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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SIERRA NEVADA FOREST PROTECTION)	
CAMPAIGN, PLUMAS FOREST PROJECT,)	
EARTH ISLAND INSTITUTE, and CENTER)	Case No. CIV. S-04-2023 LKK/PAN
FOR BIOLOGICAL DIVERSITY, non-profit)	
organizations,)	
)	
Plaintiffs,)	
vs.)	INTERVENORS'/DEFENDANTS'
)	RESPONSE TO PLAINTIFFS'
UNITED STATES FOREST SERVICE; JACK)	SUMMARY JUDGMENT MOTION
BLACKWELL, in his official capacity as)	
Regional Forester, Region 5, United States)	
Forest Service; and JAMES M. PEÑA, in his)	
official capacity as Forest Supervisor, Plumas)	
National Forest,)	
)	
Defendants.)	
_____)	
)	
QUINCY LIBRARY GROUP, an)	
unincorporated citizens group; and PLUMAS)	
COUNTY,)	
)	
Intervenors/Defendants.)	
_____)	

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GLOSSARY OF ACRONYMS

BA	Biological Assessment
BE	Biological Evaluation
CASPO	California Spotted Owl
DFPZ	Defensible Fuel Profile Zone
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
HFQLGFRA	Herger-Feinstein Quincy Library Group Forest Recovery Act
HRCAs	Home Range Core Area
IG	Interim Guidelines
MIS	Management Indicator Species
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
PAC	Protected Activity Center
QLG	Quincy Library Group
ROD	Record of Decision
SNFPA	Sierra Nevada Forest Plan Amendment
SOHA	Spotted Owl Habitat Area
USDA	United States Department of Agriculture
USFWS	United States Fish & Wildlife Service
WUI	Wildland-Urban Interface

Introduction

“The Meadow Valley DFPZ and group selection project is located near and around the community of Meadow Valley, California, population approximately 550. The project area consists of approximately 743 acres of group select treatments in 488 separate units located in the timbered stands surrounding Meadow Valley. The DFPZ consists of approximately 5,697 acres in 2 general areas, one on the ridges north of Meadow Valley and one on the ridges south of Meadow Valley. The project is very diverse in topography and fuels.” AR 13 at 04865 (Meadow Valley Project Fire/Fuels Report at 2) (“Fuels”) “The historical fire return interval for the project area is 8 to 20 years. In 1999 several large fires that originated outside of the project area threatened the community of Meadow Valley. Again in 2000, a large fire that originated outside the project area threatened Meadow Valley. Every year during the summer season, wild-land fires are ignited on the ridges surrounding Meadow Valley by lightning associated with thunderstorms.” *Id.*

“With the release of the Sierra Nevada Forest Plan Amendment (January 2001), a new strategy for the management of spotted owl habitat has replaced both the CASPO Interim Guidelines (1993) and the mitigation included in the HFQLG ROD (August 1999). The USFWS 12-month finding not to list the California spotted owl as threatened (USFWS 2003) was based in part on the SNFPA ROD.” AR 12 at 04363 (Meadow Valley Project Biological Assessment/Biological Evaluation (“BA/BE”) at 25.) With the release of the 2004 Sierra Nevada Forest Plan Amendment and the Supplemental FEIS, the January 2001 strategy for the management of spotted owl habitat has been replaced as well. The United States Fish & Wildlife Service consulted on and approved the new strategy that allows full implementation of the Herger-Feinstein Quincy Library Group Act.

“The USDA Forest Service Pacific Southwest Research Station has released a “meta-analysis” of current California spotted owl population data (Franklin et al, 2003). This analysis re-examined all the demographic data for the owl since 1992. A meta-analysis is an analytical tool that combines information from several studies and provides additional information on status and trends. The final report¹ for the study identifies a number of key points, as summarized by the Regional (R5) office memo dated 5/22/03:

- The population trend data is inconclusive and statistical trends may not indicate a decline in overall California spotted owl population.
- Reproduction varied significantly from year to year and is likely attributable to annual fluctuations in weather and owl prey availability.
- Risk factors for California spotted owl populations revolve around four main points: habitat abundance and distribution, habitat quality, influence of climate and wildfire.
- Although the study results are inconclusive, caution is advised in managing habitats until additional data is available.

“The authors of the meta- analysis (Franklin et al. 2003) conclude that current evidence suggests that California spotted owls are marginally stable or in a slow decline, and that management actions that may compromise owl populations be initiated slowly and closely monitored.” AR 12 at 04364 (BA/BE at 26) The Herger-Feinstein Quincy Library Group Forest Recovery Act [HFQLG FRA] provides that no PACs or SOHAs would be entered for logging or to build roads for the life of the project. [Section 401 (c)(1) of the QLG Act.]

In passing the National Environmental Policy Act of 1969 [NEPA], Congress established “a national policy which will encourage productive and enjoyable harmony between man and his environment.” (42 U.S.C. §4321) NEPA is “our basic national charter for protection of the

¹ The full report, “Population Dynamics of the California Spotted Owl: A Meta-analysis,” may be viewed on the Sierra Nevada Research Center website http://www.psw.fs.fed.us/snrc/ca_spotted_owl_metaanalysis.html

environment.” *Blue Mountains Diversity Project v. Blackwood*, 161 F.3d 1208, 1215-16 (9th Cir. 1998) (citing 40 C.F.R. § 1500.1(a)). Its scope is “exceptionally broad.” *Foundation for North American Wild Sheep v. United States Dep’t of Agric.*, 681 F.2d 1172, 1177 (9th Cir. 1982). NEPA’s fundamental purposes are to guarantee that: (1) agencies take a “hard look” at the environmental impacts of their actions before the actions occur by ensuring “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and that (2) “the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)

Granting Plaintiffs’ prayers for relief, in the form of setting aside approval of the Meadow Valley project and requiring the Forest Service to prepare an EIS before proceeding, would not serve to fulfill the purpose and intent of NEPA but would ironically defeat it. The Meadow Valley EA and its numerous supporting documents are comprised of several hundred pages of Forest Service specialists’ reports, site-specific data, and site-specific environmental effects analyses. Just the project planning documents whose subjects are at issue in this case (i.e., did the Forest Service properly and adequately evaluate project effects on spotted owl habitat and landscape-level wildfire hazards) run to 341 pages, not counting map and data attachments. (The EA contains 105 pages; the BA/BE is comprised of 122 pages plus 11 data attachments; the landscape analysis is 21 pages long; the vegetation analysis is 15 pages; the MIS report is 56 pages; and the fire and fuels report totals 22 pages.) Perfecting the paperwork would not yield a better decision in this instance.

“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. 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 enhance the environment.” (40 CFR §1500.1(c))

Nor would the public involvement purposes of NEPA be advanced by requiring an EIS public participation procedure for the Meadow Valley project. Plaintiffs have demonstrated that they had ample notice and access to the project planning and decision-making process. Plaintiffs have also made it plain that it is not NEPA’s “excellent action” that they seek, but no action. Plaintiffs have made no arguments and presented no evidence that they are interested in “actions that protect, restore, and enhance the environment.”

A. Injunctive Relief Is Not Appropriate In This Case

The standard for determining whether to issue a permanent injunction requires a two-part inquiry. *Amoco Production v. Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987). The Court must first determine whether any statute restricts its traditional equity jurisdiction. *Id.* If no statute restricts its equity jurisdiction, then this Court must engage in the traditional equity balancing to determine whether an injunction is appropriate. *Id.* The Ninth Circuit has held “[t]here is nothing in NEPA to indicate that Congress intended to limit [a] court’s equitable jurisdiction.” *Save the Yaak Committe v. Block*, 840 F.2d 714, 722 (9th Cir. 1988) (citing *Northern Cheyenne Tribe v. Hodel*, 842 F.2d 224, 230 (9th Cir. 1988)). Although the Ninth Circuit has not addressed this issue directly for claims brought under National Forest Management Act [NFMA] and the QLG Act, courts in this circuit have proceeded under the assumption that injunctive relief for such violations is permissible and appropriate. See, e.g., *Idaho Sporting Congress, Inc., v. Rittenhouse*, 305 F.3d 957, 976 (9th Cir. 2002) (NFMA); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1382 (9th Cir.

1998)(NFMA); *Seattle Audubon Society v. Evans*, 771 F.Supp. 1081, 1087 (W.D. Wash. 1991) (holding that “[n]othing in NFMA alters the court’s equity jurisdiction”), *aff’d*, 952 F.2d 297 (9th Cir. 1991). Accordingly, this Court should apply “the traditional balance of harms analysis,” *National Parks & Conservation Association v. Babbitt*, 241 F.3d 722, 737 (9th Cir. 2001), and consider “irreparable injury and inadequacy of legal remedies.” *Amoco Production Co.*, 480 U.S. at 542.

“In 1999 two large lightning-caused fires that originated outside the analysis area burned into the analysis area before being controlled. These were the Pidgeon Fire, 4,713 acres, and the Lookout Fire, 2,615 acres. These two fires originated near each other on the ridges South of Meadow Valley and began burning toward Meadow Valley under the influence of the predominant Southwest wind. Before these two fires were controlled it was believed that they had the potential to burn together, continue burning toward Meadow Valley and eventually threaten the community. Burning embers falling out of the smoke column landed in Meadow Valley around residential structures. All these small spot fires were quickly suppressed. The Incident Management Team responsible for controlling these fires designed and had ready to implement an evacuation and structure protection plan should these fires encroach on the community. These fires were controlled before this action became necessary.

“Also during 1999, the Bucks Fire, 34,175 acres, originated outside the analysis area, approached the analysis area from the West, but was controlled before it entered the analysis area. Again, the Incident Management Team designed and had ready to implement an evacuation and structure protection plan for about 100 summer cabin homes near the West edge of the analysis area. This fire was controlled before this action became necessary. During the 2000 fire season the human-caused Storrie Fire, 55,261 acres, originated outside the analysis area, approached the analysis area from the West, but was controlled before it could enter the

analysis area and did not threaten residential or commercial structures in the analysis area. The closest the Storrie Fire got to the analysis area before it was controlled is less than 2 miles.”

AR 11 at 04096-04097 (“Landscape Analysis: Meadow Valley Landscape,” Mt. Hough Ranger District, Plumas National Forest, July 2003 at 13-14)

Plaintiffs correctly cite a number of cases for the proposition that the court should use its equitable powers to protect the environment. What they fail to acknowledge in their motion for summary judgment is that by managing the Plumas National Forest by litigation for a single species, the California spotted owl, all other species in the forest are potentially placed at risk. The Forest Service has balanced the needs of the owl with the need to protect the people and the other species of the forest from catastrophic wildfire, and overstocked forest stands and litigation delays simply expose everyone and everything else in and about the forest to needless risk without measurably improving conditions for the spotted owl.

Intervenors QLG and Plumas County (together QLG) believe that an injunction issued for procedural violations leaves the Meadow Valley community at risk in the up-coming fire season. Since the Meadow Valley DFPZs are the last segment of the shaded fuel break designed to protect the community, and since it is so apparent from the recent fire history that the community needs protection, the balance of harm favors allowing the project to go forward this year.

However, a threat to human health and safety is not the only environmental damage that an injunction could cause. Intervenors believe that the court should deny plaintiffs an injunction because the balance of the evidence is that the spotted owl will not be affected by the action elements of the Meadow Valley project and that the environmental documents show substantial possibility of harm from delaying the project. The EA and its supporting documents evaluate a no-action alternative and clearly point to the danger to all non-spotted owl elements

of the environment from lack of a project to deal with catastrophic wildfire in the Meadow Valley analysis area.

“The fire weather of the analysis area is typical of Sierra Nevada mountain valleys. On a normal summer day, high temperatures can reach the mid to high 90s. Afternoon relative humidity can commonly go down into the 10 to 15 percent range. Winds are predominantly out of the South/Southwest on a clear day and normally surface during the afternoon hours. A large fire originating South of the community of Meadow Valley on a clear day would tend to burn towards the community. A large fire originating in or near the community would tend to burn away from Meadow Valley and towards the smaller communities of Butterfly Valley and Blackhawk Creek, located just outside the analysis area to the Northeast. It is always possible, when dealing with wildfire and changing weather and fuel conditions, that fire could enter the analysis area from any direction and threaten the community of Meadow Valley. However, based on the historical fire record and the historical weather patterns of the analysis area it is much more likely that a large fire coming from the South/Southwest would threaten the community. Likewise, a large fire originating in or around the community is much more likely to burn to the North/Northeast, away from the community and towards other smaller communities just outside the analysis area. Afternoon thunderstorms with associated lightning strikes and erratic winds are common and can occur anytime from May through October. Thunderstorm events in the analysis area normally occur 3 to 5 times per summer season.” AR 11 at 04097 (Landscape Analysis at 14)

B. Plaintiffs Will Not Suffer Irreparable Harm If Injunction Is Not Issued In This Case

To obtain an injunction in the Ninth Circuit, a party need not prove that irreparable harm will in fact occur – it must show only that injury or harm *may* occur in the absence of the requested injunction. *National Parks*, 241 F.3d at 737 (enjoining ongoing cruise ship

operations pending preparation of an EIS because they “might” cause irreparable harm); *accord Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (holding that the “possibility” of irreparable harm from logging justifies an injunction).

Although there is no presumption of irreparable injury when an agency fails to evaluate the environmental impact of a proposed action, the Supreme Court has held that “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such an injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Production Co.*, 480 U.S. at 545. *See also Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d at 569. “When the proposed project may significantly degrade some human environmental factor, injunctive relief is appropriate.” *National Parks*, 241 F.3d at 737 (internal quotation omitted). *See also Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985) (holding that “absent ‘unusual circumstances,’ an injunction is the appropriate remedy for a violation of NEPA’s procedural requirements”) (citations to numerous Ninth Circuit decisions omitted).

In this case, there are “unusual circumstances” that lie in the fact that the larger risk of environmental harm is associated with taking no action, which is the effect to the environment of an injunction, than in taking the actions outlined in the project decision. The Meadow Valley Project EA and its supporting specialists’ reports document that the Forest Service studied the existing conditions of the project area and analyzed the likely effects of two action alternatives (Alternatives A and C) and one no-action alternative (Alternative B). Plaintiffs and their experts do not dispute the Forest Service’s characterization of the forest composition and fuel loading problems in the Meadow Valley project area. Plaintiffs do not dispute the Forest Service’s evaluation of the potential effects of the No Action Alternative. Plaintiffs have also

failed to show that the temporal impacts of the proposed treatments would be longer in duration and of greater intensity than the effects of additional large wildfires.

The Court should weigh whether Plaintiffs have demonstrated that a sufficient likelihood of environmental damage of long-lasting impact would issue from implementing the Meadow Valley project; and whether Plaintiffs have demonstrated that the potential environmental damage of proceeding would be greater than the potential environmental damage of enjoining the project.

Plaintiffs improperly cite two recent Ninth Circuit rulings as situations comparable to the Meadow Valley Project in terms of potential harm justifying injunctive relief. In *Sierra Club v. Eubanks*, 335 F. Supp. 2d 1070 (E.D. Cal. 2004), the Red Star project was to be a post-fire salvage sale that would have left logging debris amounting to twice the levels rated as “extreme fire hazard” by the Forest Service. In contrast, the group selection logging of the Meadow Valley Project would be conducted using “whole tree yarding” methods, in which trees are removed to landings, limbs and all, and processed off-site. AR 13 at 04869 (Fuels at 6) The second case that was improperly compared to the present situation involved clearcut logging old growth, critical habitat from territories of Federally listed threatened northern spotted owls. *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989 (9th Cir. 2004).

Plaintiffs would have the Court evaluate potential harm based on acreage figures alone, but the Forest Service evaluated not only the raw numbers but also the overall context, in concluding that there would be no significant effect on spotted owls or their habitat. The Forest Service has determined that the old forest structure in the Meadow Valley project area is sufficient to provide for well-distributed, viable populations of the California spotted owl and fisher as well as other old forest associated species. Old forest patch types comprise at least 50

percent of each landscape. In old forest emphasis areas, the amount of old forest patch types is typically higher, comprising over 70 percent of the landscape (where site capability allows). Early seral, mid-seral, and mature forests and non-forested communities (meadows and rock outcrops) comprise the remaining 30 to 50 percent of the landscape. Early-and mid-seral conditions occur within old forest patches as well, at a fine scale.

“Recent projects within the analysis area have focused on fuel reduction using CASPO or SNFPA standards and have not diminished nesting habitat for spotted owls. If future projects employ prescriptions similar to those of the proposed action alternatives, the present action can be viewed as initiating a cumulative reduction in spotted owl nesting habitat. However, as owl occupancy is not expected to diminish with the action alternatives, a cumulative population loss is also not anticipated.” AR 12 at 04438 (BA/BE at 96) In emphasizing the “can be viewed as initiating a cumulative reduction” sentence in the BA/BE, Plaintiffs fail to grasp that the Meadow Valley Project would complete the strategic DFPZ network in this part of the Plumas National Forest, not initiate it. There is no evidence from the Forest Service researchers’ annual spotted owl surveys in the project area that indicates that the construction of previous components of the Meadow Valley area’s DPFZ network had any significant effect on the resident owl population. Nor do Plaintiffs indicate why they believe that the removal of small and intermediate-sized trees from 4.2 percent of the areas in HRCAs would be significant to the resident owls. The Forest Service considered these potential effects and found:

“Habitat alteration by the proposed action alternatives and the associated risks to known owl occupancy within individual HRCAs is displayed in Table 28. This table indicates that those HRCAs currently associated with PACs that have a high occupancy rating (based on Attachment 4) incur the least amount of impact to HRCA’s acre treatment wise and thus known

owls are at lower risk of being affected by the proposed actions and the associated PAC/HRCAs continue to provide a high potential of supporting owls.” AR 12 at 04430 (BA/BE at 88)

“Approximately 1,326 acres of the 22,218 acres of HRCA present within the Analysis Area (or 12% of the HRCA within the analysis area) would be impacted by the Meadow Valley Project (Attachment 8 and Table 28). Within the Analysis Area there is approximately 31,042 acres of PAC and HRCA combined; thus approximately 95.8% of all PAC/HRCA combined acres would not be treated under the action alternatives.” *Id.*

C. The Balance Of Hardships Does Not Tip In Plaintiffs’ Favor, But Tips In Favor Of the Intervenor and the Environment of the Plumas National Forest

Intervenors agree that when balancing the hardships in a case where environmental harm is likely, the balance will often favor the issuance of an injunction in order to protect the environment. However, in the factual situation of the Meadow Valley Project, not only have Plaintiffs failed to prove that environmental injury is sufficiently likely, but the record in this case proves that an injunction could cause harm to both the people living in Meadow Valley and also the environment surrounding Meadow Valley. The purpose of the project is to protect the environment of the area from catastrophic wildfire and the habitat losses that those fires could cause. Intervenors believe that the Forest Service’s design of this project will result in environmentally beneficial results in regard to both public safety as well as long-term habitat improvement. Plaintiffs counter this conclusion by nitpicking selected quotations from the project files and citing vague fears that somehow proven forest treatments would suddenly go away. Plaintiffs quote the Ninth Circuit’s mandate to give “due weight to the public’s interest in conservation of natural resources,” citing *Kootenai Tribe*, 313 F.3d at 1126. The Forest Service has, in designing this project, given due weight to the local public’s need to complete

the strategic DFPZ network called for by Congress in the HFQLG Act; it has given due weight to the need to protect the Meadow Valley community from the fire ignitions that occur every summer. The Forest Service has also given due weight to dealing with the forest composition and structural changes that have resulted from the past 150 years' history of industrial human use and fire suppression. Intervenor and Plaintiffs agree with the theory that there need to be more truly large trees and "old growth" in the Plumas National Forest. But we disagree on what actions will most surely produce more truly large trees and old growth forest. In this instance, Intervenor agrees with Forest Service experts that management actions are necessary to restore old growth forest conditions. The record is replete with references that the area would be better off at the end of this project than it would be if the project were stopped:

"The Meadow Valley DFPZ is designed to be part of a larger network of strategically located DFPZs across the landscape. This proposed DFPZ connects to other fuel treatment projects in the analysis area to provide connectivity of strategically placed DFPZs. This proposed DFPZ connects to the following previously accomplished fuel treatment projects: Waters 1, Spanish Camp, Ridge and MacFarland." AR 13 at 04871 (Fuels at 8)

"The proposed action calls for several different treatment activities, including harvesting of merchantable standing live trees, mechanical harvester thinning, chainsaw thinning, and shrub and brush mastication. Subsequent to thinning, excessive surface fuels remaining on the ground will be either hand piled and burned, machine piled and burned or under-burned. In certain units it may be appropriate to masticate excessive surface fuels after thinning, rather than piling and burning piles or under-burning. Pile burning and/or under-burning are the final treatments for most units. The thinning would result in achieving the desired condition of live crown base height of 15-25', depending on the canopy cover density."

AR 13 at 04869-04870 [Fuels at 6-7] "After completion of the proposed action, the DFPZ

project area would provide a safer environment for firefighters to take action against a wild-land fire. The rate of spread, flame lengths, and fire line intensities of a wild-land fire inside the treated area would be reduced, increasing the potential for successful suppression operations. The overall effect could be reduced fire size and less intense wild-land fire with reduced negative fire effects.” *Id.* at 04871 Fuels at 8)

“This DFPZ location was selected for several reasons, a few of them being; 1) location is in an area that would be considered strategic for the protection of the community of Meadow Valley, given a fire coming out of the Middle Fork and Bear Creek drainages (as the 1999 Pigeon and 1999 Lookout Fires did) and given a large fire coming out of the Meadow Valley area and moving to the northeast toward the small communities of Black Hawk and Butterfly Valley; 2) it is strategically placed near roads and ridges that can provide safe firefighter access, both into and away from a fire; and 3) it is located in the Wildland Urban Intermix (WUI) around Meadow Valley to provide a greater degree of firefighter efficiency, fire suppression effectiveness, firefighter and public safety, and protection for private and commercial properties in the WUI.” *Id.* at 04874-04875 (Fuels at 11-12)

Implementation of Alternative A will create a Defensible Fuel Profile Zone (DFPZ) on the landscape that surrounds the community of Meadow Valley. Upon completion of construction of this DFPZ the surface fuels, ladder fuels and some of the crown fuels inside the DFPZ will be treated to a reduced level. *Id.* at 04877-04878 (Fuels at 14-15) “After completion of construction of this DFPZ and when the surface and ladder fuels are treated to a condition that meets the desired condition, a total of 9,520 acres of landscape around Meadow Valley will be in a condition for surface and ladder fuels that meets the desired condition. All of these acres of landscape that meet the desired condition will be manifested in a connected

network of DFPZs strategically located on the ridges surrounding Meadow Valley.” *Id.* at 04884 (Fuels at 21)

D. The Public Interest Does Not Favor The Issuance Of An Injunction, But Favors The Meadow Valley Project Going Forward To Carry Out Congress’ Intent In Passing The HFQLGFRA.

Intervenors believe that granting Plaintiffs injunctive relief would thwart Congress’ interest in the HFQLG Pilot Project. It is ludicrous for Plaintiffs to represent their views as ‘the public interest’ in a situation in which the U.S. Congress has authorized this pilot project, and where the Administration and the Forest Service have carried out exhaustive environmental review on potential effects.

Legislative history reflects how the HFQLG Act embodies the public interest. Included within the Senate Committee’s report language on H.R. 858 (which became the HFQLGFRA) is the statement of Ronald E. Stewart, Acting Associate Chief, Forest Service, Department of Agriculture. [See attached Exhibit A, Quincy Library Group Forest Recovery and Economic Stability Act of 1997, Report 105-138 submitted by Mr. Murkowski, from the Committee on Energy and Natural Resources , pp. 16-19] That statement included the following: “During the Forest Conference in April, 1993, President Clinton challenged natural resource dependent communities to develop collaborative and locally-based solutions to controversies surrounding public land management. The science-based assessment of the Sierra Nevada ecosystem commissioned by Congress recommended implementing programs that reduce the potential for catastrophic fires. The QLG is an illustration of democratic process at work in achieving these goals. The project has the potential to enhance the health and productivity of the affected national forests, help those communities that depend on these forests for their well being, and

demonstrate that forests can be managed in a way that satisfies the needs of a broad cross-section of forest users.” [S. Rep. No. 105-138 at 19 (1997).]

Congress’ passage of the HFQLGFRA and the Senate Committee’s findings represent the public interest far better than Plaintiffs’ vague fears of unsubstantiated effects upon the environment. The Senate Committee on Energy and Natural Resources reported that “H.R. 858 is based on the QLG Community Stability Proposal of 1993, which was developed by a coalition of representatives from environmental organizations, the wood products industry, citizens, elected officials, and local communities in northern California. The proposal is intended to represent a locally-developed, consensus-based resource management program for the applicable federal lands in a portion of the Sierra Nevada ecosystem.” [S. Rep. No. 105-138 at 5.]

Congress views the HFQLG Pilot Project as an important experiment that would be extensively monitored and evaluated for information that would be broadly applicable to many other forests in the western United States. We are five years into the pilot project but, because of delays caused in part by the obstruction of Plaintiffs and their allies, Congress has recently seen fit to extend the life of the pilot another five years. Clearly the “public interest” is that stated by Congress, not Plaintiffs. To the Congress, “[t]he development of the Quincy Library Group pilot project represents a unique situation involving a locally-developed consensus approach to public land management. As such, this approach has [previously] been studied by public land managers, policy makers, and scholars of public land management. Implementation of the pilot project will also be the subject of congressional oversight and review to assess the success of the project, as well as any broader implications for improved federal land management.” [S. Rep. No. 105-138 at 7.]

E. An Injunction Will Preclude Legitimate Actions by the USFS to Reduce the Risk of Severe Fire in the Meadow Valley Area

Plaintiffs argue that this Court should enjoin the group selection part of the Meadow Valley Project on the grounds that it is not a legitimate action to reduce short-term fire risks. The group selection element of the Meadow Valley Project is a legitimate action authorized by Congress in the HFQFRA. The inclusion of group selection in the QLG Community Stability Proposal and therefore in the HFQLG Act is for the purpose of long-term forest restructuring to begin the process of recovery from the past over-story logging and fire suppression. The group selection cuts were analyzed by the Forest Service specialists and were found to have no significant adverse effects on spotted owls, nor would they increase fire hazards.

The group selection harvest proposed for the Meadow Valley project would regenerate approximately 743 acres of the available commercial forestland on a 10-year cycle, with the average 175-year rotation age creating a mosaic of uneven-aged stands across the landscape assessment area as directed by the Act. These groups would be regenerated with shade-intolerant native conifers indicative of the ecological habitat type in which the group is located. Slash disposal and mechanical treatment of competing vegetation would occur on sites where concentrations of surface fuels and brush inhibit conifer regeneration.

The groups would create openings in the forest canopy and introduce additional light and snow to the forest floor until the conifer regeneration developed once again into a closed canopy forest structure. The retention of conifers greater than 30 inches DBH, hardwoods, and the edge effect of closed canopy conifer stands surrounding the groups would diminish the sunlight within the group openings and slightly diminish the growth of shade-intolerant conifers. However, the retention of these “large” trees would allow the replenishment of the presently diminished “old growth” for the future.

The Forest Service found that “[g]roup selection openings would create low-moderate density openings within stands, but each group would retain structural elements (if present) such as conifers over 30” dbh, all black oaks, down logs up to 10-15 tons/acre, and up to 2 snags/acre, that would reduce within stand fragmentation. Group selection openings up to 2 acres “meet the definition of continuous forest cover” (CASPO IG EA, 1993).” AR 12 at 04432 (BA/BE at 90)

According to the 1993 CASPO IG EA (Page IV-81), within stand fragmentation of the small tree canopy (trees <20 to 30 feet) is less of a concern than large tree or old forest attribute removal because 1) historical understory densities were discontinuous; 2) this habitat component can return relatively quickly (versus large overstory layer) and 3) creating this type of fragmentation can help avoid larger scale, high contrast fragmentation of forested stands due to wildfire.” *Id.*

Plaintiffs’ arguments that the group selection element of the Meadow Valley Project is not a legitimate action are without merit. Plaintiffs’ attempt to convince this Court to redesign the project to delete the group selection elements and to limit DFPZ tree removals to those less than 12 inches should be rejected.

Conclusion

The Court should not enjoin the Forest Service from advertising or soliciting bids for the Meadow Valley Project, opening bids or awarding contracts for the Project, or allowing commencement of logging or any other activities pursuant to the Project. The Plaintiffs have not met their burden of proof for an injunction, and their motion for summary judgment and injunctive relief should be denied.

Respectfully submitted,

Dated: January 27, 2005

s/ Michael B. Jackson
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Group and Plumas County