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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION
15

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

19 Plaintiffs,

20 v.

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

24 Federal Defendants,

25 and

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

28 Defendant-Intervenors.

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

**DECLARATION OF
JAMES M. PEÑA**

1 I, JAMES M. PEÑA, in accordance with the provisions of 28 U.S.C. section 1746
2 declare:

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4 1. I am the Forest Supervisor on the Plumas National Forest, Region 5, USFS, in
5 Quincy, California, and have served in that position for over two years. I have been a line officer
6 (decision maker) in the Forest Service for over thirteen years. I have a Bachelor of Science
7 degree in forest resource management from Humboldt State University. I have been in the Forest
8 Service for over twenty-five years. I have seven years of experience planning timber
9 management and integrated vegetation management projects, analyzing forest stand conditions,
10 and preparing stand treatment prescriptions. I was the deciding official for the Meadow Valley
11 Project and am familiar with the project area and selected treatments.

12 2. For the first twenty years of my career I was a fully qualified firefighter and
13 progressed from firefighter up to taskforce/strike team leader in fireline qualifications and
14 fireline assignments and as a fully qualified situation unit leader on national type I incident
15 management teams. Type I incident management teams are those trained to handle the most
16 complex and difficult fires. I have had fire assignments in six western states, including:
17 California, Oregon, Washington, Montana, Nevada and Wyoming. I have also served as the
18 agency administrator on fires which occurred in areas where I was serving as a district ranger,
19 deputy forest supervisor, and forest supervisor. The fires I managed represented a broad range of
20 forest and rangeland fuel types in California, Oregon and Washington, and ranged in complexity
21 from single lightning fires to much larger fires, such as the 130,000-acre Big Bar Complex fire in
22 California in 1999.

23 3. The Defensible Fuel Profile Zone (DFPZ) units in the Meadow Valley project are
24 designed to protect the community of Meadow Valley and important wildlife habitat within the
25 project area, as well as improve the safety of firefighters who attempt to suppress fires near the
26 Meadow Valley community. Enjoining implementation of the DFPZ will not materially increase
27 protection of wildlife, but it will increase the risk of a catastrophic fire harming the community,
28 and also keep firefighters at high risk of harm when they are fighting fires in the area.

1 4. It is in the public interest to initiate these treatments to improve community
2 protection and firefighter safety. This area has had at least two large fires burn towards the
3 community of Meadow Valley in the last six years -- the Mount Hough Complex Fire in 1999,
4 and the Storrie Fire in 2000. See 13 AR 4772. There was also one fire in 2004 that originated in
5 the western portion of the Meadow Valley project area that spread towards the community and
6 was successfully suppressed before it reached any homes. Plumas National Forest fire records
7 show the Meadow Valley area averages 8 fires per year. Because of the proximity of heavy fuels
8 to the community, this area receives a "Heavy" automatic dispatch when a fire is reported. This
9 means that for each fire in the Meadow Valley area, at least 57 firefighters, four aircraft, and
10 numerous other pieces of equipment are dispatched to fight fires in the Meadow Valley area.
11 Improving the fuels conditions to increase community protection and firefighter safety is critical,
12 especially when one realizes that approximately 85% of the Meadow Valley area is currently in a
13 condition that does not meet desired fuel conditions as set forth in the National Fire Plan. See 13
14 AR 4866.

15 5. The recent fire history and amount of fuel loading near to the community are two
16 of the bases upon which I chose a treatment option that will provide a high probability of
17 reducing the risk of catastrophic loss due to fire. See 15 AR 5496. I made the decision to select
18 Alternative C in the EA after balancing several factors and approaches. For example, I weighed
19 the risk to the community of Meadow Valley of not treating fuels at all (the No Action
20 alternative), of removing only a limited amount of fuels (Alternative A), or removing as much
21 fuels as necessary to meet the desired condition (Alternative C). Weighing the risks, I chose the
22 latter approach to balance the community protection need with the need to protect wildlife habitat
23 and improve ecosystem sustainability. See id.

24 6. In my experience, it is safer to initiate fire suppression action in an area of lighter
25 fuels compared to one of heavier fuels. As the Meadow Valley project is designed, medium sized
26 trees 12-20 inches diameter at breast height (DBH) will be thinned in DFPZs, and all trees greater
27 than 20 inches DBH will be retained in units outside of the defense zone. See 13 AR 4761, 4767,
28 4779. Within the defense zone (closest to homes), medium sized trees 12-30 inches DBH will be
thinned, and all trees larger than 30 inches DBH will remain. Id. Larger trees are retained and

1 crowns will be opened to provide a more effective fuel profile. This increase in effectiveness is
2 difficult to model, but very apparent when firefighters are suppressing a fire. Stands treated to
3 the 10-12 inch DBH standard are carrying more fuel per acre and have more crown continuity
4 that put the adjacent homes at greater risk compared to the more open treatments.

5 7. Fire fighter safety would also be greater in a DFPZ where harvest was not limited
6 to trees 12" DBH and under. This is because the crowns would have more horizontal separation
7 compared to treatments in the area that only removed trees up to 10-12 inches DBH. This is
8 significant in my experience because it reduces the number of individuals and groups of trees
9 torching as you build a fire line. This reduces the creation of firebrands that can cause spotting
10 across fire lines. If there is not sufficient crown separation, fire line construction can be made
11 impractical or rendered ineffective. This is because a tight canopy can carry a crown fire which
12 will make conditions too intense to build a fire line; and, even if you could build a line, it would
13 be rendered ineffective if a crown fire carried overhead, and embers spotted across the line.

14 8. Because thinning to 20-30 inches provides a environment for firefighters to stop a
15 fire, when compared to a stand thinned to 10-12 inches, firefighters will have a much better
16 chance of saving homes and protecting habitat. The more intensive treatments will also more
17 effectively cause a crown fire approaching the community to drop to the ground and reduce in
18 intensity, and reduce the creation of fire brands that often accelerate a fire's rate of spread. Also,
19 these factors will increase the likelihood that fires originating within the DFPZ could be
20 successfully suppressed.

21 9. There are recent examples where creating a DFPZ with a 20-30 inch DBH limit
22 has been successful in facilitating fire suppression. For instance, the Pilot Project
23 Implementation Team Status Report to Congress, FY2001 noted the following when a thinned
24 area similar to the Meadow Valley DFPZ was utilized for suppression of the Stream Fire on the
25 Plumas National Forest in 2001:

26 In July 2001, the Stream Fire resulted from a lightning storm at Antelope Lake, a natural
27 fuel break and popular recreation area, located on the Plumas National Forest. Thinning
28 completed under the Forest Health Pilot on the northwest side of the lake facilitated fire
suppression activities in several ways. Because of the emergency situation, evacuation of
campers was made safely because the forests along the roads were thinned, keeping the
fire on the ground and out of the crowns, thus providing a safe exit. Also, the thinned
stands provided a good visible place to locate and suppress spot fires. Firefighters were

1 also able to safely ignite backfires from the thinned areas, which assisted in fire
2 containment at 3, 560 acres in seven days.

3 The thinned area cited in this quotation had crown separation similar to that proposed in the
4 Meadow Valley project.

5 10. In contrast to the findings noted above, another report on the Stream Fire found
6 that thinnings with a similar prescription to the 10-12" DBH limit advocated by plaintiffs were
7 not effective in modifying fire behavior (Beckman, 2001). The report found that a hand thin and
8 hand pile fuel treatment in a stand with white fir understory resulted in extreme post-fire damage
9 to the stand, with 100% tree bole and crown scorch. The damage was the result of a high
10 intensity crown fire entering the area. This surface fuel treatment did not have any effect on
11 reducing the fire spread or stand damage.

12 11. The report also discussed fuels treatment similar to the 20-30 inch DBH thinning.
13 All of the areas receiving those treatments received significantly less bole and crown scorch
14 compared to the areas of the hand thin. Unlike the 100% bole and crown scorch from the hand
15 thinning and piling, the more intense thinnings resulted in 2-12 foot bole scorch and 10-30
16 percent crown scorch. The report rated these more aggressive fuels treatments as effective
17 against moderate intensity fire.

18 12. I have walked stands immediately adjacent to homes in Meadow Valley that were
19 thinned with the 10 -12 inch and below DBH standard advocated by the Plaintiffs. I do not
20 believe these treatments provide an acceptable level of risk compared to other treatments in the
21 area that thinned the stand to an upper diameter between 20 and 30 inches DBH. The treatments
22 that were thinned to 20-30 inches DBH have resulted in greater crown separation and more
23 effective removal of ladder fuels than the treatments to 10-12" DBH.

24 13. Areas treated to 20-30 inches DBH also have tolerated under-burning better than
25 stands treated to 10-12" would. One of the reasons for this is that many stands treated only to 10-
26 12" DBH retain a high proportion of white fir, making it very difficult to underburn the stand
27 without killing the tree either through torching or girdling at the root collar. This is one reason
28 why these stands are carrying more fuel loading and fine fuel loading compared to stands we have
underburned.

1 14. The fuel treatment selected in the Meadow Valley Project decision is also more
2 cost effective than the approach advocated by the Plaintiffs (thinning to a 10-12" DBH ceiling).
3 This is a very important factor because the more cost effective a treatment is, the greater the
4 number of acres that can be made safer for suppressing fires and reducing the possibility of crown
5 fires. Implementing Alternative C, the selected alternative, would result in an estimated positive
6 return of \$1,255,720. See 14 AR 5002. If the group selection portion of the project is enjoined
7 and just the DFPZs are constructed, the net return would be negative \$1,278,574. See Hochrein
8 Declaration ¶ 5. However, if the group selection is enjoined *and* the FS may only harvest trees up
9 to 12" DBH within the DFPZs, the net return becomes negative \$1,766,701. See Hochrein
10 Declaration ¶ 6. Therefore, there is an approximately \$500,000 difference between creating the
11 DFPZ under Alternative C (with a 20-30" DBH limit) and creating the DFPZs according to
12 Plaintiffs' proposal (with a 12" DBH limit). The public interest is better served by accomplishing
13 the same number of acres at less cost with an increased level of community protection.
14 Increasing the cost effectiveness will allow the FS to treat a greater number of acres and increase
15 community protection in the Meadow Valley area. Choosing a more cost-effective alternative is
16 also consistent with the QLG Act, which states, "In conducting the pilot project, [the Forest
17 Service] shall use the most cost-effective means available ... to implement resource management
18 activities" QLG Act § 401(e).

19 15. Thinning only to 10-12 inches DBH at this time is likely to require additional
20 treatment in the near future to better meet desired future conditions (as is occurring with the
21 Waters DFPZ and other areas). With little or no crown separation, areas thinned to 10-12 inches
22 will close in more quickly compared to areas thinned with greater crown separation. More
23 frequent treatments that have a negative economic return are going to be more expensive
24 compared to less frequent treatments that pay for themselves. As a result, fewer acres are likely
25 to be treated under a 10-12" DBH limit than under a 20-30" DBH limit.

26 16. The remainder of this declaration responds to the Supplemental Declaration of
27 Chad Hanson and explains why the Meadow Valley Project overlaps some areas that were
28 thinned in the recent past through other projects. There are approximately 84 DFPZ acres within
the boundaries of the Meadow Valley DFPZ that have been previously treated by the Forest

1 Service for fire risk reduction: 70 acres within the Waters project, 13 acres within the Camp
2 project, and 1 acre within the Ridge project. See 13 AR 4772, 4878.

3 17. The mere fact that areas that have been treated in the past fall within the
4 designated boundaries of the Meadow Valley DFPZ does not mean that the FS is actually going
5 to retreat areas. In many cases, the FS designates treatment boundaries based on easily-
6 recognized land features, such as roads, and will not actually harvest trees up to the boundary.
7 For example, the Meadow Valley DFPZ may overlap an area that was previously treated but not
8 require further actual treatment. As the EA states, one of the purposes of the MV DFPZ is to
9 connect with other pre-existing fuel treatment projects, such as Waters 1, Spanish, Camp, Ridge,
10 and McFarland. See 13 AR 4871. In connecting to these other projects and working with natural
11 and man-made land features, it is almost inevitable that the boundaries would overlap to some
12 extent.

13 18. While the overlap of project boundaries does not necessarily result in the need for
14 retreating previously treated acres, retreatment may be appropriate in some situations. For
15 example, approximately 16 acres of the areas of overlap are characterized as fuel model 10 and
16 do not meet desired conditions of the National Fire Plan. See 13 AR 4866. Retreatment would
17 be appropriate in these areas to reduce fuel loads and move toward desired conditions.

18 19. Seventy of the eighty-four acres of overlap area is within the Waters DFPZ, which
19 called for hand thinning up to 10" DBH. The objective of the Waters project was to treat surface
20 fuels and reduce the risk of crown fire initiation within the DFPZ by meeting a 20' crown base
21 height (this means that the height of the lowest live branch is 20' or higher above the ground).
22 Thinning to a 10" DBH limit did not meet the objectives of reducing the threat of wildfire from
23 *outside* the DFPZ. The re-treatment as set forth in the Meadow Vally decision will meet
24 objectives such as crown separation that would allow fire fighters to be placed in that location to
25 suppress a wildfire. See 13 AR 4772-73.

26 20. This is especially important because 39% of the 84 acres is within the wildland
27 urban intermix, the land area closest to structures and homes that would be among the highest
28 priorities in defending the community against a fire. Additionally, if the area is not treated,
surface fuels would increase each passing year and could result in wildland fires of greater

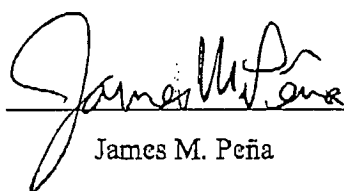
1 intensity in the future. Increased fire intensity can result in increased risk to firefighter and public
2 safety. See 13 AR 4868.

3 21. There are two reasons that the Meadow Valley group selection treatments overlap
4 previously treated acres. First, because the group selection harvest is designed to create an all-
5 aged forest. See 13 AR 4771. Group selection is not a fuels treatment (13 AR 4869, 4879), but
6 rather a landscape transition to different stand structure and species composition. The Meadow
7 Valley EA (13 AR 4792) and Vegetation Report (12 AR 4311) state group selection harvests
8 would create a mosaic of uneven-aged stands across the landscape and use a 10-year cycle with
9 an average 175-year rotation age. Also, the group selection units would be regenerated with
10 shade intolerant species (pine) suited to local conditions. Therefore, the desired future condition
11 of the group selection areas is quite different from the existing conditions, even though some of
12 the areas have been treated for fuels purposes in the recent past.

13 22. Second, group selection silviculture was not permitted in spotted owl habitat under
14 the 1999 HFQLG ROD. Rather, it was only allowed upon the release of the 2001 SNFPA ROD,
15 which permitted group selection silviculture as part of an administrative study. See 1 AR 251.
16 While it might have been more administratively efficient to have implemented the group
17 selection treatments in these areas when the areas were first treated several years ago, the
18 governing forest plan standards did not allow it at the time. See 7 AR 2383-85. Therefore,
19 implementing group selection in the area now results in treating areas that had been previously
20 treated for fuels reduction.

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Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of January 2005.


James M. Peña
Forest Supervisor
Plumas National Forest
POB 11500
Quincy, CA 95971

References

- Pilot Project Implementation Team Status Report to Congress, FY2001
- Beckman, Sid, "Assessment of the Effects of Multiple Fuel Treatments on Fire Spread and Timber Stand Damage, Stream Fire, Plumas National Forest," July 26, 2001, California CIIMT 5

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 28, 2005, I electronically filed the foregoing Federal
3 Defendants' DECLARATION OF JAMES M. PEÑA, 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
msherwood@earthjustice.org

6 Michael B. Jackson
7 mjatty@sbcglobal.net

8 I further certify that I caused to be served a copy of Federal Defendants' DECLARATION OF
9 JAMES M. PEÑA, by Federal Express overnight delivery, upon the following individual:

10 RACHEL M. FAZIO
11 John Muir Project
12 15267 Meadow Valley
Grass Valley, CA 95945

13 /s/ Brian C. Toth
14 Attorney for Federal Defendants
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