

DOCKET No. 05-15921

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA NEVADA FOREST PROTECTION CAMPAIGN, *et al.*,
Plaintiffs-Appellants,

v.

UNITED STATES FOREST SERVICE, *et al.*,
Defendants-Appellees,

and

QUINCY LIBRARY GROUP, *et al.*,
Intervenors-Defendants-Appellees.

On Appeal From a Judgment of the United States District Court
for the Eastern District of California
Civ. S-04-2023 MCE/GGH

DECLARATION OF MICHAEL R. SHERWOOD
IN SUPPORT OF APPELLANTS' URGENT MOTION
FOR INJUNCTION PENDING APPEAL

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Attorney for Earth Island Institute
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I, Michael R. Sherwood, hereby declare as follows:

1. I am a staff attorney at the Oakland Regional Office of Earthjustice and one of the attorneys of record for plaintiffs–appellants Sierra Nevada Forest Protection Campaign, Plumas Forest Project, Earth Island Institute, and Center for Biological Diversity (“plaintiffs”) in the above-entitled matter. I have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of Appellants’ Urgent Motion for Injunction Pending Appeal, filed herewith.

2. Pursuant to Ninth Circuit Rule 27-3(b), I certify that, to avoid irreparable harm to the California spotted owl and local communities near the Meadow Valley Defensible Fuel Profile Zone and Group Selection Project (“Meadow Valley Project”) area in Plumas National Forest, action by this Court with respect to Appellants’ Urgent Motion for Injunction Pending Appeal is needed by June 14, 2005. On that date, Defendants-Appellees United States Forest Service, *et al.* (“Forest Service”) are scheduled to open bids for two timber sale contracts implementing the Meadow Valley Project. On June 16, 2005, the Forest Service will open bids for two additional timber sales contracts. *See* letter dated May 10, 2005, from Brian C. Toth, counsel for the Forest Service, to counsel for appellants regarding the four timber sale contracts implementing the Meadow Valley Project advertised on May 11, 2005, and the attached advertisements for

those four timber sale contracts, a true copy of which is attached hereto as Exhibit 1, and letter dated May 11, 2005 from Plumas National Forest Supervisor James M. Peña to Michael R. Sherwood, a true copy of which is attached hereto as Exhibit 2. The Forest Service will award the contracts to the eligible high bidder “as soon as possible after bid opening,” Ex. 2, and logging pursuant to the contracts may commence soon thereafter.

3. Pursuant to Federal Rules of Appellate Procedure Rule 8(a)(2)(C) and Ninth Circuit Rule 27-3(b)(1), on May 19, 2005, I telephoned Brian C. Toth, counsel for the Forest Service, and informed him by voice mail that plaintiffs intended to file an “urgent” motion for an injunction pending appeal no later than May 24, 2005. On May 19, 2005, I similarly notified by voicemail Michael B. Jackson, counsel for Intervenor-Defendants-Appellees Quincy Library Group and Plumas National Forest.

4. On May 24, 2005, I called the clerk of the district court to inquire as to the status of plaintiffs’ motion for an injunction pending appeal filed in the district court on May 13, 2005. I was informed that as of that date, the court had not ruled on the motion.

5. Pursuant to Federal Rule of Appellate Procedure 27(a)(2)(B)(iii), attached hereto as Exhibit 3 is a true and correct copy of the district court’s May 9, 2005 Memorandum and Order denying plaintiffs’ motion for summary judgment

and request for a permanent injunction, and granting the Forest Service's cross-motion for summary judgment.

6. Attached hereto as Exhibit 4 is a true and correct copy of the district court's Judgment in a Civil Case, entered on May 9, 2005.

7. Attached hereto as Exhibit 5 is a true and correct copy of plaintiffs' Notice of Appeal to this Court, filed in the district court on May 13, 2005.

8. Attached hereto as Exhibit 6 is a true and correct copy of the parties' Stipulation and Joint Request Regarding Resolution of Plaintiffs' Motion for Injunction Pending Appeal, filed in the district court on May 13, 2005 and approved by the district court on May 20, 2005.

9. Pursuant to Federal Rule of Appellate Procedure 8(a)(2)(B)(iii), attached hereto as Exhibits 7 through 13 and 15 through 20 are true and correct copies of the relevant parts of the record in this case cited in plaintiffs' Urgent Motion for Injunction Pending Appeal. Specifically:

- Exhibit 7 is the Forest Service's February 12, 2004 Meadow Valley Project Environmental Assessment;

- Exhibit 8 is the Forest Service's April 16, 2004 Meadow Valley Project Decision Notice and Finding of No Significant Impact;

- Exhibit 9 is selected pages of the Forest Service's January 29, 2004 Meadow Valley Project Biological Assessment/Biological Evaluation;

- Exhibit 10 is a true and correct copy of the Forest Service's January 28, 2005 Response to Plaintiffs' Statement of Fact in Support of Motion for Summary Judgment.
- Exhibit 11 is selected pages of the Forest Service's August 20, 1999 Herger-Feinstein Quincy Library Group Forest Recovery Act Record of Decision;
- Exhibit 12 is selected pages of the Forest Service's January 2001 Sierra Nevada Forest Plan Amendment Record of Decision;
- Exhibit 13 is selected pages of the Forest Service's January 2004 Sierra Nevada Forest Plan Amendment Record of Decision;
- Exhibit 15 is the Forest Service's January 28, 2005 Declaration of Richard Bednarski;
- Exhibit 16 is a memo dated January 24, 2004, from James M. Peña to File, which was attached as Exhibit C to the Forest Service's January 28, 2005 Opposition to Plaintiffs' Motion for Summary Judgment and Memorandum in Support of Cross Motion for Summary Judgment;
- Exhibit 17 is plaintiffs' December 17, 2004 Declaration of Jennifer A. Blakesley in Support of Plaintiffs' Motion for Summary Judgment;
- Exhibit 17A is plaintiffs' December 17, 2004 Declaration of Dennis C. Odion in Support of Plaintiffs' Motion for Summary Judgment;

- Exhibit 18 is plaintiffs' December 17, 2004 Declaration of Monica L. Bond in Support of Plaintiffs' Motion for Summary Judgment;
- Exhibit 19 is plaintiffs' December 17, 2004 Supplemental Declaration of Chad Hanson and Exhibits A through G thereto;
- Exhibit 20 is selected pages of the Forest Service's February 13, 2004 Meadow Valley Project Fire/Fuels Report.

10. Attached hereto as Exhibit 14 is a true and correct copy of the Decision in *Center for Sierra Nevada Conservation v. Berry*, No. Civ. S-02-325 LKK/JFM (E.D. Cal. Feb. 15, 2005).

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection and knowledge.

DATED: May ____, 2005

MICHAEL R. SHERWOOD