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17
18 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

19 AMY GRANAT, *et al.*,

20 Plaintiffs,

21 vs.

22 UNITED STATES DEPARTMENT OF
23 AGRICULTURE, *et al.*,

24 Federal Defendants.
25

Case No. 2:15-CV-0605-MCE-EFB (TEMP)

Date: July 28, 2016

Time: 2:00 p.m.

Judge: Hon. Morrison C. England, Jr.

Place: 501 "I" Street

Courtroom: No. 7, 14th Floor
Sacramento, CA

26 FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS'
27 STATEMENT OF UNDISPUTED FACTS [ECF No. 31-2]
28

1 Pursuant to Local Civil Rule 260, Federal Defendants hereby respond to Plaintiffs'
2 "Statement of Undisputed Facts in Support of Plaintiffs' Motion for Summary Judgment," ECF
3 No. 31-2, as follows:

4 **Prefatory Note**

5 Local Civil Rule 260 requires the submission of a statement of undisputed facts. For the
6 reasons explained below, however, there are no material facts in the case. The Court's review of
7 claims brought under Administrative Procedure Act, 5 U.S.C. § 706, is to be based upon an
8 administrative record compiled by the agency. *See, e.g., Fla. Power & Light Co. v. Lorion*, 470
9 U.S. 729, 743-44 (1985); *Camp v. Pitts*, 411 U.S. 138 (1973); *Citizens to Pres. Overton Park v.*
10 *Volpe*, 401 U.S. 402, 420 (1971), *overruled on other grounds by Califano v. Sanders*, 430 U.S.
11 99, 104 (1977). "The task of the reviewing court is to apply the appropriate APA standard of
12 review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the
13 reviewing court." *Fla. Power & Light Co.*, 470 U.S. at 743-44. The Ninth Circuit has
14 articulated and enforced the rule that the scope of judicial review of agency action is limited to
15 the administrative record. *See, e.g., Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005) (as
16 amended); *see, e.g., Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 665 (9th Cir. 1998)
17 ("[J]udicial review of an agency decision not to issue an EIS is generally limited to review of the
18 administrative record at the time the decision was made." (citing *Friends of the Earth v. Hintz*,
19 800 F.2d 822, 829 (9th Cir. 1986))). Accordingly, judicial review of agency action is a unique
20 procedure, different in both nature and scope from the procedures used to resolve civil actions
21 within the original jurisdiction of the federal district courts.

22 Consequently, there are no material facts for the Court to resolve in the first instance.
23 Rather, the Court's role is limited to determining whether the challenged action or inaction of
24 Federal Defendants is supported by the record, which Federal Defendants lodged with the Court
25 on March 17, 2016. ECF No. 29. Nonetheless, to assure technical compliance with the local
26 rules, Federal Defendants respond to Plaintiffs' statement of undisputed facts as set forth below.
27
28

Response to Plaintiffs' Statement of Undisputed Facts

1
2 1. *In 2005, the United States National Forest Service (the "Forest Service") issued*
3 *its Travel Management Rule. 70 Fed. Reg. 68,264, et seq. (Nov. 9, 2005), codified at 36 C.F.R. §*
4 *212.50 (the 2005 Travel Management Rule).*

5 **Response:** Undisputed.

6
7 2. *At the time the 2005 Travel Management Rule was promulgated, the National*
8 *Forest Transportation System included both a managed system of roads and trails and, "[i]n*
9 *addition to this managed system of roads and trails, many National Forests contain[ed] user-*
10 *created roads and trails." 70 Fed. Reg. at 68,264.*

11 **Response:** Undisputed.

12
13 3. *There has never been a comprehensive national inventory of user-created routes,*
14 *but such routes are estimated in the tens of thousands of miles. 70 Fed. Reg. at 68,264.*

15 **Response:** Undisputed.

16
17 4. *Motor vehicles "represent an integral part of [the] recreational experience," in*
18 *National Forests and are "a legitimate and appropriate way for people to enjoy their National*
19 *Forests—in the right places, and with proper management." 70 Fed. Reg. at 68,264.*

20 **Response:** Undisputed.

21
22 5. *The Forest Service has determined that a "designated and managed system of*
23 *roads, trails, and areas for motor vehicle use is needed," and that such a system, "established*
24 *with public involvement, will enhance public enjoyment of the National Forests while*
25 *maintaining other important values and uses on [National Forest System] lands." 70 Fed. Reg.*
26 *at 68,265.*

27 **Response:** Undisputed.

1 6. *Motor Vehicle use is prohibited “off designated roads and trails and outside*
2 *designated areas,” as set forth in the 2005 Travel Management Rule. 36 C.F.R. § 261.13.*

3 **Response:** Undisputed.
4

5 7. *The public must be “allowed to participate in the designation of National Forest*
6 *System roads, National Forest System trails, and areas on National Forest System lands.” 36*
7 *C.F.R. § 212.52(a).*

8 **Response:** Undisputed.
9

10 8. *In designating National Forest System roads, National Forest System trails, and*
11 *areas on National Forest System lands for motor vehicle use, the responsible official of the*
12 *Forestry Service must consider effects on National Forest System “natural and cultural*
13 *resources, public safety, provision of recreation opportunities, access needs, conflicts among*
14 *uses of . . . system lands, the need for maintenance and administration of roads, trails, and areas*
15 *that would arise if the uses under consideration are designated; and the availability of resources*
16 *for that maintenance and administration.” 36 C.F.R. § 212.55(a).*

17 **Response:** Undisputed.
18

19 9. *The specific criteria that the Forest Service must use for the designation of roads,*
20 *trails, and areas on National Forest System lands include effects on damage to soil, watershed,*
21 *vegetation, and other forest resources; harassment of wildlife and significant disruption of*
22 *wildlife habitats; conflicts between motor vehicle use and existing or proposed recreational uses*
23 *of National Forest System lands or neighboring federal lands; and conflicts among different*
24 *classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. 36*
25 *C.F.R. § 212.55(b).*

26 **Response:** Undisputed.
27
28

1 10. *After National Forest System roads, National Forest System trails, and areas on*
2 *National Forest System lands have been designated for motor vehicle use in accordance with the*
3 *requirements of the 2005 Travel Management Rule, and after the designations have been*
4 *identified on a motor vehicle use map, “it is prohibited to possess or operate a motor vehicle on*
5 *National Forest System lands . . . other than in accordance with those designations.” 36 C.F.R. §*
6 *261.13*

7 **Response:** Undisputed.

8
9 11. *On January 3, 2008, the Forest Service issued a notice of intent to prepare an*
10 *environmental impact statement (“Notice of Intent”) for the Plumas National Forest to analyze*
11 *and disclose, among other things, the impacts associated with the addition of certain existing,*
12 *unclassified but lawful routes and trails in Plumas National Forest to the National Forest*
13 *Transportation System. AR PLU-B-001114.*

14 **Response:** Undisputed.

15
16 12. *Before the issuance of the Notice of Intent, there were 1,107 non-system,*
17 *unclassified, historically used and lawful miles in Plumas National Forest, as inventoried by the*
18 *Forest Service, which comprised 3,236 individual routes, spread across three areas of the*
19 *Forest, known as Beckwourth (AR PLU-G-001242-1253), Feather River (AR PLU-G-001256-*
20 *1261), and Mount Hough (AR P LU-G-001277-1292).*

21 **Response:** Disputed. In 2005, the Plumas National Forest completed an extensive
22 inventory and identified 1,107 miles of unauthorized routes. PLU-B-000052. The Notice of
23 Intent did not alter the lawful use of these unauthorized routes. PLU-B-000058-59. Following
24 issuance of the 2005 Travel Management Rule, the Forest Service implemented orders that
25 closed cross-county motorized vehicle travel to comply with the rule until the route designation
26 and associated NEPA process could be completed. PLU-C-002315-16, -2318, -2330, -2332.
27 Extensions to these forest orders were implemented annually until the final route designation and
28

1 NEPA process was complete. PLU-C-002299, -2302, -2307-10. Furthermore, the record
2 citations for the inventories listed by Plaintiffs and labelled “history” are drafts. The final
3 versions are labelled “inventory.” PLU-G-001238-41 (Beckwourth); PLU-G-001266-69
4 (Feather River); PLU-G-001293-308 (Mount Hough).

5
6 13. *Each inventoried route received a designation of High (“H”), Medium (“M”) or*
7 *Low (“L”), for two general criteria developed by the Service: “Benefits and Access,” on the one*
8 *hand, and “Concerns and Risks,” on the other hand. Id. Each of those criteria were divided*
9 *into sub-criteria, such as “Travel” under “Benefits and Access,” and “Water” under “Concerns*
10 *and Risks.” Id. The Forest Service designated each route as either Yes (“Y”) or No (“N”). Id.*
11 *A “Y” designation indicated that a route would be further evaluated for possible inclusion in the*
12 *Plumas National Forest Transportation Plan, while an “N” designation indicated that no further*
13 *evaluation would be conducted and the route would not be included. Id. Approximately 200*
14 *unclassified routes, out of a total of approximately 3,236 inventoried routes, received a “Y”*
15 *designation, and those 200 routes (representing 410 miles) were set aside for on-site visits, data*
16 *gathering, or analysis. Id.*

17 **Response:** Disputed. This statement oversimplifies how the Forest Service evaluated
18 each inventoried route. In reaching the letter determinations (L, M, and H or Y and N) for each
19 route, a suite of resource specialists evaluated field observations, institutional knowledge, and
20 geographic information system (“GIS”) data, placement of routes, proximity to other routes, and
21 other useful and appropriate information. See PLU-G-001238-41, -1266-69, -1293-308
22 (inventory spreadsheets, top line of first page of each shows names of resource specialists); PLU-
23 G-001255 (definitions for spreadsheets); PLU-B-000052-53 (information on interdisciplinary
24 process).

25
26 14. *The Forest Service included among the reasons for eliminating roads and trails*
27 *from on-site environmental impacts review the fact that they were less than one-half mile in*
28

1 *length (AR PLU-G-001242), were dead-end spurs off of county or state roads (AR PLU-G-*
2 *001261), or led to or from private land (AR PLU-G-001277).*

3 **Response:** Undisputed.

4
5 15. *Of the inventoried, non-system routes, 94% (or 63% of the miles) did not receive*
6 *on-site environmental impacts analysis, while the remaining 6% of the routes (or 37% of the*
7 *miles) did receive on-site environmental impacts analysis. AR PLU-G-001242-1253*
8 *(Beckwourth), AR PLU-G-001256-1261 (Feather River), and AR PLU-G-001277-1292 (Mount*
9 *Hough).*

10 **Response:** Disputed. While not all routes received an on-site field evaluation, all routes
11 were evaluated based on a variety of information sources including GIS, California Natural
12 Diversity Database, information gathered for previous projects, and existing professional
13 knowledge of specialists. PLU-B-000052 (identification of 1,107 miles of unauthorized routes);
14 PLU-B-000266, -194, -377, -378, -416, -467 (site-specific surveys); PLU-B-000194, -377
15 (California Natural Diversity Database); PLU-B-000061, -84-85, -89-90, -536-554 (previous
16 projects); PLU-B-000208, -277, -400 (professional knowledge); *see* response to ¶ 13, *supra*.
17 Furthermore, the Forest Service conducted a field review of approximately 410 miles of routes;
18 this included all routes proposed by the public. PLU-B-000081.

19
20 16. *The Forest Service's Draft Environmental Impact Statement ("DEIS") is dated*
21 *December, 2008. AR PLU-B-000649-1107.*

22 **Response:** Undisputed.

23
24 17. *The Plaintiffs in the Plumas National Forest Group filed numerous comments on*
25 *the DEIS, setting forth their objections, including but not limited to those documented in AR*
26 *PLU-B-001139, AR PLU-B-001223, AR PLU-B-001180, AR PLU-B-001582-83, and AR*

1 *PLU-B-001582-830. See Granat Decl. ¶¶ 4-18, Lazzarino Decl. ¶¶ 5-15, Perreault Decl. ¶¶ 5-*
2 *20, Crump Decl. ¶¶ 7-14.*

3 **Response:** Undisputed as to the citations to the Administrative Record. Federal
4 Defendants have a filed a motion to strike the paragraphs of the declarations that Plaintiffs
5 improperly use to advance arguments on the merits and dispute reliance on those paragraphs of
6 the declarations here. Motion to Strike, ECF No. 36.

7
8 18. *The Final Environmental Impact Statement (“FEIS”), AR PLU-B-000039-639,*
9 *and Record of Decision (“ROD”), AR PLU-B-000009-38 (collectively, the “Decision*
10 *Documents”), are dated August, 2010.*

11 **Response:** Disputed. The FEIS is not a decision document and should not be
12 categorized as such. The date of the FEIS is August 2010. PLU-B-000039. The date of the
13 ROD is August 30, 2010. PLU-B-000028.

14
15 19. *The ROD bans off-road vehicle use on all Maintenance Level 3 roads in Plumas*
16 *National Forest. AR PLU-B-000104.*

17 **Response:** Disputed. The ROD allows non-highway legal or off-road vehicle use
18 (“mixed use”) on approximately 4.1 miles of Slate Creek Road, a Maintenance Level 3 road.
19 PLU-B-000016. The ROD also is clear that the decision “does not preclude considering
20 additional trail and trail networks in the future,” so no ban exists. PLU-B-000019. The decision
21 on whether to allow mixed use is discretionary. PLU-C-001533-34, -1544-45. After issuance of
22 the ROD, there have been a number of discussions with Butte and Plumas Counties as well as
23 members of user groups about specific proposals for mixed use on additional roads. *See e.g.,*
24 *PLU-J-000008, -10.*

1 20. *The Decision Documents consider four alternatives in detail (Alternatives 2-4),*
2 *ranging from adding zero miles to the Transportation Management Plan to adding 361 miles.*
3 *AR PLU-B-000025-27.*

4 **Response:** Disputed. The FEIS analyzes in detail one no-action alternative and four
5 action alternatives. PLU-B-000043.

6
7 21. *Of the inventoried 3,236 routes, 3,036 routes were not included in the alternatives*
8 *analysis of the Decision Documents. AR PLU-G-001242-1253 (Beckwourth); AR PLU-G-*
9 *001256-1261 (Feather River); PLU-G-001277-1292 (Mount Hough).*

10 **Response:** Disputed. An alternative did consider adding all of the unauthorized routes
11 that were inventoried to the NFTS. PLU-B-000081. However, it was eliminated from detailed
12 consideration due to a variety of factors such as resource issues, short spur routes not benefitting
13 the trail system as a whole, or lack of specific interest shown by the public during extensive
14 public scoping. PLU-B-000058, -81.

15
16 22. *The FEIS did not include a discussion of Plumas County or Butte County plans*
17 *and policies in relation to motorized vehicle use on County roads, possible conflicts between the*
18 *goals, policies, and standards of the Butte County General Plan and the Plumas County General*
19 *Plan, or conflicts with the Plumas County Regional Transportation Plan. AR PLU-B-000039-*
20 *639.*

21 **Response:** Disputed. The response to public comments on the DEIS, which is part of the
22 FEIS, addresses utilization of county roads as connectors. PLU-B-001223 (response to comment
23 8). Furthermore, the Forest Service addressed this issue elsewhere in the administrative record.
24 PLU-A-000057 (appeal deciding officer response); PLU-B-001175, -1634 (response to
25 comments).

1 23. *The FEIS discusses the impacts of route closures on the ability of Native*
2 *American Tribes to access Plumas National Forest to obtain food and fuel, AR PLU-B-000561-*
3 *563 and AR PLU-B-000039-639, but does not address such impacts on others.*

4 **Response:** Disputed. The Forest Service considered an alternative to allow cross-
5 country travel to collect firewood but eliminated this alternative from detailed study. PLU-B-
6 000083. Impacts of reduced motorized vehicle access among a variety of user groups are also
7 discussed in FEIS Appendix D. PLU-B-000555-580. The FEIS notes that “[p]ermitted use, such
8 as firewood collection, will still be allowed...” PLU-B-000580.

9
10 24. *Changes made to the proposed action alternative, presented for the first time in*
11 *the Final Environmental Impact Statement, include: (a) restrictions on routes according to*
12 *season of use, AR PLU-B-000084; (b) implementation of a one-fourth mile buffer for wildlife*
13 *nests, AR PLU-B-000267; (c) implementation of a one-half mile buffer for private land “quiet*
14 *recreation” See, e.g., AR PLU-B-000100-101, 103, 105, and 107; (d) the closure of additional*
15 *roads and trails because the analysis of potential impacts to the California red-legged frog from*
16 *the continued use of these roads was not completed in a timely manner, AR PLU-B-000043; (e)*
17 *47% of single-track routes in the French Creek area were closed AR PLU-B-000022; (f) the Sly*
18 *Creek area routes were eliminated, AR PLU-B-000015; (g) 13 National Forest Transportation*
19 *System routes were eliminated from the map of available routes in the French Creek area, Id.;*
20 *and (8) the Law Enforcement Section (Appendix I) was added AR PLU-B-000633-639.*

21 **Response:** Disputed. The topic of seasons of use was discussed throughout the DEIS,
22 and at PLU-B-001037, the table clearly identifies seasons of use with date ranges in the “Trail
23 Restrictions and Mitigation” column. The quarter mile buffer for wildlife nests is presented in
24 the DEIS, specifically for California spotted owl, Northern goshawks, and bald eagles. PLU-B-
25 000848, -866. There was not an implementation of a buffer for quiet recreation. Instead, it was
26 used as a measurement indicator. PLU-B-000100. The DEIS states one of the indicator
27 measures as “[n]umber of acres located ½ mile away from roads, trails and boundaries are used
28

1 to analyze the opportunity for non-motorized and ‘quiet’ recreation on the Forest.” PLU-B-
2 000094. The changes in subsections (d) through (g) were necessary to achieve compliance with
3 the programmatic agreement between the Forest Service and the United States Fish and Wildlife
4 Service for threatened and endangered species, namely the California Red-legged frog. PLU-B-
5 000015, -22. Lastly, the Law Enforcement Section did not change the proposed action
6 alternative; it merely supplemented the information concerning law enforcement on the Forest
7 that was included in the DEIS. PLU-B-000633-39, -698-99.

8
9 25. *The cumulative impacts analysis in the FEIS is limited to the boundaries of*
10 *Plumas National Forest. AR PLU-B-000089-90.*

11 **Response:** Undisputed.

12
13 Respectfully submitted, this 12th day of May, 2016.

14
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18 United States Department of Justice

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CERTIFICATE OF SERVICE

I, John P. Tustin, hereby certify that on May 12, 2016, I caused the foregoing to be served upon counsel of record through the Court's CM/ECF system.

/s/ John P. Tustin
John P. Tustin
Attorney for Federal Defendants

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