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11 Attorneys for Federal Defendants

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

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

18 Plaintiffs, )

19 v. )

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

23 Federal Defendants, )

24 and )

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

27 Defendant-Intervenors. )  
28

Case No. S-04-CV-2023 LKK/PAN

**FEDERAL DEFENDANTS'  
STATEMENT OF UNDISPUTED  
FACTS**

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

1 Pursuant to Local Rule 56-260(a), Federal Defendants submit the following Statement of  
2 Undisputed Facts. Judicial review of agency action under section 706 of the Administrative  
3 Procedure Act (APA), however, is generally limited to a review of the administrative record,  
4 with certain judicially-recognized exceptions. See 5 U.S.C. § 706; Southwest Ctr. for Biological  
5 Diversity v. U.S. Forest Serv., 100 F.3d 1443, 1450 (9th Cir. 1996). In an APA case, the Court  
6 does not premise its decision on findings of undisputed material facts, but rather determines as an  
7 issue of law whether the agency’s decision, based on the record and any other materials which  
8 are properly considered by the court, was arbitrary or capricious. See 5 U.S.C. § 706; Florida  
9 Power & Light Co. v. Lorion, 470 U.S. 729, 743-44 (1985). In view of the forgoing, a statement  
10 of material facts “which the moving party contends are not in dispute” serves limited purpose in  
11 APA cases because, as a general rule, all relevant facts are contained in the administrative record,  
12 and, as a result, there are no disputed fact issues that would preclude a court from entering  
13 summary judgment. See Ctr. for Biological Diversity v. Lohn, 296 F. Supp. 2d 1223, 1231(W.D.  
14 Wash. 2003); Occidental Eng’g Co. v. INS, 753 F.2d 766, 769 (9th Cir. 1985). Nonetheless,  
15 Defendants recognize that a statement of facts may assist the Court to highlight significant  
16 portions of an extensive record and therefore provide the following:

17 **Herger-Feinstein Quincy Library Group Act Pilot Project**

18 1. In late 1992 and early 1993, the Quincy Library Group (“QLG”)—a group of  
19 environmentalists, timber industry representatives, local elected officials, and other community  
20 members—began holding meetings to overcome long-standing divisions over the management of  
21 National Forests in the northern Sierra Nevada. See 7 AR 2421. The QLG worked to develop a  
22 forest management proposal that would “promote forest health, ecological integrity, adequate  
23 timber supply and local economic stability.” 6 AR 1960. By August 1993, QLG had developed a  
24 proposed management plan for three National Forests, including the Plumas National Forest (on  
25 which the Meadow Valley Project, challenged in this case, is located). See 6 AR 1960-62.

26 2. In October 1998, Congress adopted the QLG Act, which directs the Secretary of  
27 Agriculture to conduct a pilot project according to QLG’s proposal (“Pilot Project”). See QLG  
28 Act § 401(b)(1). Before implementing the Pilot Project, the Forest Service prepared a

1 programmatic Environmental Impact Statement (“EIS”), issued in August 1999, as well as a  
2 Biological Assessment and Biological Evaluation (“BA/BE”), which evaluated in detail the  
3 direct, indirect, and cumulative effects of the Pilot Project on the owl. 6 AR 2054-2078.

4 3. The QLG Act mandates the “[c]onstruction of a strategic system of defensible fuel  
5 profile zones, including shaded fuelbreaks, utilizing thinning, individual tree selection, and other  
6 methods of vegetation management” consistent with the QLG proposal. QLG Act § 401(d)(1).  
7 In addition, the QLG Act states that “the Secretary shall implement and carry out . . . [g]roup  
8 selection on an average acreage of .57 percent of the pilot project land area each year.” QLG Act  
9 § 401(d)(2). The ultimate goal of group selection is “to achieve a desired future condition of all-  
10 age, multistory, fire resilient forests.” Id.

11 4. The Meadow Valley Project is part of the QLG Pilot Project. 13 AR 4771.

### 12 **The 2001 Sierra Nevada Forest Plan Amendment**

13 5. In 1995 the Regional Forester issued a draft environmental impact statement (“EIS”)  
14 on a proposal to replace the existing guidelines for timber management in the range of the  
15 California spotted owl (“owl), known as the CASPO Interim Guidelines, see 6 AR 1946-59.

16 6. The owl is classified by the Forest Service as both a “sensitive species” and a  
17 management indicator species (“MIS”) on the Plumas National Forest. See 12 AR 4341; 13 AR  
18 4799. It is not, however, listed under the ESA as either threatened or endangered. See 68 Fed.  
19 Reg. 7580, 7608 (Feb. 14, 2003) (denying petition to list the owl).

20 7. After extensive public participation, the Forest Service issued a Final EIS (“SNFPA  
21 EIS”). The SNFPA EIS includes over 40 pages of analysis of the environmental consequences  
22 related to the owl. 2001 SNFPA EIS Pt. 4.4 at 69-112. The SNFPA EIS also reviewed recent  
23 findings about fire and fuel management, analyzed the causes, effects, and distribution of  
24 twentieth century fire regimes, and evaluated various fuel treatment prescriptions. Id. Pt. 3.5.

25 8. The Regional Forester issued a decision in January 2001 (“2001 ROD”) to amend the  
26 Forest Plans for ten national forests in the Sierra Nevada and Modoc Plateau, including the  
27 Plumas. 1 AR at 236. The 2001 ROD, responded to five main “problem areas,” which included,  
28 among other topics, old forest ecosystems and associated species. See id. at 238-41.

1           9. In addressing species associated with old forest ecosystems, the ROD imposed  
2 requirements for managing spotted owls. PACs would be established for known and discovered  
3 owls, and project activities would only occur during limited operating periods to minimize  
4 effects to the owl during nesting seasons. Id. at 239. Fuel treatments would be conducted in  
5 PACs only on a limited basis. See id. The ROD also established owl home range core areas  
6 (“HRCAs”), which vary in size by National Forest and on the Plumas consist of 1,000 acres,  
7 which includes the 300-acre PAC. 4 AR at 1091. Id. The 2001 ROD imposed additional  
8 requirements on timber harvest, including diameter limits and requirements for snag retention  
9 and canopy closure. See, e.g., 1 AR at 239.

#### 10                   **Management Review of the 2001 Sierra Nevada Forest Plan Amendment**

11           10. The Chief of the Forest Service (“Chief”) affirmed the 2001 ROD, but directed the  
12 Regional Forester to review the decision in light of several concerns, including increased levels  
13 of wildfires, and the relationship between the decision and the Forest Service’s responsibilities  
14 under the QLG Act. See SNFPA Management Review & Recommendations (“MRR”) at 5.

15           11. Pursuant to the Chief’s direction, the Regional Forester chartered the SNFPA Review  
16 Team (“Team”) to use an open, public process and identify, among other things, opportunities to  
17 “implement the [QLG] Pilot Project *to the fullest extent possible.*” 2004 FSEIS at 1 (emphasis  
18 added); see also MRR at 5. The Team conducted a year-long public review which culminated in  
19 the issuance of a set of management recommendations in March 2003.

20           12. The Team found that the 2001 ROD “severely limits” implementation of the HFQLG  
21 Pilot Project on the Plumas by “preclud[ing] many of the resource management activities that  
22 Congress desired be tested,”--specifically, defensible fuel profile zones (“DFPZs”) and group  
23 selection unites. MRR at 6.

24           13. The Team also found that a new owl analysis was warranted. In analyzing the effects  
25 to the owl resulting from full implementation of the QLG Act, the 2001 ROD relied upon the  
26 analysis in the HFQLG BA/BE, which unnecessarily “took a worst case approach to estimating  
27 effects” on the owl. MRR at 55. In particular, the HFQLG BA/BE assumed that “[a]ll group  
28 selection and DFPZ construction that was projected to occur within owl habitat” would render

1 100 percent of that habitat unsuitable. Id. However, the Team found that the HFQLG BA/BE  
2 described past fuel reduction thinnings and DFPZ construction in owl nesting habitat as having  
3 “actually reduced that habitat by less than one percent of the acreage treated,” not the 100  
4 percent that the analysis assumed. Id. Thus, the analysis in the BA/BE was determined to be  
5 unnecessarily conservative. See id.

#### 6 **The 2004 Sierra Nevada Forest Plan Amendment**

7 14. The Regional Forester’s office responded to the MRR by developing and considering  
8 alternative management strategies to the 2001 ROD. A Draft Supplemental Environmental  
9 Impact Statement (“Draft SEIS”) was developed and, in June 2003, released for public comment.  
10 See 68 Fed. Reg. 35406 (June 13, 2003). A Final SEIS (“FSEIS”) was released to the public on  
11 January 30, 2004. See 69 Fed. Reg. 4512 (Jan. 30, 2004).

12 15. On January 21, 2004, the Regional Forester issued a decision adopting the proposed  
13 action from the FSEIS. See 2004 ROD at 3. The 2004 ROD replaces the 2001 ROD in its  
14 entirety and amends the Forest Plans for the National Forests in the Sierra Nevada, including the  
15 Plumas. 2004 ROD at 15.

16 16. The 2004 FSEIS contains a revised analysis of effects to the owl, based upon full  
17 implementation of the QLG Act. See 2004 FSEIS at 278-80. The BE for the 2004 FSEIS  
18 reached a finding that there would not likely be a trend toward listing the owl, and accordingly,  
19 that viability would not be threatened. See 15 AR 5466 (analysis in 2004 FSEIS “show[s] that  
20 the models project an increase in habitat suitability in the HFQLG area in 20 years over current  
21 conditions”).

#### 22 **The Meadow Valley Project**

23 17. At the same time the 2004 ROD was being finalized, the Forest Service was also  
24 developing the Meadow Valley Defensible Fuel Profile Zone Project (“Meadow Valley  
25 Project”), a proposal to conduct numerous resource activities on the Plumas NF.

26 18. The Meadow Valley Project “proposes to conduct *group-selection* timber harvest,  
27 construct *defensible fuel profile zones* (DFPZs), and perform associated road-system  
28

1 improvement work on approximately 6,400 acres in the 50,400-acre Meadow Valley landscape  
2 area, located in the westside coniferous forests of the PNF.” 13 AR at 4755.

3 19. The purpose and need for the proposed project consisted of five elements. 13 AR  
4 4764. First, the project is intended to implement the QLG Act, which requires DFPZ and group  
5 selection, and the provisions of the 2001 SNFPA ROD, which contemplated group selection to be  
6 conducted as part of an administrative study. See 13 AR 4764-4765, 4771. Second, the project  
7 would implement group selection as directed by the QLG Act “to achieve an all-aged mosaic of  
8 timber stands, while contributing to the local economy through a sustainable output of forest  
9 products.” 13 AR 4771 (emphasis omitted). Third, the project would also implement the DFPZ  
10 as the next step in connecting to larger, extensive fuel treatment network that is necessary to  
11 reduce potential size of future wildfires, provide for increased firefighter safety, and protect the  
12 Meadow Valley community. See 13 AR 4772. Fourth, the project would “treat the existing fuels  
13 on the landscape in a cost-efficient manner” to achieved desired conditions set forth in the Forest  
14 Plan, especially for the WUI land allocation, close to structures and communities. Id. Finally,  
15 the project would also include various road decommissioning, reconstruction, and temporary  
16 road construction which would provide necessary access for DFPZ construction and group  
17 selection harvest. See 13 AR 4773-4774.

18 20. Notice of the Meadow Valley Project was first published in July 2003. See 15 AR  
19 5501. The Forest Service accepted public comments on the scope of the proposed action and  
20 held a public meeting. See 13 AR 4776-4777.

21 21. In February 2004, the Forest Service released to the public an environmental  
22 assessment (“EA”) analyzing a proposed action (Alternative A), along with the no action  
23 alternative (Alternative B) and an alternative intended to increase DFPZ effectiveness  
24 (Alternative C). 13 AR at 4747-4859.

25 22. After considering and responding to the issues raised by public comments on the EA,  
26 the Forest Service issued a decision on April 16, 2004 (“Decision Notice”), selecting Alternative  
27 C in slightly modified form, and concluding that the action would not result in significant  
28 environmental effects. 15 AR at 5493-94.

1           23. Under the Decision Notice, the Meadow Valley Project would implement  
2 approximately 743 acres of group selection logging in 488 units and approximately 5,700 acres  
3 of DFPZ construction in 37 units. 13 AR 4783. Activity under the contracts probably would be  
4 completed within about five years of awarding of contracts. 13 AR 4764.

5           24. Group selection would create small openings (1/2-2 acres) in the stands, which would  
6 be regenerated with shade intolerant conifer species. 13 AR 4792. The group selection units are  
7 “widely scattered across the 50,000-acre project area.” 15 AR 5480.

8           25. The Forest Service explained that while “changes in habitat brought on by group  
9 selection . . . result in some openings and gaps within stands,” the group selection units will be  
10 “dispersed within a stand so as to maintain attributes constituting continuous forest cover within  
11 a stand.” 15 AR 5465. “[H]abitat connectivity would be maintained (minimum of 40% canopy  
12 closure) to allow for movement of old forest species between areas of suitable habitat . . . and  
13 suitable habitat for old forest species will not be reduced by more than 10% below 1999 levels,  
14 as identified in the QLG FEIS.” 15 AR 5748.

15           26. “[A]fter tree removal in group selection units, activity-created fuels in the unit would  
16 be treated by one or more of the following methods: piling and burning, underburning,  
17 mastication, or by no treatment at all where residual surface fuels are at an acceptable level. . . .  
18 Excessive surface fuels created in group selection units would not go untreated.” 15 AR 5480.

19           27. The Meadow Valley Project group selection units represent “18.6% of the annual  
20 average group selection in spotted owl habitat anticipated in the [2001] SNFPA ROD as part of  
21 an administrative study (4,000 acres/yr).” 13 AR 4787. Therefore, “vegetation management in  
22 spotted owl habitat would be accompanied by monitoring and evaluation under the auspices of  
23 [the Forest Service’s] administrative study.” 13 AR 4816. The study will be “focused on  
24 resolving uncertainties about the effects of vegetation management actions on spotted owl  
25 behavior and population dynamics.” 13 AR 4824; see also 11 AR 4138 (study design); 14 AR  
26 5124 (2003 annual report).

27           28. Under the Meadow Valley Project, construction of DFPZ units would be both by  
28 mechanical and hand thinning of conifers, underburning, and some mastication. In the DFPZ

1 units, trees larger than 20” dbh would be retained in approximately 82% of the units, and trees  
2 larger than 30” would be retained in all units. 13 AR 4793; 15 AR 5462. Snags and large logs  
3 are also retained. See 15 AR 5498; 12 AR 4348, 4349.

4 29. The project DFPZ is designed to reduce the possibility that a catastrophic crown fire  
5 would cause the loss of forest cover and, consequently, owl habitat. 13 AR 4824. Under the no  
6 action alternative, future fires would be expected to “burn more intensely and over larger areas,”  
7 and could “eliminate suitable habitat or make its distribution more patchy, leading to lower  
8 abundance” of owls in the analysis area. Id.

9 30. Under the Meadow Valley Project, there would not be any project activity in any  
10 PACs or SOHAs. See 13 AR 4824 The vast majority of existing foraging habitat (87%) and  
11 nesting habitat (95%) would be retained within the analysis area. Id. In addition, “96% of the  
12 combined acreage of PACs and HRCAs would not be treated.” Id. Of the 30 HRCAs within the  
13 analysis area, 16 would be reduced only by an average of 7-8% (50-63 acres of their average size  
14 of 750 acres). 13 AR 4824. The three PAC/HRCAs where suitable habitat reduction would be  
15 greatest “have not been occupied by owls in the last two years.” Id.

16 31. The Biological Assessment/Biological Evaluation (“BA/BE”) for the Meadow Valley  
17 Project provided a detailed analysis of the Project’s direct, indirect, and cumulative effects to  
18 spotted owl habitat at the project level (5,700 acres) and the wildlife-analysis-area level (85,919  
19 acres). 12 AR 4427-4434. The Forest Service analyzed the direct effects on owl habitat and  
20 sixteen PACs/HRCAs, the indirect effects on thirty owl PACs/HRCAs, and the percent of each  
21 HRCA impacted and the reduction of suitable habitat. 12 AR 4427-4432.

22 32. The Meadow Valley BA/BE also identified numerous timber sale projects within the  
23 analysis area, described the silvicultural system used, and the extent of their effects. See 12 AR  
24 4397-4402, 4434-4438, 4439. The BA/BE lists the number of acres treated or otherwise affected  
25 for approximately 14 past and ongoing projects. See 12 AR 4398-4399.

26 33. In the BA/BE, the Forest Service biologist concluded that owl occupancy is not  
27 expected to diminish and a cumulative population loss is not anticipated with implementation of  
28 the Meadow Valley Project. See 12 AR 4438.



1           34. For timber sales implementing the Meadow Valley Project, Forest Service employees  
2 would designate all trees to be harvested. See, e.g., 16 AR 5793, 5948 (contract provision stating  
3 that “no tree larger than 29.9 inches in diameter at breast height (DBH) is designated for cutting  
4 under this contract”); 16 AR 5798, 5953 (contract provision stating that “[a]ll live hardwoods;  
5 [sic] and all live conifer trees 34.0 inches or larger in diameter at stump height shall be left as  
6 leave trees.”)

7  
8 Dated: January 28, 2005

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 28, 2005, I electronically filed the foregoing Federal  
3 Defendants' STATEMENT OF UNDISPUTED FACTS, with the Clerk of the Court using the CM/ECF  
4 system, which will send notification of such filing to the following:

5 Michael R. Sherwood  
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9 I further certify that I caused to be served a copy of Federal Defendants' STATEMENT OF  
10 UNDISPUTED FACTS, by Federal Express overnight delivery, upon the following individual:

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15 /s/ Brian C. Toth  
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