forests can play an important role in efforts to combat climate change and to respond to its effects. For instance, in 2006 the Food and Agriculture Organization of the United Nations ("FAO") concluded that climate change and forests are intrinsically linked:

> On the one hand, changes in global climate are already stressing forests through higher mean annual temperatures, altered precipitation patterns and more frequent and extreme weather events. At the same time, forests and the wood they produce trap and store carbon dioxide, playing a major role in mitigating climate change. And on the flip side of the coin, when destroyed or over-harvested and burned, forests can become sources of the greenhouse gas, carbon dioxide.

FAO, *Forests and Climate Change*, www.fao.org/newsroom/en/focus/2006/1000247/index.html (March 27, 2006). Similarly, in a report by the Pew Center on Global Climate Change, the authors posit that forest location, composition, and productivity will be altered by changes in temperature and precipitation, that changes in forest disturbance regimes, such as fire or disease, could further affect the future of U.S. forests and the market for forest products, and that there may be adverse economic effects on some regions, and positive impacts on other regions. Pew Center on Global Climate Change, *Forests & Global Climate Change: Potential Impacts on U.S. Forest Resources*, www.pewclimate.org/global-warming-in-depth/all_reports/forests_and_climate_change/ (Feb. 2003).

It is thus becoming increasingly clear that the Forest Service must consider the implications of global warming on forest management, and forest management on global warming, as it plans for the future. Public participation in the planning process is one way to ensure that the Forest

Service does so, while making available to the Forest Service the increasing body of scientific information about the causes and effects of global warming as they relate to forests. Moreover, if the Forest Service considers global warming issues at the program level, then there will be fewer delays caused by having to address it on blank slate each time the agency approves an individual project.

In sum, as occurred when the Forest Service developed the LRMP for the Sequoia National Forest, and as should occur in the future as the Forest Service grapples with how to address the nexus between forest management and global warming, NEPA affords the public an opportunity to raise important issues and to provide useful information at a time when the Forest Service can incorporate such information into its planning decisions. NEPA also requires accountability on the agency's part that environmental considerations play a role in its decision making. The Attorney General urges the Forest Service to embrace NEPA rather than continue to try to avoid it.

V. Conclusion

Forest planning under NFMA, and especially program-level planning through the development, revision, and amendment of LRMPs, is the type of government action for which NEPA perhaps works best. NEPA provides a mechanism for informed and adequate consideration of the likely environmental impacts of decisions early in the planning process. This, in turn, leads to better decision making and to less controversy and more efficient implementation in the long run. For this reason, while the California Attorney General understands that the Forest Service will, and *should*, continue to use categorical exclusions where appropriate, the Attorney General opposes the Forest Service's efforts over the past several years to exclude critical program-level and project-level decisions from the purview of NEPA. Referring back to the title of this hearing, "Management by Exclusion" is a poor management strategy.