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 Office of Species Conservation, James L. Caswell, Administrator

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, *ex. rel.*
 BILL LOCKYER, ATTORNEY GENERAL; STATE
 OF NEW MEXICO *ex. rel.* PATRICIA A. MADRID,
 ATTORNEY GENERAL; STATE OF OREGON, by
 and through THEODORE KULONGOSKI,
 GOVERNOR; STATE OF WASHINGTON, by and
 through CHRISTINE GREGORIE, GOVERNOR

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
 AGRICULTURE; MIKE JOHANNIS, Secretary of the
 Department of Agriculture; MARK REY, Under
 Secretary for Natural Resources and Environment of
 the Department of Agriculture; UNITED STATES
 FOREST SERVICE; DALE BOSWORTH, Chief of
 the United States Forest Service,

Defendants.

THE WILDERNESS SOCIETY, *et al.*,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, *et al.*

Defendants.

Case No. 05-03508 EDL

Consolidated with

Case No. 05-04038 EDL

BRIEF OF AMICUS CURIAE
 GOVERNOR JAMES E. RISCH, *ET AL.*
 IN SUPPORT OF DEFENDANTS

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I. INTRODUCTION

Governor James E. Risch, of the State of Idaho, desires to voice the support of Idahoans for the federal rule allowing States, through their Governor, to recommend management provisions to the Secretary of Agriculture for inventoried roadless areas (“State Petitions Rule”). Over the past three decades, the roadless debate has cast a shadow of doubt over the management of the 9.3 million acres of inventoried roadless areas (IRAs) in Idaho. Promulgation of the State Petitions Rule signaled a clear path forward to the State for resolving this intractable debate by affording those who work, live, recreate, and enjoy these lands with an opportunity to participate through their elected officials. Therefore, the State respectfully requests this court uphold the State Petitions Rule without further delay.

For the sake of brevity, Governor Risch does not wish to recast or reargue the legal merits of the State Petitions Rule, only to reiterate and concur with federal defendants' position that the rule is merely procedural and does not necessitate additional environmental analysis or consultation pursuant to the National Environmental Policy Act or Endangered Species Act. Rather, the Governor wants to briefly illustrate the efforts, resources and continued commitment the State and its citizens have invested in this petition process.

I. ARGUMENT

A. STATUS UPDATE

The citizens of the State of Idaho have invested a substantial amount of time and resources in preparing a petition pursuant to the State Petitions Rule. The process involved substantial engagement by local units of government and the public at large. Judicial invalidation or delay would frustrate these important efforts and the ongoing process in Idaho.

On June 23, 2005, the Governor of Idaho announced the State would develop a petition pursuant to the invitation afforded by the State Petitions Rule, outlining management recommendations for the 9.3 million acres of inventoried roadless areas (IRAs) in Idaho. As part of that announcement, the Governor invited local communities to develop specific recommendations for roadless areas in portions of the national forests within their county.

1 Following that announcement, local communities under the leadership of their respective
2 county commissioners proceeded to outline a process whereby they would provide written
3 recommendations to the Governor for his review. Affected county commissioners decided to
4 hold a series of public meetings to solicit public comment and develop their recommendations.
5 On a state-wide basis approximately sixty (60) public meetings were held. A representative from
6 the Governor's Office or the Governor's Office of Species Conservation attended nearly every
7 meeting in order to provide guidance and aid in the process. Aside from those meetings, staff
8 attended at least ten (10) additional meetings across the State explaining the Governor's vision
9 for this local process.

10 Due to the voluminous amount of comments received, the county commissioners hired
11 two independent contractors to compile submitted comments and prepare the commissioners'
12 ultimate recommendations. Likewise, in anticipation of receiving and analyzing these
13 recommendations and individual public comments, the Governor's Office of Species
14 Conservation hired an independent contractor for \$50,000.00. To offset these and other
15 associated costs, especially employee salary and travel, the Forest Service entered into a Cost-
16 share Agreement with the Governor's Office for \$150,000.00.

17 As a result of this local effort, the Governor's Office of Species Conservation received
18 comments and/or recommendations from 66 organizations, 30 counties, and 1,596 individuals on
19 the 281 individual IRAs within the State. Given the amount of comments coupled with the
20 largest amount of IRA acreage in the coterminous United States, staff spent a substantial amount
21 of time (approximately 450 hours) reducing this information into single management
22 recommendations for each IRA for the Governor's consideration.

23 **B. IDAHO'S CONTINUED COMMITMENT TO THE STATE**
24 **PETITION PROCESS**

25 **1. PETITION AND RULE DRAFTING PROCESS**

26 As is apparent from the foregoing, the State of Idaho and its citizens have invested a
27 substantial amount of time and resources in preparing recommendations for the Governor. The
28 Governor is currently reviewing these recommendations. Over the next month the Office of the

1 Governor, in conjunction with representatives of the county commissioners will draft our petition
2 outlining the State's management recommendations to the Secretary for Idaho's 281 inventoried
3 roadless areas.

4 After the petition is drafted and submitted to the Secretary, the Office of the Governor
5 pursuant to 36 C.F.R. 294.14(8), intends to accept the invitation afforded by the State Petitions
6 Rule to participate in "future environmental analysis and rulemaking" as a cooperating agency
7 with the Forest Service. To aid in the process of promulgating a final rule in response to the
8 Governor's recommendations, the Governor plans to issue an executive order, which has the full
9 force and effect of law, establishing a Roadless Rulemaking Commission responsible for
10 coordinating with the Forest Service in the rulemaking process. The commission will include,
11 among others, county commissioners who participated in the public process to ensure that the
12 spirit and letter of the petition's recommendations are carried forward.

13 2. IMPLEMENTATION

14 As part of the aforementioned cooperating agency status, the State, by and through the
15 Office of the Governor, intends to continue its collaborative partnership and work with the Forest
16 Service and the public if a final rule is promulgated by the Secretary.

17 II. CONCLUSION

18 The Governor of Idaho supports the State Petitions Rule. Idahoans, those who are closest
19 to these areas, have had a hand in developing and shaping the future of our national forests for
20 the generations of Idahoans to follow. Delay or invalidation of this process by this court would

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frustrate these efforts of many Idahoans to partner with the Forest Service and other stakeholders in collaborative management. The State respectfully requests this court uphold the State Petitions Rule and allow the process to continue without delay.

Dated: August 18, 2006

PERKINS COIE LLP

By

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