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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION

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

13 Plaintiffs,)

14 v.)

15 UNITED STATES FOREST SERVICE; JACK)
BLACKWELL, in his official capacity as)
16 Regional Forester, Region 5, United States)
Forest Service; and JAMES M. PEÑA, in his)
17 official capacity as Forest Supervisor, Plumas)
National Forest,)

18 Defendants.)
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20 QUINCY LIBRARY GROUP, an unincorporated)
citizens group, and PLUMAS COUNTY,)

21 Intervenors/Defendants.)
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Case No. CIV. S-04-2023 MCE/GGH

INTERVENOR QUINCY LIBRARY
GROUP'S REPLY IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
INJUNCTION PENDING APPEAL

23 The facts of this case are set forth in the Court's Memorandum and Order of May 9, 2005, at pages 2 – 11.
24 Intervenor/defendants Quincy Library Group and Plumas County (referred to here collectively as "QLG") were
25 admitted to this case in December 2004.

26 The standard of review for a motion for injunction pending appeal is essentially the same as that for a
27 permanent injunction. *See, e.g., Warm Springs Dam Task Force v. Gribble*, 565 F.2d 549, 551 (9th Cir. 1977). In
28 *Warm Springs*, the Ninth Circuit stated that:

1 The considerations in determining whether to grant or deny the requested relief are three-fold:
2 (1) Have the movants established a strong likelihood of success on the merits? (2) Does the
balance of irreparable harm favor the movants? (3) Does the public interest favor granting the
injunction?

3 Plaintiffs indicate in their Memorandum of Points and Authorities in Support of Motion for Injunction
4 Pending Appeal (Memo) that in their appeal to the Ninth Circuit, they “intend to focus on whether this Court erred in
5 ruling that the Forest Service need not prepare an EIS for the Meadow Valley Project pursuant to NEPA.” Plaintiffs’
6 Memo at 4. The remedy sought by Plaintiffs is an injunction until an EIS is prepared for the project. Memo at 2;
7 Complaint at 20. What would an EIS add to the administrative record, other than a new wrapper around the data and
8 studies already in existence? How would requiring an EIS fulfill NEPA’s policy to “encourage productive and
9 enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to
10 the environment and biosphere and stimulate the health and welfare of man”? NEPA, 42 USC § 4321

11 “Ultimately, of course, it is not better documents but better decisions that count. NEPA’s
purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.
12 The NEPA process is intended to help public officials make decisions that are based on
understanding of environmental consequences, and take actions that protect, restore, and
13 enhance the environment.” 40 CFR §1500.1(c)

14 Given the record in this Court, both the Court’s ruling that the Meadow Valley EA has fulfilled the “hard
15 look” requirement of NEPA and also its determination that the Forest Service reasonably concluded an EIS is not
16 necessary, it is unclear what benefit Plaintiffs hope to gain from either an appeal or an injunction pending appeal,
17 other than a postponement of the project. An EIS and a new decision would not likely produce a different outcome,
18 because this Court has already given Plaintiffs opportunity (through its declarations supplementing the administrative
19 record) to try to show that some relevant environmental considerations were missing, misunderstood, or arbitrary in
20 the Meadow Valley planning documents, and has allowed the Forest Service to rebut those declarations’ arguments.
21 Plaintiffs have failed to show any relevant environmental factor that was not considered, nor one that was incorrectly
22 analyzed.

23 In considering the totality of the administrative record and the supplemental declarations, this Court has
24 determined that the Meadow Valley Project’s analyses and decision satisfy NEPA. For example, Plaintiff’s
25 cumulative effects argument failed to pass muster when considered on its merits (Court’s Memorandum and Order at
26 24), because the Forest Service had a rational basis for defining the wildlife analysis area (*see* 12 AR 4351), and
27 because defining the geographic area for assessment purposes is “a task assigned to the special competency of the
28 appropriate agencies.” Such decisions are given deference. *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976); *see also*

1 *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 959-960). Plaintiffs alleged there was no scientific support
2 for its conclusions that spotted owl occupancy would not be reduced by the Meadow Valley project, but this Court
3 found that the Forest Service biologist analyzed the likelihood of occupancy based on past data on reproduction and
4 pair occupancy in each of 16 Home Range Core Areas' associated PAC. 12 AR 4475. The biologist further assessed
5 the percentage portion of the HRCAs subject to treatment along with the number of acres of suitable habitat to be
6 harvested. Based on those figures, the degree of potential risk to PAC viability was calculated and considered. 12 AR
7 4427-4440.

8 The pointlessness of an EIS remedy for anything other than perfecting the NEPA paperwork makes clear that
9 Plaintiffs have little likelihood of succeeding on the merits of their appeal, just as they did not succeed before this
10 Court. Thus Plaintiffs fail to pass the first for injunctive relief: as movants, they have not established a strong
11 likelihood of prevailing on the merits.

12 The second consideration before this Court is, does the balance of irreparable harm favor the movants?
13 Intervenor's interests would be directly and adversely harmed were an injunction granted while Plaintiffs appeal to the
14 Ninth Circuit. Moreover, the intensity and duration of the hardships threatening Intervenor's, and the public interests
15 they represent, far outweigh the potential injuries claimed by Plaintiffs in duration, intensity, and irreparability. The
16 balance of hardships tips even more sharply against Plaintiffs because the harm they claim they would suffer by
17 having the Meadow Valley Project proceed is neither great nor irreparable.

18 “Nevertheless there can be no presumption of environmental harm from alleged violations of an
19 environmental statute.” *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987) and *Sierra Club v.*
20 *Penfold*, 857 F.2d 1318 (9th Cir. 1988).

21 “The requirement for showing a likelihood of irreparable harm increases or decreases in inverse correlation
22 to the probability of success on the merits, with these factors representing two points on a sliding scale.” *United States*
23 *v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)

24 Plaintiffs assert that the environmental damage they seek to enjoin is that 4,281 acres of suitable habitat for
25 the California spotted owl will be rendered unsuitable as a result of the logging. Plaintiffs' Memo. at 2-3. The
26 Meadow Valley project documents admit this effect, but considered the context (relatively few of the total habitat
27 acres available will be affected, and none of the most important PAC acres will be impacted) and intensity (thinnings
28 that leave large trees and logs are not permanently degrading habitat) to conclude that the project effects on spotted

1 owls would not be significant. The Forest Service biologists who prepared the Meadow Valley BA/BE cited the 1993
2 CASPO Interim Guidelines EA for its evaluation that “within stand fragmentation of the small tree canopy ... is less of
3 a concern than large tree or old forest attribute removal because 1) historical understory densities were discontinuous;
4 2) this habitat component can return relatively quickly (versus large overstory layer) and 3) creating this type of
5 fragmentation can help avoid larger scale, high contrast fragmentation of forested stands due to wildfire.” 12 AR
6 4432. The CASPO Report’s authors reported in 1992 that they knew

7 . . . that spotted owls regularly used some stands, but not others, that had been recently logged
8 in the Lassen NF.... We would not be surprised to find that a brief period (probably less than 5
9 years) elapses after logging operations before the owls resume foraging in *Selected Timber
Strata*.” CASPO Report at 25.

10 The Meadow Valley’s DFPZ thinnings and group selection cuts are not expected to render the treated stands
11 unsuitable for use by foraging owls for a long period of time, and therefore do not constitute an irreparable injury to
12 the future suitability of project units as owl habitat.

13 Plaintiffs’ citations of injunctions involving old-growth habitat timber sales are not applicable to the Meadow
14 Valley Project because of the overall habitat context referred to above, and also because very few of the acres to be
15 treated could reasonably be characterized as old-growth stands. Finally, the old-growth features of all project acres
16 will be retained: the 30-inch limitation on cutting live trees, the snag and log retention features of the DFPZ and group
17 selection units all ensure that. *See* 12 AR 4348, 4349; 13 AR 4793; 15 AR 5462, 5498. Thus the harm alleged by
18 plaintiffs is neither irreparable nor comparable to logging that removes old-growth forest elements.

19 Quincy Library Group members have a special connection by residence, employment, investment,
20 community, and lifestyle with the northern Sierra Nevada, including the Meadow Valley Project area. Some members
21 of the QLG have businesses and livelihoods in the forest products industries, which are directly affected by Forest
22 Service vegetation management programs and contracts. An injunction pending appeal for the Meadow Valley Project
23 would effectively prevent its timber sales and other contracts from becoming available to the local economy in time
24 for the 2005 work season, and therefore would decrease overall business and employment opportunities in Plumas
25 County. The Forest Service estimated that the Meadow Valley Project would create 683 full-time jobs and \$29.3
26 million in employee-related income, and provide forest products in the form of biomass and sawtimber for
27 manufacturing. *See* 13 AR 4792, 4811; 15 AR 5496.

28 Intervenor would suffer injury to its interests in having the QLG Act carried out with respect to the
community stability and economic efficiency goals of the QLG Pilot Project if the Meadow Valley Project were

1 enjoined, even temporarily pending appeal. QLG's unique interest in the QLG Pilot as a sustainable, environmentally
2 and economically healthy forest management program would be obstructed by an injunction. To a lesser but still
3 significant extent, QLG's and Federal defendants' interests in learning and adaptively managing through the Meadow
4 Valley Project and other QLG Pilot projects would be damaged by an injunction. The Plumas-Lassen Administrative
5 Study, authorized by the 2001 SNFPA ROD, has been designed to study the ecological effects of the QLG Act's
6 DFPZ and group selection projects, and includes a focus on study plots in the Meadow Valley project. The University
7 of California's Berkeley Forestry Camp and numerous research sites lie within the project area.

8 Plumas County residents, including QLG members, who live in and near the Meadow Valley project area fear
9 grave damage to personal lives and property as well as to the local environment if Plaintiffs succeed in holding up the
10 Meadow Valley Project. Plumas County has a duty to protect public health, safety, and welfare in the Meadow Valley
11 area, and would be potentially affected both physically and financially by an injunction. The worst-case scenario for
12 the County would be loss of life, property, and public infrastructure such as roads, bridges, and watershed stability due
13 to high-intensity, landscape-sized wildfires.

14 The magnitude and duration of some potential wildfire effects clearly rise to the level of irreparable harm.
15 Where human lives are at risk, the harm would be irreparable; where houses and property are at risk, the harm would
16 be financially and sentimentally damaging to individuals, but the injury could be repaired over time. Where owl
17 habitat is at risk, the potential harm from wildfire and firefighting is severe and long-lasting enough to be considered
18 irreparable. The balance of potential harms and hardships tips sharply toward implementing the Meadow Valley
19 Project.

20 Finally, this Court must determine if the public interest favors granting the injunction. In addressing this
21 matter in its opposition to the motion for permanent injunction, Federal defendants stated three reasons why an
22 injunction is not in the public interest: first, the project implements the QLG Act's goal of providing community
23 stability; second, the DFPZ construction would protect the nearby communities from wildfire; and third, allowing the
24 DFPZs to be constructed would better serve the QLG Act's goal of cost-effectiveness. Govt. Response to Summ.
25 Judg. Motion at 46. A fourth way in which the public interest will be served by not granting an injunction lies in the
26 scientific and management knowledge to be gained by the Plumas-Lassen Administrative Study, which has been
27 surveying and studying the Meadow Valley area for several years now. Surely it is in the public interest for the Forest
28 Service to gain scientific and management knowledge of relevance to many other national forests in California and

1 throughout the western United States.

2 For all of the above reasons, Plaintiffs' Motion for Injunction Pending Appeal should be denied.

3 Respectfully submitted on May 18, 2005.

s/Michael B. Jackson
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