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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

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

18 Plaintiffs,)
19)

20 v.)

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

23 Federal Defendants.)
24)
25)
26)
27)
28)

Case No. 04-CV-2023

**DEFENDANTS' RESPONSE
TO PLAINTIFFS' STATEMENT OF
FACT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: April 5, 2005
Time: 1:30 p.m.
Location: 15th Floor
Courtroom No. 4

Federal Defendants set forth the following response to the allegations in Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment:

1. *On April 16, 2004, Defendant James M. Pena, Forest Supervisor for the Plumas National Forest, approved the Meadow Valley Defensible Fuel Profile Zone and Group Selection Project ("Meadow Valley Project" or "Project") within the Mt. Hough Ranger District, Plumas National Forest, about five miles west of Quincy, California, and surrounding the community of Meadow Valley. Answer ¶ 16.*

Admit.

2. *The Meadow Valley Project would, over a five-year period, result in the logging of about 40 million board feet of timber from approximately 6,400 acres. Id. at ¶ 17. Active logging operations are expected to occur approximately 80 days per year for the duration of the Project. AR 15 at 05502. (Meadow Valley Project Decision Notice and Finding of No Significant Impact ("Decision Notice") at 10). Total truck traffic for the Meadow Valley Project is estimated to be about 5,000 trips hauling logs and 5,000 trips hauling wood chips. Answer ¶ 17.*

Admit.

3. *The Project proposes approximately 743 acres of group selection logging in 488 units scattered throughout the area. AR 13 at 04760 (Meadow Valley Project Environmental Assessment ("EA") at 6).*

Admit.

4. *Group selection is a form of commercial logging in which all or nearly all trees are removed in ½ to 2-acre patches. AR 12 at 04346 (Meadow Valley Project Biological Assessment/Biological Evaluation ("BA/BE") at 8); see also Answer ¶ 19.*

Deny that group selection is a "form of commercial logging." Group selection is "a silvicultural system that involves harvest of small areas of trees" and "results in uneven-aged (all-aged) forests consisting of small even-aged (same-aged) groups." 13

1 AR at 04849. Admit that the Meadow Valley Project proposes groups that would
2 range in size from ½ to 2 acres. 12 AR at 04346.

3 5. *All or nearly all trees up to 30 inches in diameter will be removed from the 488*
4 *group selection cuts, as well as any larger trees that are considered to be diseased or that*
5 *“interfere with operability” where landings, roads and skid trails are constructed. AR 12 at*
6 *04346 (BA/BE at 8).*

7 Deny that trees larger than 30" dbh would be removed because they are diseased. 15 AR
8 at 5494. Otherwise, admit.

9 *Within the group selection units planned for the Project, there is no requirement to maintain any*
10 *forest canopy cover (Answer ¶ 19), and fewer than three trees on average will remain per acre*
11 *logged. Declaration of Dennis Odion (“Odion Dec.”) ¶ 3.*

12 Deny except insofar as to admit that there is no per se requirement for a particular level of
13 canopy to be retained. An average of seven trees greater than 30" dbh will remain within
14 group selection units. 12 AR at 4312.

15 6. *The Project also calls for approximately 5,700 acres of defensible fuel profile*
16 *zone (“DFPZ”) logging in 37 units. Answer ¶ 18; AR 13 at 04763 (EA at 9).*

17 Admit.

18 7. *DFPZs are long, approximately 1/4-mile-wide strips, generally following*
19 *ridgetops and/or roads. Answer ¶ 20.*

20 Admit.

21 8. *In approximately 950 acres of DFPZs located within the “defense zone” land*
22 *allocation, the Meadow Valley Project will allow removal of trees up to 30 inches in*
23 *diameter. Answer ¶ 20; AR 13 at 04763 (EA at 9). In approximately 4,320 acres of DFPZs*
24 *outside of the defense zone, the Project will allow removal of trees up to 20 inches in diameter.*
25 *Answer ¶ 20; AR 13 at 04779 (EA at 25). Trees larger than the diameter limits in both cases*
26 *may be removed if necessary for “operability.” Answer ¶ 22; AR 13 at 04775 (EA at 21).*

27 Admit.
28

1 9. *A 40 percent minimum canopy cover requirement is applicable to the 978*
2 *DFPZ acres dominated by trees larger than 24 inches in diameter and with pre-existing*
3 *canopy cover greater than 40 percent. Answer ¶ 20; AR 15 at 05498 (Decision Notice at 6).*

4 Admit.

5 *There is no minimum canopy cover requirement for the remaining 4,722 acres of DFPZs that*
6 *do not meet these criteria. AR 15 at 05498 (Decision Notice at 6).*

7 Admit, except insofar as the allegations imply that canopy would be eliminated in DFPZ
8 units. Basal retention requirements apply to the remaining 4,722 acres and would be
9 expected to result in, on average, about 40% canopy closure. See 13 AR at 04779 (“To
10 ensure crown separation necessary to achieve a more effective DFPZ, resulting crown
11 densities (measured as canopy closure) would be expected to average about 40% under
12 Alternative C”).

13 10. *The Forest Service has not marked the trees to be removed from the group*
14 *selection units in the Meadow Valley Project area. Answer ¶ 21. Instead, trees to be logged*
15 *from the group selection units have been designated by description. See AR 16 at 05754-901,*
16 *05902-06065, 06066-217, 06218-379 (the four timber sale contracts advertised for the*
17 *Project).*

18 Admit.

19 11. *The Project site is directly adjacent to the eastern edge of the 21,000-acre Bucks*
20 *Lake Wilderness Area and impacts the Pacific Crest National Scenic Trail. Answer ¶ 27; AR 13*
21 *at 04814-15 (EA at 60-61).*

22 Admit.

23 *The Project would also involve logging in the Silver Creek corridor, an eligible Wild and*
24 *Scenic River, as well as along several tributaries of the Middle Fork Feather National Wild and*
25 *Scenic River. AR 13 at 04813-14 (EA at 59-60).*

26 Admit only to the extent that it alleges the Meadow Valley Project would involve timber
27 harvest in the Silver Creek Corridor. See 14 AR 5063 (“Two DFPZ units in the
28

1 downstream portion of the corridor would extend to within 300 and 400 feet of the
2 stream. *No actions would be taken near the stream.*") (emphasis added). Deny that
3 mechanical timber harvest would occur along tributaries of the Middle Fork Feather
4 National Wild and Scenic River, which are designated as Riparian Habitat Conservation
5 Acres. 14 AR at 5004.

6 12. *Implementation of the Meadow Valley Project began in late September, 2004*
7 *when hand thinning and mastication occurred on 258 acres and 104 acres of the Project area,*
8 *respectively, pursuant to two service contracts. Answer ¶ 28.*

9 Admit.

10 13. *The California spotted owl (Stria occidentalis occidentalis) ("owl") is a*
11 *medium-sized raptor with large dark eyes and mottled brown and white coloring. Answer ¶*
12 *29. California spotted owls inhabit the Sierra Nevada mountain range from Shasta County*
13 *south to Kern County, including the Meadow Valley Project site within the Plumas National*
14 *Forest. Id.*

15 Admit.

16 14. *California spotted owls are habitat specialists that select and use old forests*
17 *characterized by large trees, dense and multi-storied forest canopies, dense canopy closure,*
18 *large standing dead trees ("snags"), and downed logs and woody debris for nesting, roosting,*
19 *and foraging. Answer ¶ 30, AR 10 at 03838 (68 Fed. Reg. 7580, 7586 (Feb. 14, 2003)).*

20 Admit, except to the extent that it implies owls necessarily select old growth forest for
21 foraging. Owls also forage in younger, smaller forests characterized by 11 to 24-inch
22 diameter trees with 40% or greater canopy cover. 12 AR at 4366.
23 *The best scientific information available indicates that high survival of spotted owls is*
24 *achieved by maintaining large, unfragmented areas of old growth habitat. AR 10 at 03838 (68*
25 *Fed. Reg. at 7586).*

26 Admit, except to the extent that the allegation implies that suitable habitat for owls is
27 limited to "old growth." See 10 AR at 3847 ("The best scientific information available
28 indicates that high survival of spotted owls is achieved by maintaining large,

unfragmented areas of *suitable habitat*") (emphasis added). Suitable habitat for California spotted owls includes not only "old growth," but also smaller size classes. Id. at 3838.

15. *The current extent of old forests in the Sierra Nevada, including in the Plumas National Forest and the Meadow Valley Project area, is substantially less than prior to European settlement. Id.*

Admit that "[t]he current extent of old forests in the Sierra Nevada is believed to be substantially less than in pre-historic times," 10 AR at 3838, but deny Plaintiffs' conclusions about old forests in the Plumas National Forest or the Meadow Valley Project area.

The Forest Service has estimated that old forests have declined from 50 to 90 percent in the Sierra Nevada, primarily due to logging, road construction, development, and related activities. Id.

Admit that the Forest Service has reported that old forest conditions have declined from 50 to 90 percent compared to the range of historical conditions, but deny that such a decline has been attributed "primarily" to forest management activities. Id.

The Plumas National Forest has the lowest proportion of remaining old forests of all national forests in the Sierra Nevada. Answer ¶ 52.

Admit.

16. *As a consequence of this habitat loss and fragmentation, the owl's population in the Sierra Nevada is declining. See Answer ¶ 32; Declaration of Monica Bond ("Bond Dec.") IT 16, 39; Declaration of Jennifer Blakesley ("Blakesley Dec.") ¶¶ 3-4.*

Deny. Although it is recognized that the owl may be experiencing an uncertain level of decline in parts of its range, a recent meta-analysis indicates that population trend data is inconclusive and statistical trends may not indicate a decline in overall owl populations. 12 AR at 4364. Factors other than habitat loss and fragmentation have also been recognized as contributing to any possible decline, including effects of drought and climate change, potential spread of a new competitor species (barred owl), and possible

1 threats of disease. 10 AR at 3833.

2 17. *The Forest Service has designated the California spotted owl as a “sensitive”*
3 *species due to concerns regarding its viability. AR 13 at 04822 (EA at 68); Answer ¶ 30. Since*
4 *the owl’s population changes are believed to indicate the effects of forest management practices*
5 *on other species dependent on old forest habitat, the owl has also been designated as a*
6 *“management indicator species” for the Plumas National Forest. AR 13 at 04798-99 (EA at*
7 *44-45).*

8 Admit.

9 18. *Based upon the owl’s decline and a wide range of threats to the owl, including*
10 *planned and projected logging on National Forest and private lands, several of the plaintiff*
11 *organizations have petitioned the U.S. Fish and Wildlife Service to designate the owl as a*
12 *threatened or endangered species under the Endangered Species Act, 16 U.S.C. § 1531, et*
13 *seq. Answer ¶ 33.*

14 Admit.

15 19. *For nesting and roosting, the owl requires forests dominated by large trees (24*
16 *inches in diameter or greater) with canopy cover of 70 percent or greater, and higher than*
17 *average numbers of snags and downed woody material. AR 12 at 04365 (BA/BE at 27).*

18 Admit.

19 *Data from 124 nest sties within the Sierra indicated that nest trees used by owls averaged 45*
20 *inches in diameter, and more than 70% of all nest trees were larger than 30 inches in*
21 *diameter. Id. at 04366 (BA/BE at 28).*

22 Admit.

23 *For foraging, the owl requires forests dominated by medium and large trees (11 inches in*
24 *diameter or greater) with canopy cover of 50 percent or greater, as well as higher than*
25 *average numbers of snags and downed woody material. Id.*

26 Deny that owls require trees 11 inches dbh or greater and canopy cover of 50 percent or
27 greater for foraging. Foraging habitat consists of at least two canopy layers, with
28 “dominant and co-dominant trees in the canopy averaging at least 11 inches dbh, [and] at

1 least 40% canopy closure.” 12 AR at 4366. Canopy covers down to 40% are suitable for
2 foraging, but “appear to be only marginally so (based on owl occurrence and
3 productivity threshold at around 50% canopy cover). In the red fir type, stands with 30%
4 or greater canopy cover should be considered suitable for foraging.” Id. (citations
5 omitted).

6 20. *The owl is a territorial species that preferentially utilizes habitat near and*
7 *around its nest tree. Answer ¶ 35; AR I at 00274-75 (2001 Sierra Nevada Forest Plan*
8 *Amendment Final Environmental Impact Statement (“SNFPA 2001 FEIS”) at 39-40). The*
9 *Forest Service designates the best available 300 acres of habitat around each owl nest or*
10 *roost site as a Protected Activity Center (“PAC”). AR I at 00327-29 (2001 Sierra Nevada*
11 *Forest Plan Amendment Record of Decision (“SNFPA 2001 ROD”) at Appendix A, 33-35).*

12 Admit.

13 *Around each PAC, the Forest Service characterizes approximately 1,000 acres of the best*
14 *available habitat where the most concentrated owl foraging activity is likely to occur as a*
15 *Home Range Core Area (“HRCA”). Id. at 00337 (SNFPA 2001 ROD at Appendix A, 43);*
16 *Answer ¶ 35.*

17 Deny that a HRCA consists of 1,000 acres around each PAC. PACs are a minimum of
18 300 acres. On the Plumas National Forest (“PNF”), approximately 1,000 acres are
19 designated as a HRCA; the acreage in the 300-acre PAC counts toward the total 1,000
20 home range core area. 4 AR at 1091. Otherwise, admit.

21 21. *Logging of suitable owl nesting and foraging habitat, particularly within owl*
22 *PACs and HRCAs, is likely to adversely affect any resident owls and reduce the likelihood*
23 *that non-resident owls will utilize the area as foraging habitat. AR 12 at 04427-34 (BA/BE*
24 *at 85-92).*

25 Deny. Timber harvest would not occur within owl PACs. See 15 AR at 5497
26 (“Alternative C does not enter spotted owl PACs”). Harvest would occur within
27 HRCAs but would not likely change the occupancy of PACs that were occupied in
28 2002 and 2003. See 12 AR at 4433 (“owl occupancy of each established PAC should

1 remain the same as pre-treatment”). “[N]o major shift in owl use [of HRCAs] due to
2 habitat alteration” is expected. Id. “Edges created by groups within suitable owl
3 habitat may reduce the use of foraging habitat by spotted owls.” Id. at 4434.

4 22. *The Meadow Valley Project is part of the Herger-Feinstein Quincy Library*
5 *Group Forest Recovery Act (“QLG Act”) pilot project, a five-year program being implemented*
6 *on approximately 1.5 million acres within the Plumas and Lassen National Forests and the*
7 *Sierraville Ranger District of the Tahoe National Forest. Pub. L. 105-277, Div. A, § 101(e)*
8 *[Title IV, Sec. 401], Oct. 21, 1998, 112 Stat. 2681-305 (16 U.S.C. § 2104 note).*

9 Deny that the pilot project is limited to five years. See Consolidated Appropriations
10 Resolution, 2003, Pub. L. No. 108-7, § 338, 117 Stat. 11, 278 (codified at 16 U.S.C. §
11 2104 note) (extending pilot project an additional five years, until 2008). Otherwise,
12 admit.

13 *The stated purpose of the pilot project is to implement and demonstrate the effectiveness of*
14 *certain resource management activities including “construction of a strategic system of*
15 *defensible fuel profile zones” and “utilization of group selection and individual tree selection .*
16 *. . . to achieve a desired future condition of all-age, multistory, fire resilient forests.” Id. at*
17 *Sections 401(b), (d).*

18 Admit.

19 23. *Congress specifically deferred implementation of the QLG Act from “[a]ll*
20 *spotted owl habitat areas [“SOHAs”] and protected activity centers located within the pilot*
21 *project area,” and required the pilot project to be implemented “consistent with applicable*
22 *Federal law and the standards and guidelines for the conservation of the California spotted owl*
23 *as set forth in the California Spotted Owl Sierran Province Interim Guidelines [“CASPO Interim*
24 *Guidelines”] or the subsequently issued guidelines, whichever are in effect.” Id. at Section*
25 *401(c)(1), (3).*

26 Admit.

27 24. *In its 1999 Final Environmental Impact Statement for the QLG Act pilot project*
28 *(“1999 QLG FEIS”), the Forest Service concluded that the DFPZs prescribed under the*

1 *selected alternative would reduce the amount of owl nesting habitat by 7 percent and the*
2 *amount of owl foraging habitat by an additional 8.5 percent — a total of 15.5% of suitable owl*
3 *habitat within the pilot project area. AR 7 at 02581 (1999 QLG FEIS at 3-103). The Forest*
4 *Service further concluded that this reduction of suitable habitat would result in a trend toward*
5 *federal listing for the owl. Id. at 02884 (1999 QLG FEIS at 6-19). The Forest Service also found*
6 *that the prescribed group selection and individual tree selection cuts were expected to reduce*
7 *suitable owl habitat by an additional 2-4% in the pilot project area. AR 6 at 02063 (QLG Act*
8 *pilot project Biological Assessment/Biological Evaluation at 73).*

9 Admit.

10 25. *The 1999 QLG FEIS also found that the number of spotted owl home ranges in*
11 *the pilot project area with more than 50 percent suitable habitat, an important criteria for*
12 *determining successful owl survival and reproduction, was expected to decrease by 11 percent.*
13 *Id. at 02582 (3-104); AR 8 at 03402-03 (1999 QLG FEIS at AA-45, 46).*

14 Admit, but clarify that the “home ranges” used to conduct the QLG FEIS analysis are
15 not the HRCAs. 6 AR at 2073.

16 26. *In its Record of Decision that accompanied the final environmental impact*
17 *statement (“1999 QLG ROD”), the Forest Service acknowledged that a 15.5% reduction of*
18 *suitable owl habitat “could pose a serious risk to the viability of the California spotted owl in*
19 *the planning area, thereby making the implementation of [the selected alternative]*
20 *inconsistent with the National Forest Management Act.” AR 7 at 02384 (1999 QLG ROD at*
21 *7). The Forest Service concluded that “additional mitigation must be applied . . . in order to*
22 *provide sufficient protection to the California spotted owl.” Id. at 02388 (1999 QLG ROD at*
23 *11). Consequently, the Forest Service imposed as mitigation a condition that “[a]t the site-*
24 *specific level, defensible fuel profile zones, group selection harvest areas, and individual tree*
25 *selection harvest areas will be designed and implemented to completely avoid suitable*
26 *California spotted owl habitat, including nesting habitat and foraging habitat.” Id. at 02383*
27 *(1999 QLG ROD at 6).*

28 Admit.

27. *The 1999 QLG ROD also noted that “[t]his decision provides programmatic direction for the duration of the pilot project. All project-level decisions will be implemented after site-specific environmental analysis and review.” Id.; see also AR 7 at 02671 (1999 QLG FEIS at 4-52) (“Incremental reductions in habitat would be analyzed as part of the cumulative effects analysis at the site-specific level to provide a more accurate assessment of the effects of incremental reductions in habitat”).*

Admit.

28. *The Meadow Valley Project also implements the 1988 Plumas National Forest Land and Resource Management Plan (“Plumas Forest LRMP”) and the 2004 Sierra Nevada Forest Plan Amendment Record of Decision (“SNFPA 2004 ROD”). AR 15 at 05496 (Decision Notice at 4).*

Admit.

29. *The Plumas Forest LRMP provides programmatic direction for the management of lands in the Plumas National Forest pursuant to the National Forest Management Act (“NFMA”), 16 U.S.C. § 1604.*

Admit.

30. *The SNFPA 2004 ROD provides a comprehensive management strategy for all eleven national forests within the Sierra Nevada range, including Plumas National Forest. AR 4 at 01058 (SNFPA 2004 ROD at 6). The SNFPA 2004 ROD replaced the Forest Service’s Record of Decision for the 2001 Sierra Nevada Forest Plan Amendment (“SNFPA 2001 ROD”), which had its origins in work done during the previous decade to protect the California spotted owl. Id. at 01055 (SNFPA 2001 ROD at 3); AR 1 at 00236 (SNFPA 2001 ROD at 1).*

Admit.

31. *The SNFPA 2001 ROD, which amended both the Plumas LRMP and the 1999 QLG ROD, found that “the entire level of management activity specified in the [QLG Act] cannot be implemented without degrading owl habitat [and] without increasing risk to owl viability.” AR 1 at 00286 (SNFPA 2001 ROD at 51).*

1 Admit.

2 32. *In the SNFPA 2001 ROD, the Forest Service adopted a new “California Spotted*
3 *Owl Conservation Strategy,” replacing the CASPO Interim Guidelines and the 1999 QLG*
4 *ROD’S mitigation measure with new standards and guidelines that provided substantial protection*
5 *for most owl habitat. Id. at 00272-76 (SNFPA 2001 ROD at 37-41).*

6 Admit.

7 *The strategy was based on the premise that “[t]he California spotted owl population in the Sierra*
8 *Nevada is in decline,” and was designed to “conserve existing suitable habitat and minimize*
9 *further habitat degradation” by protecting “rare and likely important components of the landscape*
10 *such as stands of mid- and late-seral forests with large trees, structural diversity and complexity,*
11 *and moderate to high canopy cover.” Id. at 00273-74 (SNFPA 2001 ROD at 38-39).*

12 Admit, except to the extent that the allegations imply that conserving suitable owl
13 habitat was recognized as a long-term management strategy. The SNFPA 2001 ROD
14 recognized that the "habitat management prescriptions to maintain currently suitable
15 owl habitat may not necessarily represent a long term forest management strategy,"
16 because if the prescriptions were continued indefinitely, they could make it more
17 difficult to regenerate "shade intolerant species such as hardwoods and pines (sugar and
18 Ponderosa)." 1 AR at 274.

19 33. *The SNFPA 2001 ROD proposed some vegetation treatments prescribed by the*
20 *QLG Act pilot project in owl habitat as part of an administrative study to “investigate the response*
21 *of the California spotted owl and its habitat, particularly populations of prey species and*
22 *features of their habitats, to various silvicultural treatments.” Id. at 00250-51 (SNFPA 2001*
23 *ROD at 15-16); see also id. at 00272-76 (SNFPA 2001 ROD at 37-41).*

24 Admit, except to clarify that the SNFPA ROD specifically proposes group selection. 1
25 AR at 251.

26 *However, the notice of intent to prepare an EIS for the administrative study, published on*
27 *December 4, 2002 (67 Fed. Reg. 72136), generated so much controversy regarding owl impacts*
28

1 *that the notice was subsequently cancelled and the study abandoned. 68 Fed. Reg. 20366 (Apr.*
2 *25, 2003).*

3 Deny. The scope of the administrative study was changed due to the complexity of the
4 original proposal. The area covered by the original study was extensive and the study
5 design so complex that continuing it would have markedly reduced the Forests' ability
6 to accomplish both the Study and their commitments to the HFQLG pilot project before
7 2009, the time period for the pilot project. See 9 AR at 3597. Since that time, the
8 researchers and the Forests have initiated a different administrative study that will
9 examine projects proposed as part of the HFQLG pilot implementation. 13 AR at 4735.

10 34. *The SNFPA 2001 ROD noted that it "does not authorize timber sales or any*
11 *other specific activity on the Sierra Nevada national forests. Site-specific decisions will be*
12 *made on projects in compliance with NEPA, ESA, and other environmental laws following*
13 *applicable public involvement and administrative appeal procedures."* AR 1 at 00270 (SNFPA
14 *2001 ROD at 35).*

15 Admit.

16 35. *The Forest Service determined in the SNFPA 2004 ROD that the QLG Act pilot*
17 *project should be fully implemented, and it eliminated the prohibitions on logging in suitable*
18 *owl habitat even while acknowledging that "there is still much more to learn and understand*
19 *about the linkages between management activities, and their effects on owl habitat and population*
20 *dynamics."* AR 4 at 01058 (SNFPA 2004 ROD at 6).

21 Deny that the 2004 ROD "eliminated prohibitions on logging in suitable owl habitat."

22 Timber harvest in suitable owl habitat was allowed even under the 2001 ROD. See 1
23 AR at 274 (noting that "[t]hinning from below is the principle silvicultural prescription"
24 to achieve the immediate objective of maintaining currently suitable owl habitat).

25 Otherwise, admit.

26 36. *The SNFPA 2004 ROD noted that it "does not authorize timber sales or any*
27 *other specific activity on the Sierra Nevada national forests. Site-specific decisions will be*
28 *made on projects in compliance with NEPA, ESA, and other environmental laws following*

1 *applicable public involvement and administrative appeal procedures.” AR 4 at 01072*
2 *(SNFPA 2004 ROD at 20).*

3 Admit.

4 37. *The Meadow Valley Project was proposed on August 5, 2003 while the*
5 *spotted owl habitat protections by the SNFPA 2001 ROD were still in place (AR 11 at*
6 *04113), but it was approved on April 16, 2004 (AR 15 at 05492) following the removal of*
7 *those protections by the SNFPA 2004 ROD. AR 4 at 01079 (SNFPA 2004 ROD at 27).*

8 Admit, except to the extent that the allegation states that spotted owl habitat
9 protections were removed by the 2004 ROD. The 2004 ROD included direction that
10 fuels treatments avoid California spotted owl PACs, that trees 30" inches dbh and larger
11 be retained in all thinning projects, and that 40% basal area in the largest trees in all
12 treated areas be retained. 4 AR at 1056-57. "Collectively, the standards and guidelines
13 for mechanical treatments ensure that there will be a continuous supply of large trees in
14 all managed areas to provide for future old forest stand structure." *Id.* at 1057.

15 38. *On February 12, 2004, Plumas National Forest Supervisor James M. Pena*
16 *circulated an environmental assessment (“EA”) on the Meadow Valley Project for comment*
17 *pursuant to the National Environmental Policy Act (“NEPA”). Answer ¶ 54; AR 13 at*
18 *04745.*

19 Admit.

20 39. *On March 19, 2004, the Sierra Nevada Forest Protection Campaign*
21 *(“Campaign”) and Plumas Forest Project submitted comments on the proposed action, as*
22 *did the Earth Island Institute (“Earth Island”) and the Center for Biological Diversity*
23 *(“Center”). Answer ¶ 54; AR 14 at 05242-70, 05234-35.*

24 Admit.

25 40. *In a Decision Notice and Finding of No Significant Impact issued on April 16,*
26 *2004, the Forest Supervisor decided to select and implement Alternative C in the EA, the*
27 *alternative resulting in the most amount of logging and the greatest adverse impact on the*
28 *spotted owl and its. [sic] AR 15 at 05493 (Decision Notice at 1).*

1 Deny that the selected alternative would result in "the greatest adverse impact on the
2 spotted owl." E.g. 13 AR at 4799 ("the potential for wildland fire to become large and
3 highly intense and cause severe damage to terrestrial habitats" would be greater under
4 the no-action alternative). Otherwise, admit.

5 *The Forest Supervisor also determined that the Meadow Valley Project will not have a*
6 *significant effect on the quality of the human environment and that an environmental impact*
7 *statement would not be prepared. Id. at 05501 (Decision Notice at 9).*

8 Admit.

9 41. *On June 1, 2004, Earth Island and the Center filed a timely administrative*
10 *appeal of this decision to defendant Jack Blackwell, Regional Forester, Region 5, United*
11 *States Forest Service, pursuant to 36 C.F.R. Part 215. Answer ¶ 57; AR 15 at 05654-60. On*
12 *June 7, 2004, plaintiffs Campaign and Plumas Forest Project also filed a timely*
13 *administrative appeal to the Regional Forester. Answer ¶ 57; AR 15 at 05681-708.*

14 Admit.

15 42. *On July 22, 2004, Bernard Weingardt, Deputy Regional Forester, acting on*
16 *behalf of defendant Jack Blackwell, issued his decision denying the appeals and affirming the*
17 *Forest Supervisor's decision to approve the Meadow Valley Project and not to prepare an*
18 *environmental impact statement. Answer ¶ 58; AR 15 at 05739-52.*

19 Admit.

20 43. *The primary rationale given by the Forest Service for the Meadow Valley*
21 *Project is that it will implement the resource management activities called for in the QLG Act*
22 *and thereby reduce the risk of wildfire near the community of Meadow Valley and other nearby*
23 *communities. AR 13 at 04772-74 (EA at 18-20).*

24 Deny. Implementing the QLG Act is only one of five components of the project's
25 purpose. See 13 AR at 4764-4774. Resource management activities required by the
26 QLG Act, DFPZ construction and group selection, are not themselves intended to
27 reduce fire risk. DFPZs do not reduce risk of wildfire occurring, but rather reduce the
28 potential size of wildfires and provide safe locations where fire suppression personnel

1 can combat wildfire, thereby providing protection for communities. *Id.* at 4772. Nor is
2 group selection intended to reduce fire risk, but rather "to achieve an all-aged mosaic of
3 timber stands, while contributing to the local economy through a sustainable output of
4 forest products." *Id.* at 4771. Separate and apart from implementing the QLG Act, the
5 proposed action is intended to help reduce fire risk by "treat[ing] the existing fuels on
6 the landscape in a cost-efficient manner." *Id.* at 4772.

7 44. *At least 108 acres of the Meadow Valley Project's group selection units as well*
8 *as 84 acres designated for DFPZ cuts have been previously treated by the Forest Service for*
9 *purposes of fire risk reduction. Answer ¶ 23; Odion Dec. ¶ 12. These treatments occurred over*
10 *the last several years and have included thinning and/or prescribed fire to burn underbrush.*
11 *Answer ¶ 23; Odion Dec. 12.*

12 Admit.

13 45. *The Forest Service's decision to prescribe group selection cuts in which all or*
14 *nearly all trees up to 30 inches in diameter (as well as larger trees for purposes of*
15 *"operability") will be removed will result in the virtual elimination of the forest canopy in most*
16 *cases, which in turn will create hotter, drier conditions on the ground, allow increased wind*
17 *speeds, and accelerate the growth of small trees, shrubs, invasive weeds, and other surface and*
18 *ladder fuels. Odion Dec. ¶¶ 3-7, 22-23.*

19 Admit, except to deny that group selection is expected to accelerate growth of invasive
20 weeds. 13 AR at 4807-08.

21 46. *The group selection cuts will generate hazardous surface fuels in the form of*
22 *logging slash debris, the immediate removal of which is not required in the advertised contracts for*
23 *the Project. Id. at ¶¶ 8-10; AR 16 at 05754-901 (Snake MP Thin SBA Timber Sale Contract).*

24 Deny insofar as the allegations imply that hazardous levels of slash would be generated
25 within units or that slash would be left untreated. Within group selection units,
26 "underburning, or piling and burning would be used to treat residual slash, pre-existing
27 fine fuels, and shrubs." 13 AR at 4760; see also 12 AR at 4311 ("Slash disposal and
28 mechanical treatment of competing vegetation would occur on sites where

1 concentrations of surface fuels and brush inhibit conifer regeneration."). The sample
2 timber sale contracts require whole tree yarding to minimize slash generation within
3 units. See 16 AR at 5817 (contract provision regarding whole tree yarding); 13 AR at
4 4869 ("Group select units are proposed for whole tree yarding to landings"). Under the
5 sale contracts, "a schedule for completion of slash treatment" will be developed "prior to
6 Purchaser's Operations." 16 AR at 5821. Otherwise, admit.

7 47. *The Meadow Valley Project Fire/Fuels Report prepared by the Forest Service*
8 (*"Fire/Fuels Report"*) acknowledges that the Project's group selection cuts "are not actions
9 designed to meet the purpose and need for hazardous fuels reduction." AR 13 at 04869 (*Fire/Fuels*
10 *Report at 6*); *see id. at 04879 (Fire/Fuels Report at 16)*.

11 Admit.

12 48. *The Forest Service's decision to create DFPZs by removing large fire-resistant*
13 *trees and significantly reducing canopy cover will result in hotter, drier and brushier conditions*
14 *within the DFPZs, making them more receptive to combustion. Odion Dec. ¶¶ 13-14.*

15 Deny that DFPZs "will result in hotter, drier and burshier conditions . . . making
16 them more receptive to combustion." The Fire/Fuels Report found that "[a]fter
17 completion of the proposed action, the DFPZ project area would provide a safer
18 environment for firefighters" and "[t]he rate of spread, flame lengths and fireline
19 intensities of a wildland fire inside the treated area would be reduced." 13 AR at
20 4871. Subsequent to thinning, 100% of units would be treated to reduce surface,
21 ladder, and crown fuels. 13 AR at 4779; 13 AR at 4869-70. The DFPZ is designed
22 to be effective for a period of 10 years. 13 AR at 4817. "Under the action
23 alternatives, the emerging network of strategically placed DFPZs would be
24 increased, thereby reducing the potential for large stand-replacing fires in the
25 HFQLG Pilot Project area." Id.

26 49. *The Meadow Valley Project area contains approximately 945 acres of suitable*
27 *owl nesting habitat and 3,336 acres of suitable foraging habitat, for a total of approximately*
28

1 4,281 acres of suitable owl habitat. Answer ¶ 38; AR 12 at 04367-68 (BA/BE at 29-30). This
2 constitutes approximately 67% of the Project area's 6,400 acres. Answer ¶ 39.

3 Deny except to admit that within the Project area there are approximately 945 acres of
4 suitable owl nesting habitat and approximately 3,335 acres of suitable owl foraging
5 habitat for a total of 4,280 acres of suitable owl nesting/foraging habitat. This is
6 approximately 9.6% of the the total suitable habitat within the Analysis Area. 12 AR at
7 4367-4368.

8 50. *The Forest Service has acknowledged that the Meadow Valley Project's*
9 *planned logging activity is expected to render unsuitable all 4,281 acres of nesting and*
10 *foraging owl habitat in the Project area. AR 12 at 04439-40 (BA/BE at 97-98).*

11 Admit.

12 *Both the group selection and DFPZ logging contemplated by the Meadow Valley Project will*
13 *degrade or eliminate spotted owl habitat by removing medium and large trees, by reducing*
14 *canopy cover to levels considered unsuitable for owls, and by removing large snags and*
15 *downed wood. Answer ¶ 37; AR 12 at 04386-88, 04427-28 (BABE at 46-48, 85-86).*

16 Deny that large trees 30" dbh or above are generally scheduled to be removed. 13

17 AR at 4760-61. Within group selection units and DFPZs, large snags will be retained.

18 Id. at 4760 (in group selection units, "where sufficient snags exist, two of the largest snags per
19 acre would be retained, unless removal is necessary for operability"); id. at 4761 (two
20 snags/acre would be retained within defense zone); id. at 4779 ("Within the threat zone
21 and general forest areas, four of the largest wildlife snags per acre would be retained on
22 a stand basis within the mixed conifer ecological type, and six wildlife snags per acre
23 would be retained in the red fir type (averaged over 10-acre blocks). Within the old
24 forest and spotted owl home range core areas (HRCAs), eight snags per acre would
25 be retained."). Otherwise, admit.

26 51. *There are 16 owl PACs and associated HRCAs located within the Project area*
27 *that would be directly impacted by the proposed logging. Answer ¶ 40; AR 12 at 04368*
28 *(BA/BE at 30).*

1 Deny that any PACs would be directly impacted by proposed harvest. See 15 AR at 5497

2 (“Alternative C does not enter spotted owl PACs”). Otherwise, admit.

3 *The Meadow Valley Project would log portions of all 16 HRCAs, and approximately 1,000*
4 *acres of prime owl habitat within these HRCAs would be rendered unsuitable as a result of*
5 *group selection and DFPZ logging. Answer ¶ 40; AR 12 at 04428, 04431 (BA/BE at 86, 89).*

6 Admit, except to clarify that 1,000 acres of "suitable habitat" could potentially be
7 rendered unsuitable with Alternative C, 12 AR at 4430, and that "prime" is Plaintiffs'
8 characterization.

9 *Approximately one-third of the group selection units in the Meadow Valley Project are*
10 *located within HRCAs, some directly adjacent to owl PACs. Answer ¶ 36; AR 12 at 04489*
11 *(BA/BE at Attachment 9C).*

12 Admit.

13 52. *Additionally, there are 14 PACs and HRCAs in the Meadow Valley analysis*
14 *area (AR 12 at 04433 (BABE at 91)) and at least 15 additional PACs and HRCAs just outside*
15 *of the analysis area (Id. at 04489 (Attachment 9C)) that are likely to be indirectly adversely*
16 *affected by the proposed action. AR 12 at 04433 (BA/BE at 91), 04489 (BA/BE at Attachment*
17 *9C).*

18 Deny that the BA/BE supports the conclusion that PACs and HRCAs outside of the
19 analysis area would be indirectly adversely affected. Otherwise, admit.

20 53. *The EA for the Meadow Valley Project states that “actions under proposed plan*
21 *amendments would introduce elements of uncertainty about future owl activity in the project*
22 *area. Alternative C [the selected alternative] involves a higher risk of adversely affecting*
23 *spotted owls because it deviates more from the owl management strategy in SNFPA, and the*
24 *more intensive treatments would create more structurally unsuitable habitat across the*
25 *project area and within HRCAs (e.g. reducing canopy closure to 40% in certain units in*
26 *threat zones, general forest, and old forest emphasis areas at least temporarily eliminates a*
27 *key element of suitable owl habitat).” AR 13 at 04824 (EA at 70).*

28 Admit.

1 54. *The loss of 4,281 acres of suitable owl nesting and foraging habitat resulting*
2 *from the Meadow Valley Project would create a risk of decreased spotted owl survival and*
3 *reproduction in the Project area, even if owl occupancy remains stable, and would*
4 *contribute to the need to list the owl under the Endangered Species Act. Blakesley Dec. ¶¶ 7-*
5 *11, 18; Bond Dec. T1116-23, 38-39.*

6 Deny. The EA concludes that viability would not be threatened and hence the project
7 would not contribute to the need to list the owl for six main reasons, one of which is
8 that owl occupancy would remain stable. 13 AR at 4824. As for the effect on owl
9 reproduction, the BA/BE explains that even where PAC/HRCAs undergo habitat
10 disturbance, nearby owls still may use those PAC/HRCAs for successful
11 reproduction. See 12 AR at 4432 (such sites still "may provide areas for occupation
12 by dispersing juveniles and sub-adults"); id. (noting also that "frequently vacant sites
13 had records of successful reproduction, and . . . supported high survival and
14 reproduction when they were occupied").

15 55. *The EA contains a section entitled "Cumulative Effects," and a subsection*
16 *regarding the cumulative effects of past, present, and reasonably foreseeable future actions*
17 *on the California spotted owl. AR 13 at 04827-28 (EA at 73-74); see also id. at 04816-18*
18 *(EA at 62-64); AR 12 at 04397-402, 04434-38 (BA/BE at 57-62, 92-96).*

19 Admit.

20 56. *The EA's discussion of past and present actions briefly recites the history of*
21 *recent timber sales in the Project area and concludes that such actions "focused on fuel*
22 *reduction using California Spotted Owl (CASPO) or SNFPA standards [and] have not*
23 *diminished nesting habitat for spotted owls." AR 13 at 04828 (EA at 74); see AR 12 at*
24 *04434-38 (BA/BE at 92-96).*

25 Admit.

26 57. *The EA does not mention, consider, or evaluate any reasonably foreseeable*
27 *future QLG Act pilot project actions that are likely to have cumulatively significant impacts on*
28 *the California spotted owl. AR 13 at 04828 (EA at 74).*

1 Deny. The EA discusses the cumulative impacts of the Meadow Valley Project and
2 similar past projects as well as reasonably foreseeable future actions, see 13 AR at 4816-
3 4821, 4827-28.

4 *The EA notes that “[a]nticipated future actions related to the proposed action include*
5 *construction of DFPZs and group selection timber harvest in areas beyond the project area and*
6 *DFPZ maintenance within the project area.” Id.*

7 Admit.

8 *Although the EA acknowledges that “[i]f future projects employ prescriptions similar to those*
9 *of the proposed action, the present action can be viewed as initiating a cumulative reduction in*
10 *available spotted owl habitat,” it concludes that “owl occupancy is not expected to diminish*
11 *with the proposed action [and] a cumulative population loss is also not anticipated” because*
12 *such projects must avoid PACs and SOHAs. Id.; see AR 12 at 04438 (BA/BE at 96).*

13 Admit except insofar as the allegation implies that the analysis is inadequate.

14 58. *As of February 2004, the Forest Service had published a “program of work” for*
15 *fiscal years 2004 through 2009 detailing proposed acreage, treatments and sawlog volumes*
16 *for over 230 logging projects in Lassen, Plumas and Tahoe National Forests as part of the*
17 *QLG Act pilot project. AR 9 at 03632-52 (Herger-Feinstein Quincy Library Group Forest*
18 *Recovery Act Pilot Project, Status Report to Congress, Fiscal Year 2003 (“QLG FY03 Status*
19 *Report”), Appendix D at 27-47).*

20 Admit except to clarify that about a quarter of the projects listed in the "program of
21 work" have no sawlog volumes and therefore are not "logging projects." 9 AR at
22 03632-52.

23 59. *In fiscal years 2004 and 2005, there were 24 QLG projects planned for the*
24 *Plumas National Forest, including over 35,000 acres of DFPZ logging and 6,373 acres of group*
25 *selection logging. Answer ¶ 48; AR 9 at 03634-39 (QLG FY03 Status Report, Appendix D at*
26 *29-34). The pace of logging is expected to escalate in subsequent years, with 17 new projects*
27 *involving an additional 17,530 acres of DFPZs and 4,600 acres of group selections planned*
28

1 *for the Plumas National Forest in fiscal year 2006, and 23 similar projects planned for fiscal*
2 *year 2007. AR 9 at 03643, 03647 (QLG FY03 Status Report, Appendix D at 38, 42).*

3 Admit, except to clarify that some projects are prescribed burns or hand thinning and thus
4 not "logging" projects and that the Status Report is a working document subject to
5 revision.

6 60. *Fifty-seven of the 64 Plumas National Forest projects planned in fiscal years 2004*
7 *through 2007 are in the Mount Hough Ranger District, where the Meadow Valley Project is*
8 *located, and the immediately adjacent Feather River Ranger District. Id. at 03632-47 (QLG FY03*
9 *Status Report, Appendix D at 27-42).*

10 Admit except to clarify that of the 64 Plumas National Forest Projects, 17 are on the
11 Beckwourth Ranger District, 18 are on the Feather River Ranger District, and 29 are on
12 the Mount Hough Ranger District. 9 AR 3634-35, 3638-39, 3642-43, 3645-47.

13 Otherwise, admit.

14 61. *The majority of the documented PACs and HRCAs within Plumas National Forest*
15 *are within the Mount Hough and Feather River Ranger Districts. AR 7 at 02475 (1999 QLG*
16 *FEIS at Figure 2.2).*

17 Admit.

18 62. *The proposed Empire Vegetation Management Project ("Empire Project")*
19 *includes a combination of group selection, DFPZ construction, and individual tree selection on*
20 *over 10,111 acres of suitable owl habitat directly northeast of the Meadow Valley Project in the*
21 *Mount Hough Ranger District. Answer ¶ 49.*

22 Admit except to clarify that the Empire project is not "directly" northeast of the Meadow
23 Valley Project; it is 1.5 miles away.

24 *The Forest Service had begun planning the Empire Project prior to February 28, 2000, when it*
25 *was listed as a fiscal year 2004 project in the Herger-Feinstein Quincy Library Group Forest*
26 *Recovery Act Pilot Project, Status Report to Congress, Fiscal Year 2000 ("QLG FY00 Status*
27 *Report") at Appendix C-9. Attachment 11 to the Declaration of George Torgun ("Torgun Dec.").*

28 [footnote omitted]

1 Deny except to admit that Empire was identified in the FY00 Report.

2 *Treatment acreage and sawlog volumes have been identified in QLG Programs of Work since 2000,*
3 *including the February 2004 Program of Work. AR 9 at 03639 (QLG FY03 Status Report, Appendix*
4 *D at 34).*

5 Admit.

6 *The scope of the Empire Project was clearly defined by the Forest Service in several wildlife*
7 *survey contracts awarded prior to the April 16, 2004 Meadow Valley Project decision date,*
8 *including a carnivore survey (awarded 1/13/04), a California spotted owl survey (awarded*
9 *3/16/04), and a northern goshawk survey (awarded 3/16/04). See attachments 4, 5 and 6 to Torgun*
10 *Dec. [footnote omitted]*

11 Deny that the scope of the Empire Project was clearly defined at the time of the wildlife
12 survey contract awards. Although the preliminary location of the DFPZ had been
13 identified, generic peirmiter boundaries, including the location of the planning areas
14 where groups were potentially going to be located were not decided.

15 63. *The proposed Basin Group Selection Project ("Basin Project") includes plans for*
16 *group and individual tree selection logging on 1,295 acres directly southwest of, and adjacent to, the*
17 *Meadow Valley Project in the adjacent Feather River Ranger District. Answer ¶ 49.*

18 Admit.

19 *The majority of this land is suitable owl nesting or foraging habitat (id.), and 24 PACs are within*
20 *one-half mile of the project boundary and could be adversely affected. Basin Project Biological*
21 *Assessment and Biological Evaluation for Fish and Wildlife, Attachment 7 to Torgun Dec.*

22 [footnotes omitted]

23 Deny. The BE/BA for the Basin Project concluded that the while the PACs may be
24 indirectly affected, they would not be adversely affected.

25 *The Basin Project Scoping Notice and Proposed Action were issued on March 2, 2004. Attachment 8*
26 *to Torgun Dec. The Basin Project is also listed on the Plumas National Forest Schedule of*
27 *Proposed Actions for January-March 2004, dated October 2003. Attachment 10 to Torgun Dec.*

28 [footnotes omitted]

1 Admit.

2 64. *The proposed Watdog Defensible Fuel Profile Zone/Group Selection*
3 *Project ("Watdog Project") includes 3,700 acres of DFPZ construction, 200 acres of group*
4 *selection, and 600 acres of individual tree selection adjacent to the Basin Group Selection*
5 *Project in the Feather River Ranger District. Answer ¶ 49.*

6 Admit except to clarify that Watdog is not "adjacent" to the Basin Group Selection Project
7 but rather two miles away.

8 *Treatment prescriptions, acreage, and sawlog volumes for the Watdog Project were published by*
9 *the Forest Service in the QLG FY00 Status Report at Appendix C-8. Attachment 11 to Torgun Dec.*

10 Deny that treatment prescriptions were published in the QLG FY00 Status Report.

11 Otherwise, admit.

12 *The original Scoping Notice and Proposed Action for the Watdog Project was published on*
13 *March 4, 2003. Attachment 9 to Torgun Dec. [footnotes omitted] The Watdog Project was*
14 *also published in the Plumas National Forest Schedule of Proposed Actions for January-*
15 *March, 2004, dated October 2003. Attachment 10 to Torgun Dec. [footnote omitted]*

16 Admit.

17 65. *The Slapjack Defensible Fuel Profile Zone/Group Selection Project ("Slapjack*
18 *Project") proposes 5,200 acres of DFPZs, 250 acres of group selection, and 800 acres of*
19 *individual tree selection just south of the Watdog Project in the same Ranger District.*
20 *Answer ¶ 49.*

21 Admit except to clarify that the Slapjack Project is not "just south" of the Watdog
22 Project, but rather two miles away.

23 *The Slapjack Project was included as an FY04 planned project in the QLG FY00 Status*
24 *Report at Appendix C-9. Attachment 11 to Torgun Dec.*

25 Admit that Slapjack is listed as a FY04 Project in the FY00 Status Report but clarify
26 that the Project was subsequently modified and listed as an FY05 Project in the FY03
27 Status Report to Congress. 9 AR at 3638.

1 *The Slapjack Project was also listed in the Plumas National Forest Schedule of*
2 *Proposed Actions for January-March, 2004, dated October 2003. Attachment 10 to Torgun*
3 *Dec. [footnotes omitted]*

4 Admit except to clarify that Slapjack is listed in the document, but that scoping for the
5 Project had not yet begun.

6
7 Respectfully submitted this 28th day of January 2005.

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