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16 UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION

19 SIERRA NEVADA FOREST PROTECTION) Case No. Civ. S-04-2023 LKK/PAN
20 CAMPAIGN, *et al.*,)
21)
22 Plaintiffs,)
23 vs.) PLAINIFFS' RESPONSE TO FEDERAL
24 UNITED STATES FOREST SERVICE, *et al.*,) DEFENDANTS' STATEMENT OF
25) UNDISPUTED FACTS
26 Defendants,)
27)
28 and) Date: April 5, 2005
29) Time: 1:30 p.m.
30 QUINCY LIBRARY GROUP, an unincorporated) Judge: Hon. Lawrence K. Karlton
31 citizens group; and PLUMAS COUNTY,)
32)
33 Intervenor/Defendants.)

34 Pursuant to Local Rule 56-260(b), plaintiffs hereby respond to the Federal Defendants'
35 Statement of Undisputed Facts:

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

37 1. *In late 1992 and early 1993, the Quincy Library Group ("QLG")—a group of*
38 *environmentalists, timber industry representatives, local elected officials, and other community*
members—began holding meetings to overcome long-standing divisions over the management of

1 *National Forests in the northern Sierra Nevada. See 7 AR 2421. The QLG worked to develop a*
2 *forest management proposal that would “promote forest health, ecological integrity, adequate*
3 *timber supply and local economic stability.” 6 AR 1960. By August 1993, QLG had developed a*
4 *proposed management plan for three National Forests, including the Plumas National Forest (on*
5 *which the Meadow Valley Project, challenged in this case, is located). See 6 AR 1960-62.*

6 Admit, except deny that the QLG adequately represents the interests of local
7 environmentalists and other community members. *See H.R. Rep. No. 105-136(I) at 18-20 (1997).*

8 2. *In October 1998, Congress adopted the QLG Act, which directs the Secretary of*
9 *Agriculture to conduct a pilot project according to QLG’s proposal (“Pilot Project”). See QLG Act*
10 *§ 401(b)(1). Before implementing the Pilot Project, the Forest Service prepared a programmatic*
11 *Environmental Impact Statement (“EIS”), issued in August 1999, as well as a Biological Assessment*
12 *and Biological Evaluation (“BA/BE”), which evaluated in detail the direct, indirect, and cumulative*
13 *effects of the Pilot Project on the owl. 6 AR 2054-2078.*

14 Deny that the 1999 QLG FEIS or the 1999 QLG BA/BE adequately evaluated “in detail” the
15 effects of the pilot project on the California spotted owl, or that further site-specific environmental
16 analysis regarding the California spotted owl would not be required. *See AR 7 at 02383 (1999 QLG*
17 *ROD at 6) (“This decision provides programmatic direction for the duration of the pilot project. All*
18 *project-level decisions will be implemented after site-specific environmental analysis and review”).*
19 Otherwise, admit.

20 3. *The QLG Act mandates the “[c]onstruction of a strategic system of defensible fuel*
21 *profile zones, including shaded fuelbreaks, utilizing thinning, individual tree selection, and other*
22 *methods of vegetation management” consistent with the QLG proposal. QLG Act § 401(d)(1). In*
23 *addition, the QLG Act states that “the Secretary shall implement and carry out . . . [g]roup selection*
24 *on an average acreage of .57 percent of the pilot project land area each year.” QLG Act §*
25 *401(d)(2). The ultimate goal of group selection is “to achieve a desired future condition of allage,*
26 *multistory, fire resilient forests.” Id.*

27 Deny that achieving fire resilient forests is merely a “goal” of the QLG Act’s group selection
28 units. The QLG Act mandates that the Secretary of Agriculture “shall implement” group selection

1 prescriptions “to achieve a desired future condition of allage, multistory, fire resilient forests.” QLG
2 Act § 401(d). Otherwise, admit.

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

4 Admit.

5 **The 2001 Sierra Nevada Forest Plan Amendment**

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

9 Admit.

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

14 Admit, but clarify that several of the plaintiff organizations have repitioned the U.S. Fish
15 and Wildlife Service to designate the owl as a threatened or endangered species under the
16 Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, after protections for the owl contained in the
17 2001 Sierra Nevada Forest Plan Amendment Record of Decision (“SNFPA 2001 ROD”) were
18 significantly weakened by the 2004 Sierra Nevada Forest Plan Amendment Record of Decision
19 (“SNFPA 2004 ROD”). *See Answer ¶ 33.* In its 12-month finding on a previous petition to list the
20 owl, the U.S. Fish & Wildlife Service explicitly based its “not warranted” finding on the California
21 spotted owl conservation strategy in the SNFPA 2001 ROD remaining in place, but acknowledged
22 the need to monitor both the management review of the SNFPA 2001 ROD and a proposed
23 administrative study “because the outcome of each of these efforts could substantially affect
24 California spotted owls.” 68 Fed. Reg. 7580, 7598-604 (Feb. 14, 2003). At the request of the Forest
25 Service, the U.S. Fish and Wildlife Service did not include the owl in its biological opinion on the
26 2004 Sierra Nevada Forest Plan Amendment Final Supplemental Environmental Impact Statement.
27 AR 3 at 00752.

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

6 Admit, except deny that the SNFPA 2001 FEIS fully or adequately evaluated the effects of
7 various fuel treatment prescriptions or that further site-specific environmental analysis would not be
8 required. *See AR 1 at 00270 (SNFPA 2001 ROD at 35) (“This ROD does not authorize timber sales*
9 *or any other specific activity on the Sierra Nevada national forests. Site specific decisions will be*
10 *made on projects in compliance with NEPA, ESA, and other environmental laws following*
11 *applicable public involvement and administrative appeal procedures”).*

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

16 Admit, except clarify that the SNFPA 2001 ROD amended the Forest Plans for eleven
17 national forests. *See AR 1 at 00239 (SNFPA 2001 ROD at 4).*

18 9. *In addressing species associated with old forest ecosystems, the ROD imposed*
19 *requirements for managing spotted owls. PACs would be established for known and discovered*
20 *owls, and project activities would only occur during limited operating periods to minimize effects to*
21 *the owl during nesting seasons. Id. at 239. Fuel treatments would be conducted in PACs only on a*
22 *limited basis. See id. The ROD also established owl home range core areas (“HRCAs”), which*
23 *vary in size by National Forest and on the Plumas consist of 1,000 acres, which includes the 300-*
24 *acre PAC. 4 AR at 1091. Id. The 2001 ROD imposed additional requirements on timber harvest,*
25 *including diameter limits and requirements for snag retention and canopy closure. See, e.g., 1 AR at*
26 *239.*

27 Admit.
28

1 **Management Review of the 2001 Sierra Nevada Forest Plan Amendment**

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

6 Admit, but clarify that the Chief directed that this review was to be limited to certain
7 elements and serve as an opportunity for refining the decision. See MRR at 5.

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

13 Deny that the Regional Forester acted “[p]ursuant to the Chief’s direction,” or that the Team
14 used “an open, public process.” See 16 Fed. Reg. 16758, 16759 (Apr. 7, 2003). Otherwise, admit.

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

19 Admit, but clarify that the SNFPA 2001 ROD determined that “it will not be possible to
20 construct approximately ten percent of the DFPZs because they would not be consistent with
21 elements of the California spotted owl conservation strategy,” and concluded that “the entire level of
22 management activity specified in the [QLG Act] cannot be implemented without degrading owl
23 habitat [and] without increasing risk to owl viability.” AR 1 at 00285-86 (SNFPA 2001 ROD at 50-
24 51).

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

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

7 Deny that the 1999 QLG BA/BE used a “worst case approach,” or that this approach is
8 unnecessary for accurately evaluating impacts to the owl from QLG Act pilot project activities. The
9 1999 QLG BA/BE’s analysis of past projects included *all* projects throughout the QLG Act pilot
10 project area. AR 6 at 02061 (1999 QLG BA/BE at 71). These past projects did not involve the same
11 resource management activities prescribed by the QLG Act, and were often conducted in areas that
12 would be considered unsuitable habitat for California spotted owls. *Id.* Plaintiffs note that the
13 Meadow Valley Project is expected to render unsuitable all 4,281 acres of suitable owl habitat in the
14 Project area. AR 12 at 04367-68, 04439-40 (BA/BE at 29-30, 97-98).

15 **The 2004 Sierra Nevada Forest Plan Amendment**

16 14. *The Regional Forester’s office responded to the MRR by developing and considering*
17 *alternative management strategies to the 2001 ROD. A Draft Supplemental Environmental Impact*
18 *Statement (“Draft SEIS”) was developed and, in June 2003, released for public comment. See 68*
19 *Fed. Reg. 35406 (June 13, 2003). A Final SEIS (“FSEIS”) was released to the public on January*
20 *30, 2004. See 69 Fed. Reg. 4512 (Jan. 30, 2004).*

21 Admit.

22 15. *On January 21, 2004, the Regional Forester issued a decision adopting the proposed*
23 *action from the FSEIS. See 2004 ROD at 3. The 2004 ROD replaces the 2001 ROD in its entirety*
24 *and amends the Forest Plans for the National Forests in the Sierra Nevada, including the Plumas.*
25 *2004 ROD at 15.*

26 Admit.

27 16. *The 2004 FSEIS contains a revised analysis of effects to the owl, based upon full*
28 *implementation of the QLG Act. See 2004 FSEIS at 278-80. The BE for the 2004 FSEIS reached a*

1 *finding that there would not likely be a trend toward listing the owl, and accordingly, that viability*
2 *would not be threatened. See 15 AR 5466 (analysis in 2004 FSEIS “show[s] that the models project*
3 *an increase in habitat suitability in the HFQLG area in 20 years over current conditions”).*

4 Admit, except deny that the analysis in the SNFPA 2004 FSEIS complies with federal law, or
5 that further site-specific environmental analysis regarding the owl would not be required. See AR 4
6 at 01072 (SNFPA 2004 ROD at 20) (“This ROD does not authorize timber sales or any other
7 specific activity on the Sierra Nevada national forests. Site specific decisions will be made on
8 projects in compliance with NEPA, ESA, and other environmental laws following applicable public
9 involvement and administrative appeal procedures”); AR 3 at 00745 (SNFPA 2004 FSEIS
10 Biological Evaluation for Sensitive Species at 2) (“The programmatic Biological Evaluation will
11 provide a baseline to consider bioregional cumulative effects in these project-level analyses. These
12 project-level Biological Evaluations will be able to consider the spatial and temporal direct, indirect,
13 and cumulative effects at the local scale and will make independent determinations for each affected
14 sensitive species”).

15 **The Meadow Valley Project**

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

19 Admit.

20 18. *The Meadow Valley Project “proposes to conduct group-selection timber harvest,*
21 *construct defensible fuel profile zones (DFPZs), and perform associated road-system improvement*
22 *work on approximately 6,400 acres in the 50,400-acre Meadow Valley landscape area, located in*
23 *the westside coniferous forests of the PNF.” 13 AR at 4755.*

24 Admit.

25 19. *The purpose and need for the proposed project consisted of five elements. 13 AR*
26 *4764. First, the project is intended to implement the QLG Act, which requires DFPZ and group*
27 *selection, and the provisions of the 2001 SNFPA ROD, which contemplated group selection to be*
28 *conducted as part of an administrative study. See 13 AR 4764-4765, 4771. Second, the project*

1 would implement group selection as directed by the QLG Act “to achieve an all-aged mosaic of
2 timber stands, while contributing to the local economy through a sustainable output of forest
3 products.” 13 AR 4771 (emphasis omitted). Third, the project would also implement the DFPZ as
4 the next step in connecting to larger, extensive fuel treatment network that is necessary to reduce
5 potential size of future wildfires, provide for increased firefighter safety, and protect the Meadow
6 Valley community. See 13 AR 4772. Fourth, the project would “treat the existing fuels on the
7 landscape in a cost-efficient manner” to achieved [sic] desired conditions set forth in the Forest
8 Plan, especially for the WUI land allocation, close to structures and communities. Id. Finally, the
9 project would also include various road decommissioning, reconstruction, and temporary road
10 construction which would provide necessary access for DFPZ construction and group selection
11 harvest. See 13 AR 4773-4774.

12 Admit that these are the five stated purposes and needs of the Meadow Valley Project, but
13 deny that the Project will achieve these goals, and clarify that the QLG Act “requires that the
14 effectiveness of group selection be demonstrated in achieving an all-age, multistory, fire-resilient
15 forest.” AR 13 at 04771 (EA at 17).

16 20. Notice of the Meadow Valley Project was first published in July 2003. See 15 AR
17 5501. The Forest Service accepted public comments on the scope of the proposed action and held a
18 public meeting. See 13 AR 4776-4777.

19 Admit.

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

24 Admit.

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 C
27 in slightly modified form, and concluding that the action would not result in significant
28 environmental effects. 15 AR at 5493-94.

1 Admit, except to the extent that it implies that the Forest Service adequately responded to the
2 public comments made by plaintiffs. *See, e.g.,* AR 15 at 05682-87 (Plaintiffs’ Notice of Appeal and
3 Statement of Reasons at 2-7).

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

8 Admit.

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

12 Admit that group selection would create small openings (1/2-2 acres), but deny that group
13 selection units are widely scattered across the 50,000-acre Project area, or that group selection
14 provides an effective means of regenerating shade-intolerant species. *See* Declaration of Dennis C.
15 Odion in Support of Plaintiffs’ Motion for Summary Judgment (“Odion Dec.”) ¶¶ 5-7; *see also* AR 6
16 at 02071 (1999 QLG BA/BE at 81) (“group selection harvest will probably not provide a long-term
17 benefit to shade-intolerant species”).

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

25 Admit that the cited documents make the statements quoted, but deny that attributes
26 constituting continuous forest cover or habitat connectivity would be maintained. AR 6 at 02066
27 (1999 QLG BA/BE at 76) (finding that the intensity of DFPZ construction and group selection under
28 the QLG Act pilot project rates “low” in minimizing fragmentation, “increasing the risk of

1 management actions creating large amounts of unsuitable habitat, increas[ing] edge effect, and
2 potentially reducing habitat connectivity”); *see* AR 2 at 00494 (SNFPA 2001 FEIS, U.S. Fish &
3 Wildlife Service Biological Opinion at 140) (the “risk to spotted owls is relatively higher due to the
4 linear nature of DFPZs . . . and the disproportionately higher use of mechanical treatment projected
5 to occur in forests comprising the QLG area”).

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

10 Admit that the cited document contains the statements quoted, but deny that all surface fuels
11 in group selection units are required to be treated. The contracts for the Meadow Valley Project fail
12 to set a specific slash cleanup schedule, allow the post-cleanup “treatment” of slash by scattering it
13 up to 18 inches in depth in most of the Project area, and only require whole tree yarding for felled
14 trees under 20 inches in diameter. *See* AR 16 at 05817, 05821-26, 05973, 05977-82. The Forest
15 Service simply assumes that slash cleanup will happen within 5-7 years, and fails to acknowledge or
16 assess the likely increased fire risk due to the drier, brushier conditions generated by the proposed
17 group selection logging. *See* AR 15 at 05502 (Decision Notice at 10).

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

26 Deny that the administrative study “anticipated in the [2001] SNFPA ROD” is being
27 implemented by the Meadow Valley Project, since that original study design has been cancelled and
28 the SNFPA 2001 ROD has been superseded by the SNFPA 2004 ROD, which allows the full

1 implementation of the QLG Act pilot project. *See* AR 1 at 00250-51, 00285-86 (SNFPA 2001 ROD
2 at 15-16, 50-51) (proposing administrative study); 67 Fed. Reg. 72136 (Dec. 4, 2002) (Notice of
3 intent to prepare an EIS for the administrative study); 68 Fed. Reg. 20366 (Apr. 25, 2003)
4 (Cancellation of notice of intent); AR 11 at 04139-40 (Draft revised administrative study at 39-40)
5 (“The original intention of this integrated research strategy was to develop an experimental design at
6 a landscape scale in which certain key questions could be tested . . . [U]ltimately, the Forest Service
7 concluded that it could not manage to support a study of this geographic scope and still be able to
8 address other mandates of interest, most notably implementation of the HFQLG Pilot Project”); AR
9 4 at 01403 (SNFPA 2004 FSEIS at 269) (“Under Alternative S1, group selection would be carried
10 out by implementing a case study and occur at an approximate rate of 4,000 acres per year for the
11 life of the pilot project. Alternative S2 [the selected alternative] would include group selection acres
12 at the rate anticipated in the [QLG] Act (8,700 acres per year”); AR 4 at 01067 (SNFPA 2004 ROD
13 at 9) (“This ROD replaces, in its entirety, the SNFPA ROD of January 2001”); AR 14 at 5126
14 (Plumas/Lassen Study, 2003 Annual Report at 3) (“[T]he focus of this work has changed from the
15 original intent expressed in the 2001 ROD to what is now intended in the 2004 ROD. This is
16 discussed below but in short, the work being done now is oriented towards understanding the effects
17 of a different strategy for altering wildland fire behavior that developed for the HFQLG pilot project
18 area”). Otherwise, admit.

19 28. *Under the Meadow Valley Project, construction of DFPZ units would be both by*
20 *mechanical and hand thinning of conifers, underburning, and some mastication. In the DFPZ units,*
21 *trees larger than 20” dbh would be retained in approximately 82% of the units, and trees larger*
22 *than 30” would be retained in all units. 13 AR 4793; 15 AR 5462. Snags and large logs are also*
23 *retained. See 15 AR 5498; 12 AR 4348, 4349.*

24 Deny that all trees larger than 30” or all snags and large logs would be retained in all units.
25 Trees larger than 30” may be removed for “operability” purposes, and there are limits on snag
26 retention in the DFPZ units. AR 13 at 04761-62 (EA at 7-8). Otherwise, admit.

27 29. *The project DFPZ is designed to reduce the possibility that a catastrophic crown fire*
28 *would cause the loss of forest cover and, consequently, owl habitat. 13 AR 4824. Under the no*

1 *action alternative, future fires would be expected to “burn more intensely and over larger areas,”*
2 *and could “eliminate suitable habitat or make its distribution more patchy, leading to lower*
3 *abundance” of owls in the analysis area. Id.*

4 Deny. The Forest Service’s decision to create DFPZs by removing large fire-resistant trees
5 and significantly reducing canopy cover will result in hotter, drier, and brushier conditions within the
6 DFPZs, and will increase the immediate risk of severe fire in the Project area. Defendants’
7 Response to Plaintiffs’ [Undisputed] Statement of Fact[s] in Support of Motion for Summary
8 Judgment ¶ 45; Odion Dec. ¶¶ 13-17, 20, 23. Approximately 84 acres designated for DFPZ cuts
9 have already been treated by the Forest Service in recent years to reduce fire risk. *See Answer ¶ 23.*
10 The DFPZ logging proposed by the Meadow Valley Project will degrade or eliminate spotted owl
11 habitat by removing medium and large trees, reducing canopy cover to levels considered unsuitable
12 for owls, and by removing large snags and downed wood. *See Answer ¶ 37; AR 12 at 04386-88,*
13 *04427-28 (BA/BE at 46-48, 85-86).*

14 30. *Under the Meadow Valley Project, there would not be any project activity in any*
15 *PACs or SOHAs. See 13 AR 4824 The vast majority of existing foraging habitat (87%) and nesting*
16 *habitat (95%) would be retained within the analysis area. Id. In addition, “96% of the combined*
17 *acreage of PACs and HRCAs would not be treated.” Id.. Of the 30 HRCAs within the analysis area,*
18 *16 would be reduced only by an average of 7-8% (50-63 acres of their average size of 750 acres).*
19 *13 AR 4824. The three PAC/HRCAs where suitable habitat reduction would be greatest “have not*
20 *been occupied by owls in the last two years.” Id.*

21 Admit the first sentence, but clarify that the Forest Service has replaced the concept of
22 SOHAs with HRCAs as a conservation strategy for owls in its recent environmental analyses,
23 including the analysis for the Meadow Valley Project. *See, e.g., AR 12 at 04428 (BA/BE at 86).* In
24 the second sentence, admit that the majority of existing foraging and nesting habitat in the analysis
25 area would not be directly logged, but clarify that 100% of the suitable owl nesting and foraging
26 habitat in the *Project area* will be rendered unsuitable by the Meadow Valley Project. *AR 12 at*
27 *04367-68, 04439-40 (BA/BE at 29-30, 97-98).* Admit the third and fourth sentences, but clarify that
28 the three PACs/HRCAs where suitable habitat reduction would be the greatest were found by the

1 Forest Service to be unoccupied for only two years (2002 and 2003), and that it is not unusual for
2 owls to return to sites that have been vacant for several years. AR 12 at 04433 (BA/BE at 91); AR 2
3 at 00419 (SNFPA 2001 FEIS, U.S. Fish & Wildlife Service Biological Opinion at 64). The Forest
4 Service acknowledges that the Project poses a “high” risk to the viability of these PACs/HRCAs,
5 which might otherwise be recolonized by breeding owls. AR 12 at 04431, 04433 (BA/BE at 89, 91).

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

12 Deny that the Meadow Valley Project BA/BE provided a “detailed analysis of the Project’s
13 direct, indirect, and cumulative effects” on the California spotted owl. The BA/BE provided only a
14 conclusory analysis of the direct, indirect, and cumulative impacts of the Meadow Valley Project and
15 other past and present actions on the owl, and failed to even mention any reasonably foreseeable
16 future actions that may have cumulatively significant impacts on the owl. See AR 12 at 04427-34
17 (BA/BE at 85-92). Deny that the Forest Service adequately analyzed the direct and indirect effects
18 on owl habitat. The BA/BE failed to provide any home range assessment for owls inside or adjacent
19 to the analysis area, or an assessment of the impacts to owl nest sites in the Project vicinity that are
20 likely to have home ranges that overlap with the analysis area. See AR 12 at 04427-34 (BA/BE at
21 85-92). Otherwise, admit.

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 for*
25 *approximately 14 past and ongoing projects. See 12 AR 4398-4399.*

26 Admit that the BA/BE identified and described some timber sale projects within the analysis
27 area, but deny that it adequately analyzed the effects of these projects on the California spotted owl.
28 See AR 12 at 04397-402, 04434-39 (BA/BE at 57-62, 92-97).

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

4 Admit, but deny that the record supports this conclusion. *See AR 12 at 04428-31 (BA/BE at*
5 *86-89); AR 13 at 04824 (EA at 70).*

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

12 Deny that “all trees to be harvested” would be designated by Forest Service employees or the
13 timber sale contracts. *See, e.g., AR 16 at 05754-901. Otherwise, admit.*

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15 DATED: February 28, 2005

Respectfully submitted,

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19 Attorneys for Plaintiffs Sierra Nevada Forest Protection
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20
21 /s/ Rachel M. Fazio (as authorized on 2/28/05)
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22
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