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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SIERRA NEVADA FOREST  
PROTECTION CAMPAIGN, PLUMAS  
FOREST PROJECT EARTH ISLAND  
INSTITUTE; and CENTER FOR  
BIOLOGICAL DIVERSITY, non-  
profit organizations,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE;  
JACK BLACKWELL, in his  
official capacity as Regional  
Forester, Region 5, United  
States Forest Service; and  
JAMES M. PEÑA,

Federal Defendants,

and

QUINCY LIBRARY GROUP,  
an unincorporated citizens  
group; and PLUMAS COUNTY,

Defendant-Intervenors.

NO. CIV. S 04-2023 MCE GGH

ORDER

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Following this Court's May 9, 2005 issuance of summary judgment in favor of Defendants United States Forest Service, Jack Blackwell, and James Peña (hereinafter "Forest Service"), Plaintiffs filed a notice of appeal with the Ninth Circuit Court of Appeals on May 13, 2005. Concurrently with that appeal, Plaintiffs also submitted a motion for injunction pending appeal. Pursuant to Rule 8(a)(1)(C) of the Federal Rules of Appellate Procedure, Plaintiffs' motion asks this Court to enjoin the Forest Service from awarding any timber sale contracts, which implement the Meadow Valley Project ("MVP") at issue in this litigation, pending final disposition of Plaintiffs' appeal.

In considering whether to grant an injunction pending appeal, three factors must be assessed. Plaintiffs, as the moving party, must first show a strong likelihood of success on the merits. If that prerequisite is satisfied, Plaintiffs must then show that the balance of irreparable harm favors their position. Finally, whether or not the public interest militates in favor of an injunction must be considered. Warm Springs Dam Task Force v. Gribble, 565 F.2d 549, 551 (9<sup>th</sup> Cir. 1977).

Assessment of both the second and third factors merges into a single equitable judgment which must be weighed in the event that the potential for irreparable environmental injury has been established. See id.

Plaintiffs have not shown a likelihood of success on the merits of their claims in this case, as they must to qualify for the "extraordinary remedy" of injunctive relief. See Shelton v. Nat'l Collegiate Athletics Ass'n, 539 F.2d 1197, 1199 (9<sup>th</sup> Cir.

1 1976). In its May 9, 2005 Memorandum and Order granting summary  
2 judgment, this Court found that no Environmental Impact Statement  
3 was required because the Forest Service demonstrated that the MVP  
4 posed no significant effect on the environment either in terms of  
5 its impact to the California spotted owl, or with respect to  
6 increased fire risk. The Court granted summary judgment in  
7 favor of the Forest Service as to those issues, which are the  
8 very same bases proffered by Plaintiffs in now attempting to  
9 again justify injunctive relief. Consequently there is no  
10 likelihood of success on the merits and Plaintiffs cannot satisfy  
11 their initial hurdle in obtaining an injunction pending appeal.

12 Even if Plaintiffs were to establish a likelihood of success  
13 on the merits, the balancing of equities entailed by the second  
14 and third Warm Springs factors still does not warrant the  
15 injunctive relief they seek. The only irreparable harm  
16 identified by Plaintiffs in this case stems from the Forest  
17 Service's alleged violations of NEPA, NFMA and the QLG Act in  
18 allegedly increasing fire risk through implementation of the MVP  
19 and in degrading old forest area constituting suitable habitat  
20 for the California spotted owl. (See Pls.' Mem. in Support of  
21 Mot. for Summ. J., 44:26-45:21; Pls.' Mem. in Support of  
22 Injunction Pending Appeal, 6:2-6). As indicated above, the Court  
23 has already determined that no such violations occurred. In  
24 light of that determination there is no irreparable harm to  
25 Plaintiffs which must be balanced.

26 Moreover, as set forth in the Court's Amended Memorandum and  
27 Order filed concurrently with this Order, the public interest  
28 also does not favor issuance of an injunction in this case.

1 Construction of the DFPZs encompassed within the MVP are designed  
2 to reduce the risk of catastrophic wildfire which has threatened  
3 the Meadow Valley community on at least two occasions since 1999.  
4 In addition, as previously indicated the MVP seeks to promote  
5 forest restructuring (and a return to conditions more closely  
6 approximating pre-European settlement conditions) that will  
7 achieve a more fire-resilient forest in the long run by opening  
8 the canopy cover to facilitate the growth of more fire resistant  
9 pine species. Such long-term fire resilience, which not only  
10 reduces the risk to Meadow Valley and surrounding communities,  
11 improves firefighter safety and efficiency, and reduces the  
12 potential for a devastating crown fire that could ultimately  
13 impact old-growth forest habitat essential for species like the  
14 California spotted owl, is also in the public interest.

15 For all these reasons, Plaintiffs' request for injunction  
16 pending appeal is hereby DENIED.

17 IT IS SO ORDERED.

18 DATED: May 26, 2005

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22 MORRISON C. ENGLAND, JR.  
23 UNITED STATES DISTRICT JUDGE  
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