

1 M. REED HOPPER, No. 131291  
E-mail: mrh@pacificlegal.org  
2 DAMIEN M. SCHIFF, No. 235101  
E-mail: dms@pacificlegal.org  
3 Pacific Legal Foundation  
930 G Street  
4 Sacramento, California 95814  
Telephone: (916) 419-7111  
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs  
7  
8

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11

12 AMY GRANAT, CORKY LAZZARINO, SIERRA )  
ACCESS COALITION; CALIFORNIA OFF- )  
13 ROAD VEHICLE ASSOCIATION; THE )  
COUNTY OF PLUMAS; AND THE COUNTY OF )  
14 BUTTE, )

15 Plaintiffs, )

16 v. )

17 UNITED STATES DEPARTMENT OF )  
AGRICULTURE, a federal agency; TOM )  
18 VILSACK, in his official capacity as Secretary of )  
the UNITED STATES DEPARTMENT OF )  
19 AGRICULTURE; UNITED STATES FOREST )  
SERVICE, a federal agency; THOMAS L. )  
20 TIDWELL, in his official capacity as Chief of the )  
UNITED STATES FOREST SERVICE; RANDY )  
21 MOORE, in his official capacity as PACIFIC )  
SOUTHWEST REGIONAL FORESTER; ALICE )  
22 CARLTON, in her official capacity as the former )  
PLUMAS NATIONAL FOREST SUPERVISOR; )  
23 AND EARL FORD, in his official capacity as )  
PLUMAS NATIONAL FOREST SUPERVISOR, )

24 Defendants.  
25  
26  
27  
28

No. 2:15-cv-00605-MCE-EFB (TEMP)

**PLAINTIFFS' RESPONSE  
TO FEDERAL DEFENDANTS'  
STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF  
CROSS-MOTION FOR  
SUMMARY JUDGMENT**

Date: July 28, 2016  
Time: 2:00 p.m.  
Courtroom: 7, 14th Floor  
Judge: Hon. Morrison C. England, Jr.

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 **RESPONSE TO PREFATORY STATEMENT**

2 Plaintiffs Amy Granat, *et al.* (“Forest Users”), agree with Defendants United States  
3 Department of Agriculture, *et al.*, that, because this action is brought under the judicial review  
4 provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, the Court will not hold a  
5 trial nor will it be required to conduct fact finding in order to adjudicate the Forest Users’ claims  
6 for relief. Rather, the claims for relief will be resolved based on the administrative record. The  
7 Forest Users do not, however, believe that the administrative record as currently constituted  
8 represents the true administrative record. They therefore reserve for appeal all issues that they  
9 have raised that concern, or are dependent upon, the record’s adequacy.

10 **RESPONSES TO STATEMENT OF FACTS**

11 1. Prior to the 2005 Travel Management Rule, the Plumas National Forest was open  
12 to most cross-country motor vehicle use. PLU-B-000052.

13 **RESPONSE:** Undisputed to the extent that, “[h]istorically, motor vehicle use was  
14 unrestricted throughout most of the Forest.” PLU-B-000013 (Record of Decision).

15 2. The 1988 Plumas National Forest Land and Resource Management Plan identifies  
16 certain special area designations (also known as land allocations) where motorized vehicle use is  
17 restricted, including: Wilderness areas, Wild and Scenic Rivers, Feather Falls Scenic Area,  
18 recreation areas, developed recreation sites, semi-primitive areas, bald eagle habitat, and research  
19 natural areas. *See* PLU-C-002652, -2658, -2664, -2669, -2672, -2677, -2685, and -2700 (1988  
20 Forest Plan); PLU-B-000023-24 (summary of special area designations in Record of Decision for  
21 Plumas Motorized Travel Management Plan).

22 **RESPONSE:** Disputed in that: (i) with respect to wild and scenic rivers, several  
23 allowances for motorized vehicle access are provided, PLU-C-002658; (ii) with respect to  
24 recreation areas, wheeled vehicles are permitted on designated routes, PLU-C-002669; (iii) with  
25 respect to developed recreation sites, vehicle access is permitted on interior roads and spurs, and  
26 off-road vehicles are allowed on trails leading to adjacent off-road vehicle routes and “acceptable”  
27 cross-country areas, PLU-C-002672; and (iv) with respect to semi-primitive areas, snowmobiles  
28 are permitted, PLU-C-002677.

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

PACIFIC LEGAL FOUNDATION  
 930 G Street  
 Sacramento, CA 95814  
 (916) 419-7111 FAX (916) 419-7747

1 3. Prior to the 2005 Travel Management Rule, the Plumas National Forest contained  
 2 approximately 4,137 miles of National Forest System (“NFS”) roads and 130 miles of NFS  
 3 motorized trails. These roads and trails resulted from historical and ongoing access needs for  
 4 forest and fuels management activities, mineral exploration and mining, livestock grazing,  
 5 recreational activities, fire prevention and suppression, and for reaching private parcels within the  
 6 Plumas National Forest. PLU-B-000053.

7 **RESPONSE:** Undisputed.

8 4. Much of this extensive system was already part of the National Forest  
 9 Transportation System (“NFTS”). PLU-B-000053.

10 **RESPONSE:** Undisputed in that roads discussed in Paragraph 3 were part of the National  
 11 Forest Transportation System. Disputed in that “[m]uch” is not defined.

12 5. Prior to the 2005 Travel Management Rule, the 4,137 miles of NFS roads were  
 13 designated by maintenance level as follows:

Operational Maintenance Level	Miles
1	262
2	3,241
3	404
4	106
5	124
Total	4,137

20  
 21 PLU-B-000013; PLU-B-000126.

22 **RESPONSE:** Undisputed.

23 6. Maintenance level 1 roads are not subject to the requirements of the Highway  
 24 Safety Act. PLU-C-000856. Vehicular traffic is eliminated, including administrative traffic. *Id.*  
 25 ML-1 is defined as “[a]ssigned to intermittent service roads during the time they are closed to  
 26 vehicular traffic. The closure period must exceed 1 year. Basic custodial maintenance is  
 27 performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road  
 28 to facilitate future management activities. Emphasis is normally given to maintaining drainage

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate  
2 traffic management strategies are ‘prohibit’ and ‘eliminate.’ Roads receiving level 1 maintenance  
3 may be of any type, class or construction standard, and may be managed at any other maintenance  
4 level during the time they are open for traffic. However, while being maintained at level 1, they  
5 are closed to vehicular traffic, but may be open and suitable for nonmotorized uses.” *Id.*

6 **RESPONSE:** Undisputed.

7 7. Maintenance level 2 roads are not subject to the requirements of the Highway Safety  
8 Act. PLU-C-000848. They have low traffic volume and low speed, and are not suitable for  
9 passenger cars. *Id.* ML-2 is defined as “[a]ssigned to roads open for use by high clearance  
10 vehicles. Passenger car traffic is not a consideration. Traffic is normally minor, usually consisting  
11 of one or a combination of administrative, permitted, dispersed recreation, or other specialized  
12 uses. Log haul may occur at this level. Appropriate traffic management strategies are either to  
13 (1) discourage or prohibit passenger cars or (2) accept or discourage high-clearance vehicles.” *Id.*

14 **RESPONSE:** Undisputed.

15 8. Maintenance level 3 roads are subject to the requirements of the Highway Safety  
16 Act and the Manual of Uniform Traffic Control Devices (“MUTCD”). PLU-C-000836. They have  
17 low to moderate traffic volume. *Id.* ML-3 is defined as “[a]ssigned to roads open and maintained  
18 for travel by prudent drivers in standard passenger cars. User comfort and convenience are low  
19 priorities. Roads in this maintenance level are typically low speed, single lane with turnouts, and  
20 spot surfacing. Some roads may be fully surfaced with either native or processed material.  
21 Appropriate traffic management strategies are either ‘encourage’ or ‘accept.’ ‘Discourage’ or  
22 ‘prohibit’ strategies may be employed for certain classes of vehicles or users.” *Id.*

23 **RESPONSE:** Disputed in that signage for many roads of Maintenance Level 3 and higher  
24 in the Plumas National Forest does not meet the MUTCD. PLU-A-000155 (Sierra Access  
25 Coalition (SAC)/California Off-Road Vehicle Association (CORVA) Appeal).

26 9. Maintenance level 4 roads are subject to the requirements of the Highway Safety  
27 Act and the MUTCD. PLU-C-000828. They have moderate traffic volume and speeds. *Id.* ML-4  
28 is defined as “[a]ssigned to roads that provide a moderate degree of user comfort and convenience

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 | at moderate travel speeds. Most roads are double lane and aggregate surfaced. However, some  
2 | roads may be single lane. Some roads may be paved and/or dust abated. The most appropriate  
3 | traffic management strategy is ‘encourage.’ However, the ‘prohibit’ strategy may apply to specific  
4 | classes of vehicles or users at certain times.” *Id.*

5 |         **RESPONSE:** Disputed. *See* Resp. ¶ 8.

6 |         10. Maintenance level 5 roads are subject to the requirements of the Highway Safety  
7 | Act and the MUTCD. PLU-C-000820. They have the highest traffic volume and speeds and  
8 | usually are paved or chip-sealed. *Id.* ML-5 is defined as “[a]ssigned to roads that provide a high  
9 | degree of user comfort and convenience. These roads are normally double-lane, paved facilities.  
10 | Some may be aggregate surfaced and dust abated. The appropriate traffic management strategy  
11 | is ‘encourage.’” *Id.*

12 |         **RESPONSE:** Disputed. *See* Resp. ¶ 8.

13 |         11. During the summer and fall of 2004, an independent contractor reviewed and  
14 | mapped routes and areas used by off-highway vehicles (“OHVs”) on the Forest. PLU-B-000058.

15 |         **RESPONSE:** Undisputed. The Forest Users note that the Service’s contractor did not  
16 | coordinate with Plumas and Butte Counties to elicit their input on the review and mapping of these  
17 | Forest routes. *See* PLU-A-000313-315 (Plumas County Appeal); PLU-A-000319-320 (Butte  
18 | County Appeal).

19 |         12. In 2005, the Plumas National Forest completed an extensive inventory of  
20 | unauthorized routes on NFS lands open to cross-country travel and identified approximately 1,107  
21 | miles of unauthorized routes. PLU-B-000052.

22 |         **RESPONSE:** Disputed. The 1,107 miles of non-system routes are properly characterized  
23 | as “unclassified,” not “unauthorized,” because they were fully legal to use. PLU-D-007131-7132  
24 | (SAC Comment); PLU-D-007607 (CORVA Comment). The inventory was not comprehensive.  
25 | PLU-D-007175 (SAC Comment) (“There is still a vast array of old temporary roads and skid trails  
26 | present of the landscape that haven’t been identified.”). The vast majority of the unclassified  
27 | routes were created in connection with approved timber harvests. *See* PLU-D-007131-7132 (SAC  
28 | Comment). The Service had the opportunity to coordinate its route inventory with Butte

1 | and Plumas Counties, but declined. *See* PLU-A-000313-315 (Plumas County Appeal);  
2 | PLU-A-000319-320 (Butte County Appeal).

3 |         13.     The inventory of unauthorized routes involved the examination of previous records  
4 | (existing road and trail atlases, forest maps, maintenance plans, maintenance expenditures, etc.)  
5 | to populate the Forest Service’s infrastructure database (“INFRA”) and verify the Forest  
6 | Transportation Atlas. PLU-B-000053. Since then, adjustments to the Transportation Atlas and  
7 | INFRA database have been made to correct errors and account for NFS roads that were either  
8 | newly constructed or overlooked. *Id.*

9 |             **RESPONSE:** Undisputed. The Forest Service began to populate the INFRA database in  
10 | 2002. PLU-B-000053 (FEIS). Again, the Forest Users note that these routes are better described  
11 | as unclassified, not unauthorized. Moreover, to the extent that these routes were created as part  
12 | of a Service-approved timber harvest and remained in place, it would be particularly inapt to refer  
13 | to them as “unauthorized.”

14 |         14.     The 2005 Motorized Travel Management Rule defines unauthorized routes as roads  
15 | or trails that are not included in an official forest transportation atlas. 36 C.F.R. § 212.1.  
16 | Generally, unauthorized routes are created through repeated use and were not planned by the  
17 | Forest Service. PLU-B-000052. These routes were developed without agency authorization,  
18 | environmental analysis, or public involvement. PLU-B-000616. For example, many unauthorized  
19 | routes do not currently have features for proper drainage or erosion control, and thus may have  
20 | potentially increased sedimentation effects on streams. *See* PLU-C-000874 (70 Fed. Reg. at  
21 | 68265); PLU-B-000052.

22 |             **RESPONSE:** Disputed. The Travel Management Rule defines unauthorized routes as  
23 | those that not included in the forest transportation atlas *and* that are not a forest road or trail or  
24 | temporary road or trail. 36 C.F.R. § 212.1. The Rule made no findings applicable to the Plumas  
25 | National Forest with respect to erosion control, sedimentation, or any other alleged impact from  
26 | off-road vehicle use. Typically, the Service was aware of routes being created by the public,  
27 | especially those created as a result of Service-approved actions (such as timber harvests). The  
28 | Service always has enjoyed the authority to respond immediately if the use of any route posed a

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 | threat to forest resources. *See, e.g., id.* § 261.15(h) (prohibiting off-road vehicle use that “damages  
2 | or unreasonably disturbs the land, wildlife, or vegetative resources”). That the Service often did  
3 | not act amounts to a tacit decision to allow a route’s use to evolve naturally.

4 |       15. In December 2006, the Plumas implemented a forest order to close the forest to  
5 | crosscountry motor vehicle travel while it undertook a National Environmental Policy Act  
6 | (“NEPA”) and decision-making process to implement Subpart B of the travel management  
7 | regulations. PLU-C-002315. Similar forest closure orders were issued on an annual basis through  
8 | December 2010. PLU-C-002302, 2308, 2310.

9 |       **RESPONSE:** Undisputed. The Forest Users note, however, that these temporary closures  
10 | cannot fairly be used as a basis to support permanent closures. *See Half Moon Bay Fishermans’*  
11 | *Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“NEPA clearly requires that  
12 | consideration of environmental impacts of proposed projects take place *before* [a final decision]  
13 | is made.” (quoting *LaFlamme v. FERC*, 842 F.2d 1063, 1071 (9th Cir.1988))).

14 |       16. After the 2005 Travel Management Rule was promulgated, the Forest Service held  
15 | a series of public workshops across the Plumas National Forest to discuss motorized travel  
16 | management and which routes should be added to the NFTS. PLU-B-000058-59, PLU-C-  
17 | 002313-14, PLU-F-000044.

18 |       **RESPONSE:** Undisputed to the extent that the cited record pages establish that the Forest  
19 | Service held three public meetings in April, 2007, and three public workshops in May, 2007.  
20 | These meetings, however, do not constitute “coordination” under the Travel Management Rule and  
21 | other authority. *See* Pls.’ Resp. & Reply at 8-9.

22 |       17. The Forest Service solicited public comment on its proposed action and held a series  
23 | of public meetings to explain the proposed action. PLU-B-000058-59, PLU-D-012240,  
24 | -12244-12245, -12250. During 2004 and 2005, the Forest also sought route information from the  
25 | public and validated route locations and mapped them. PLU-A-000565-566, PLU-D-014292,  
26 | -14331-14336, -14345-14347, -14351-14354, -14412, -14416-14424.

27 |       **RESPONSE:** Disputed. On-site verification was not conducted for all of the inventoried  
28 | routes, *see* PLU-B-000081 (FEIS) (field review conducted for only 410 miles of the inventoried



PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 routes), nor were the Forest Service’s validation and mapping accurate, PLU-A-000160-164  
2 (SAC/CORVA Appeal) (illustrating the inaccuracy of the Forest Service’s GPS data). The  
3 Service’s information solicitation process was not systematic or effective. For example, the agency  
4 made no effort to solicit information from regular forest vacationers. *See* PLU-A-000315 (Plumas  
5 County Appeal).

6 18. On May 14, 2005, the Forest Service provided on-the-ground training for the public  
7 to locate and map their favorite riding areas so they could effectively provide that information to  
8 the Forest Service. PLU-D-014238-14239, -14248.

9 **RESPONSE:** Undisputed in that the Service provided training. Disputed to the extent that  
10 such training was effective. *See* PLU-D-013991 (newspaper article quoting a SAC member  
11 observing that the Service lost the initial user-collected data sets); PLU-A-000315 (Plumas County  
12 Appeal) (noting that the Service’s approach to outreach “relies upon the interest and knowledge  
13 of a relatively limited segment of the public that has the ability to participate in the Forest Service  
14 process,” such that “[r]ecreationists who may visit Plumas County only on vacation can look  
15 forward to discovering that access to their favorite campsites has been eliminated”).

16 19. In December 2006, public meetings were held in Oroville, Portola, and Quincy  
17 explaining the temporary Forest Order (effective December 31, 2006) that restricted OHV use to  
18 mapped roads, trails and areas. PLU-D-014137-14143, 14146.

19 **RESPONSE:** Undisputed.

20 20. By April 2007, the Plumas National Forest developed the “first cut” route map,  
21 which included 220 miles of proposed motorized trails. PLU-D-014001, 014005-14068; PLU-G-  
22 001380-1395. The “first cut” consisted of known routes used by the public, including destinations,  
23 loops, and spur routes to fishing access and favorite dispersed camping sites. PLU-B-000058. The  
24 “first cut” avoided routes on private land with no right of way, routes where motorized use would  
25 conflict with existing uses, and routes with measurable resource impacts. *Id.*

26 **RESPONSE:** Disputed. The Forest Service’s “first cut” analysis was not accurate. PLU-  
27 A-000160-164 (SAC/CORVA Appeal); PLU-D-007132-7133 (SAC Comment).

28 ///



1           21.     In the fall of 2007 and summer of 2008, the Forest Service completed field surveys  
 2 for all of the approximately 410 miles proposed for addition to the NFTS and conducted  
 3 subsequent field visits for potentially problematic routes. PLU-B-000081. During this process,  
 4 the Service could have but did not coordinate its efforts with Butte and Plumas Counties. *See*  
 5 PLU-A-000319-320 (Butte County Appeal).

6           **RESPONSE:** Disputed. The so-called “problematic routes” did not include any routes that  
 7 had been dismissed as a result of the Forest Service’s “first cut” exercise. *See* PLU-B-000081  
 8 (FEIS).

9           22.     The Plumas National Forest then engaged in an extensive public participation  
 10 process to obtain comments and input regarding its “first cut” route map. PLU-B-000058-59,  
 11 PLUC-002313-2314; PLU-D-014001-02, -14091-92; PLU-F-000044. In the spring of 2007, the  
 12 Forest held three public meetings and three public workshops to identify which of the routes and  
 13 areas should become part of the proposed action, the type of use that each would have, and routes  
 14 to be considered for dispersed recreation access. PLU-B-000562. The concept of “mixed use”  
 15 (combining highway legal and non-highway legal vehicles on the same road) was also introduced  
 16 during these meetings. *Id.* At the first session of the 2007 two-part series, public meetings were  
 17 held in Quincy (April 17) Portola (April 18), and Oroville (April 19). PLU-D-014001-02,  
 18 -14091-92. At the second set of workshops, held in Blairsden (May 2), Quincy (May 3) and  
 19 Oroville (May 10), individuals worked with Forest Service specialists to identify important routes.  
 20 PLU-B-000059. Groups shared their ideas and their various concerns. Roughly 300 people  
 21 participated in these workshops. *Id.* Afterwards, the Forest Service issued a press release that  
 22 provided information on the meetings and the outcome. *Id.*; PLU-D-013955-82; *see*  
 23 PLU-D-013832-88 (scoping documents).

24           **RESPONSE:** Disputed. The public participation process relevant to the Forest Service’s  
 25 “first cut” route map was not “extensive.” *See* PLU-A-000181 (SAC/CORVA Appeal) (noting  
 26 that, because “[n]o map has been produced which shows the routes that will be administratively  
 27 abandoned,” “[t]he public cannot understand the impacts of the routes that will be closed to their  
 28 use by viewing the maps produced in the DEIS and FEIS,” and therefore “it is impossible to

PACIFIC LEGAL FOUNDATION  
 930 G Street  
 Sacramento, CA 95814  
 (916) 419-7111 FAX (916) 419-7747

1 understand where the 873 miles of routes are being eliminated”); PLU-A-000314 (Plumas County  
 2 Appeal). *See also* PLU-D-013927 (SAC Comment) (noting that the Forest Service’s delay in  
 3 providing electronic copies of its spreadsheets and maps made it very difficult to elicit information  
 4 from SAC members). Importantly, contrary to its subsequent actions, the Service told the public  
 5 that it was unnecessary to identify dispersed campsites. *See* PLU-D-014429 (“We  
 6 are . . . considering the campsite as part of the road and trail system . . . allowing use of dispersed  
 7 campsites within a reasonable distance from roads and motorized trails . . . . Camp sites beyond  
 8 a reasonable distance will be connected with a designated trail to allow access.”). The Forest Users  
 9 also note that the Service could have coordinated with Butte and Plumas Counties during this  
 10 process but chose not to. *See* PLU-A-000319-320 (Butte County Appeal).

11 23. The determination of which routes would be included in the various alternatives was  
 12 made with extensive public input and involvement over the course of four years and more than 20  
 13 public meetings and workshops. PLU-B-000024; *see e.g.*, PLU-C-002313-14 (cover letter for  
 14 public meetings); PLU-D-012240, 12244-45, 12250 (sign in sheets); -14238-39 (website  
 15 announcing public workshop). The public had additional opportunities to comment on and  
 16 participate in the Forest Service’s decision-making process during the 60-day public scoping  
 17 period and the 75-day Draft Environmental Impact Statement (“DEIS”) comment period.  
 18 PLU-B-000059; *see e.g.*, PLU-D-000001-14448 (public comments); PLU-B-001135-760  
 19 (comments and response to comments).

20 **RESPONSE:** Disputed. The public participation process relevant to the Service’s route  
 21 designation process was not “extensive.” *See* PLU-D-013926 (denying SAC’s request for an  
 22 additional 60 days to provide relevant feedback on the route designation process); PLU-D-007797  
 23 (SAC Comment) (noting that Service personnel still had not provided critical management  
 24 documents two months after they had been requested); PLU-D-007178 (SAC Comment)  
 25 (discussing the limited opportunities to comment on the draft impact statement). *See also* Resp.  
 26 ¶ 22.

27 24. The Forest Service Interdisciplinary Team took all of this information and  
 28 developed the proposed action for the Notice of Intent to Prepare an Environmental Impact

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 Statement (“NOI”). PLU-B-000058-59, -1114-18. The proposed action was designed to include  
2 as many routes as possible that were requested by the public. PLU-B-000058-59. This inclusive  
3 approach was used so that these routes could be analyzed in detail and their effects disclosed as  
4 part of this NEPA process. *Id.*

5 **RESPONSE:** Disputed. The route designation process was exclusive, not inclusive, given  
6 that the vast majority of routes requested by the public were not even given on-site analysis, much  
7 less serious consideration for designation. PLU-A-000160-164 (SAC/CORVA Appeal). *See* PLU-  
8 D-007134-7135 (SAC Comment) (requesting the designation of all routes except those with  
9 documented “egregious” resource damage). The Forest Users also note that the Service could have  
10 coordinated with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-  
11 000319-320 (Butte County Appeal).

12 25. In January 2008, the Forest Service completed the Proposed Action and NOI based  
13 on comments from the meetings held in the spring of 2007. PLU-B-000059, -1114-18. The  
14 comment period on the proposed action began on January 3, 2008, and ended March 3, 2008.  
15 Presentations to a variety of groups, phone calls, news releases, website postings and emails were  
16 used to alert the public of the opportunity to comment on the proposed action. PLU-B-000059.  
17 Public meetings were held in Blairsden (January 15), Quincy (January 22), and Oroville  
18 (January 29) to explain the Proposed Action. Over 3,300 comments were received, although many  
19 were identical emails. *Id.*

20 **RESPONSE:** Undisputed. The Forest Users note that the Service could have coordinated  
21 with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-000319-320  
22 (Butte County Appeal).

23 26. The proposed action was developed to address two key needs: (1) regulation of  
24 unmanaged public cross-country motorized vehicle travel in accordance with Subpart B of the  
25 2005 Travel Management Rule, 36 C.F.R. Part 212, Subpart B, and (2) making limited changes  
26 to the NFTS to provide motorized access to existing dispersed recreation opportunities (e.g.,  
27 camping, hunting, fishing, hiking, horseback riding) and to provide a diversity of motorized

28 ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 recreation opportunities (e.g., 4x4 vehicles, motorcycles, allterrain vehicles, passenger vehicles).  
2 PLU-B-000014, -55-56.

3         **RESPONSE:** Undisputed to the extent that the statement accurately reflects the Purpose  
4 and Need as set forth in the final impact statement. Disputed to the extent that the Purpose and  
5 Need were appropriately ascertained. *See* PLU-D-007133-7134 (SAC Comment) (noting that the  
6 Purpose and Need’s characterization of the effects of off-road vehicle travel inappropriately  
7 assumed the conclusion before analysis).

8         27. The Project implements provisions of the 2005 Travel Management Rule designed  
9 to enhance management of NFS lands; sustain natural resource values through more effective  
10 management of motor vehicle use; and provide opportunities for motorized recreation experiences  
11 on NFS lands. PLU-B-000013. Management strategies were developed to balance resource  
12 protection, cultural values and recreation opportunities. PLU-B-000465. The Forest Service  
13 recognized there was a need for limited additions to the NFTS to provide motor vehicle access to  
14 dispersed recreation opportunities and to provide a diversity of motorized recreation opportunities.  
15 PLU-B-000014. It is also understood that these purposes had to be balanced with the overall  
16 purpose of regulating unmanaged motor vehicle travel and the related detrimental effects.  
17 PLU-B-000577-78.

18         **RESPONSE:** Disputed. Motorized vehicle access does not necessarily raise resource  
19 issues, and the Project does not appropriately balance motorized vehicle access with other  
20 objectives. *See, e.g.,* PLU-A-000147, 151-53, 158-59, 174-75 (SAC/CORVA Appeal); PLU-A-  
21 000320-322 (Butte County Appeal); PLU-A-000314-315 (Plumas County Appeal). The Purpose  
22 and Need sections of the draft and final environmental impact statements substantially differ. The  
23 former refers to a need for “limited changes” to the forest’s transportation system, PLU-B-000669,  
24 whereas the latter refers to a need for “limited additions,” PLU-B-000056.

25         28. The Forest staff held discussions with and/or sought input from Plumas and Butte  
26 County officials on numerous occasions between 2003 and 2009. PLU-A-000057; PLU-D-  
27 007890, -7902, -9582 (sign-in sheets); PLU-E-000014, -20, -26, -31-32, -34-35, -49, -58 (sign-in  
28 sheets, lists of meetings, letters). At least four formal meetings and six informal meetings occurred

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 with Plumas County officials. PLU-A-000057; PLU-D-007890, -7902, -7904. At least two Butte  
2 County representatives were included on the Forest’s travel management mailing list.  
3 PLU-A-000057. In addition to the scheduled public workshops, the Forest staff offered to set up  
4 private, individual meetings with two Butte County Supervisors. *Id.*

5 **RESPONSE:** Disputed. These meetings were intended to respond to the concerns of the  
6 general public, not the unique concerns of Butte and Plumas Counties as local governments. *See*  
7 PLU-A-000319 (Butte County Appeal); PLU-A-000150-151 (SAC/CORVA Appeal).

8 29. The record indicates that the Forest asked for (and was granted) a discretionary time  
9 extension by the Regional Forester’s office for the stated purpose of “. . . fulfilling the  
10 participatory intent of the NEPA process” with “Plumas, Lassen, and Butte counties . . . .”  
11 PLU-A-000057.

12 **RESPONSE:** Undisputed as to the granting of the extension, but disputed to the extent that  
13 the statement alleges that NEPA’s directives concerning analysis of consistency with local  
14 government planning efforts were satisfied. *See Resp.* ¶ 28.

15 30. On December 29, 2008, the Forest Service published the DEIS for the Project and  
16 made the DEIS available for public comment. PLU-B-001113. The Plumas National Forest sent  
17 letters to interested parties, tribes and reviewing agencies providing them either with copies of the  
18 DEIS or a summary and a link to a website at which the documents and maps could be  
19 downloaded. PLU-B-000059.

20 **RESPONSE:** Disputed. Not all truly interested parties—such as regular vacationers to  
21 the Plumas National Forest—were notified. *See* PLU-A-000315 (Plumas County Appeal). *See*  
22 *also* PLU-D-008106 (SAC Comment) (noting that the draft impact statement’s listing of  
23 inventoried routes did not contain “route numbers making it difficult if not impossible to comment  
24 on individual routes”).

25 31. The Environmental Protection Agency published a notice of availability of the DEIS  
26 in the Federal Register on December 29, 2008, which initiated the 45-day comment period.  
27 PLU-B-001113. The comment period subsequently was extended through March 3, 2009.  
28 PLU-B-000616, -646. The Forest also published a legal notice regarding availability of the DEIS

1 | in the Feather River Bulletin on January 7, 2009, and sent a follow-up letter to interested parties  
2 | and reviewing agencies on February 6, 2009. PLU-B-000648; *see* PLU-D-007955-64.

3 |         **RESPONSE:** Disputed. *See* Resp. ¶ 30.

4 |         32.       The Forest received over 4,310 public comment letters on the DEIS, including 340  
5 | original responses and 3,970 form letters. PLU-B-000616. The Forest Service reviewed all  
6 | submitted comments and suggestions.

7 |         **RESPONSE:** Disputed. The Service did not give legally adequate consideration to the  
8 | Forest Users' comments and suggestions. *See* PLU-A-000150-151, 000164-173 (SAC/CORVA  
9 | Appeal); PLU-A-000319-322 (Butte County Appeal); PLU-A-000313-314 (Plumas County  
10 | Appeal).

11 |         33.       Public comment on the Plumas National Forest DEIS was far-reaching, often highly  
12 | detailed, and represented a wide range of values and perspectives with respect to motorized travel  
13 | management. PLU-B-000618. While many respondents commented on specific topics within the  
14 | DEIS, such as the purpose and need, cumulative impacts, best management practices (BMPs),  
15 | document composition, etc., most respondents requested specific updates, changes, or additional  
16 | data be added to various technical studies (resource reports). *Id.* Many respondents also  
17 | commented on the DEIS Alternatives with different respondents advocating for each alternative.  
18 | PLU-B-000619-20.

19 |         **RESPONSE:** Undisputed.

20 |         34.       The comment letters represented a wide range of views regarding motorized travel  
21 | management. Respondents expressed polarized views on how motorized and nonmotorized  
22 | recreation activities should be managed. PLU-B-000620-21. Regarding OHV use, many  
23 | respondents expressed the view that the agency should recognize that unmanaged OHV use has  
24 | resulted in unauthorized routes which have damaged the forest by increased soil compaction and  
25 | erosion, increased sedimentation, water quality degradation, the spread of noxious weeds,  
26 | increased fire risk, damage to cultural resources, habitat destruction and fragmentation, increased  
27 | disturbance to sensitive wildlife, etc. *Id.* Other respondents were concerned that the current  
28 | transportation system continues to allow motor vehicle use in ecologically and socially important

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 | roadless areas, in proposed Wild and Scenic River corridors, and in sensitive wildlife habitat. *Id.*  
2 | Individuals who oppose OHV use urged the Plumas National Forest to “restrict and control, rather  
3 | than enlarge, the road network in this forest that is open to OHVs.” *Id.*

4 |         **RESPONSE:** Disputed to the extent that the statement alleges that these comments are  
5 | accurate in their portrayal of the effects of motorized vehicle access on the Plumas National Forest.  
6 | *See* PLU-A-000147, 000160-164 (SAC/CORVA Appeal); PLU-D-007643-7644 (CORVA  
7 | Comment).

8 |         35. Conversely, many individuals support OHV use and believe that the Plumas  
9 | National Forest should preserve motorized access to public lands. PLU-B-000621. Those  
10 | respondents expressed the view that OHV opportunities should be enhanced and expanded because  
11 | of significant demand for sustainable and responsible motorized recreation. *Id.* Many respondents  
12 | also stated that OHV groups donate time and manpower to not only maintain trails, but help clean  
13 | up trails damaged by the carelessness of others. Those who support OHV use also mention various  
14 | social values and benefits they attribute to OHV use. *Id.*

15 |         **RESPONSE:** Undisputed.

16 |         36. In addition to these two views on motorized recreation, there were some individuals  
17 | who requested that OHV activities be managed better but not eliminated. PLU-B-000621. One  
18 | group believed, for example, that “OHV use can be managed in a proper way to protect critical  
19 | forest resources while providing a recreational experience.” *Id.*

20 |         **RESPONSE:** Undisputed.

21 |         37. Forest Service staff received several letters from Plumas, Butte, and Lassen  
22 | Counties as part of its planning process. Those letters are included in the administrative record and  
23 | summarized as follows:

- 24 |         • Scoping letter from Jack Hanson, Lassen County: The letter urged the Lassen,  
25 | Plumas, and Modoc National Forests to be consistent with their travel management  
26 | planning. PLU-E-000049.

27 | ///

28 | ///



PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

- 1 • Scoping letter from Robert Perrault, Plumas County: The letter addressed several  
2 issues, mostly related to the classification and status of roadways and a general  
3 objection to reducing the number of unauthorized routes. PLU-E-000035.
- 4 • Scoping letter from Curt Josiassen, Butte County: The letter addressed their  
5 support of mixed use on non-paved county roads and similar access on NFS level  
6 3 and 4 roads. PLU-E-000034.
- 7 • Letter from Bill Connelly, Butte County: The letter requested an extension of the  
8 comment period for the DEIS. PLU-E-000032.
- 9 • DEIS comment letter from Lloyd Keefer, Lassen County: The letter requested an  
10 extension of the comment period for the DEIS. PLU-E-000030.
- 11 • DEIS comment letter from Mike Crump, Butte County: The letter resubmitted the  
12 county's scoping letter from Curt Josiassen and requested that a list of mixed use  
13 non-paved county roads be used as loop access connectors to NFTS roads and  
14 trails. PLU-E-000026.
- 15 • DEIS comment e-mail from Ian Sanders, Butte County: The e-mail resubmitted  
16 Curt Josiassen and Mike Crump's letters and a list of county roads. PLU-E-000020.
- 17 • DEIS comment letter from Sharon Thrall, Plumas County: The letter addressed  
18 several objections to the DEIS, including whether the Project amends the Land and  
19 Resource Management Plan for the Forest, lack of analysis of land use designations  
20 under the county's General Plan, lack of analysis of the county's pending  
21 Herger-Feinstein Quincy Library Group Forest Recovery Act projects, the need for  
22 evacuation routes in coordination with the county's Fire Plan, allowing limited use  
23 of motor vehicles off routes, and the failure to coordinate uses adequately between  
24 Forest routes and the County road system. PLU-E-000014.

25 ///  
26 ///  
27 ///  
28 ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1           **RESPONSE:** Undisputed. The Forest Users note, however, that the content of these letters  
2 likely would have been different had the Service coordinated its actions with Butte and Plumas  
3 Counties. *See* PLU-A-000319-320 (Butte County Appeal); PLU-E-000035-36 (Plumas County  
4 Comment).

5           38. In August 2010, the Plumas National Forest issued its Final Environmental Impact  
6 Statement (“FEIS”). PLU-B-000039. The FEIS included responses to comments that the Forest  
7 Service had received on the DEIS. *Id.*

8           **RESPONSE:** Disputed to the extent that the statement alleges that the responses to  
9 comments were legally adequate. *See* Resp. ¶ 32.

10           39. Chapter 2 of the FEIS describes and compares the alternatives considered.  
11 PLU-B-000062-87. The Forest Service considered in detail four action alternatives and a no action  
12 alternative. PLU-B-000062. The no-action alternative maintains the status quo and provides a  
13 baseline for comparing the other alternatives. PLU-B-000067.

14           **RESPONSE:** Undisputed.

15           40. The Forest Service also considered eleven alternatives but eliminated these from  
16 detailed study. PLU-B-000081-85. These eleven alternatives proposed to: designate all  
17 inventoried routes as motorized trails; designate more trails; designate all inventoried routes and  
18 decommission and restore at a later date; designate all unpaved ML-3 and ML-4 roads for mixed  
19 use; designate and manage areas for dispersed camping; designate more motorized play areas;  
20 allow cross-country travel to firewood trees; provide a balanced recreation experience for all  
21 vehicle types; base seasonal closure on rainfall rather than dates; designate fewer trails based on  
22 water and soil; and reduce road density based on comprehensive travel analysis and seasonal wet  
23 weather closures of roads. *Id.*

24           **RESPONSE:** Undisputed.

25 ///

26 ///

27 ///

28 ///

PACIFIC LEGAL FOUNDATION  
 930 G Street  
 Sacramento, CA 95814  
 (916) 419-7111 FAX (916) 419-7747

41. Table 3 in Chapter 2 of the FEIS is a Summary Comparison of Alternatives:

Item	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	
Cross-country travel	Continues	Prohibited	Prohibited	Prohibited	Prohibited	
Changes to Vehicle Class from Highway Legal Only to Mixed Use (Both Highway-Legal and Non-Highway Legal Allowed)	0 miles	0 miles	0 miles	4.1 miles	4.1 miles	
Motorized Trails & Areas Added To National Forest System	Trails Added Open to All Vehicles	0 miles	216.07 miles	0 miles	108.14 miles	156.35 miles
	Trails Added Open to OHV Use Vehicles 50" or Less	0 miles	62.81 miles	0 miles	22.42 miles	38.71 miles
	Trails Added Open to Motorcycles	0 miles	82.46 miles	0 miles	9.65 miles	39.04 miles
	Total	0 miles	361.34 miles	0 miles	140.21 miles	234.10 miles
	Areas Added Open to OHV Use Vehicles 50" or Less	None	Sly Creek area 36 acres	None	None	None

PLU-B-000086.

**RESPONSE:** Undisputed.

42. The Forest analyzed the physical, biological, social, and economic environments that would be affected by the proposed action and alternatives in chapter 3 of the FEIS. PLU-B-000088. For each alternative, the FEIS discussed the direct, indirect, and cumulative effects on the environment from implementation at the site-specific and Forest-wide scales. *Id.* The Forest

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 recognized that unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed  
2 and habitat degradation, and impacts to cultural resource sites. PLU-B-000090. On some Plumas  
3 NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted  
4 in unplanned, unauthorized roads and trails. *Id.* These routes generally developed without  
5 environmental analysis or public involvement, and do not have the same status as NFTS roads and  
6 trails included in the Forest transportation system. *Id.*

7 **RESPONSE:** Disputed. The Service did not adequately analyze the Project's direct or  
8 cumulative effects. *See* PLU-A-000151-153, 000158-164, 000166-173 (SAC/CORVA Appeal);  
9 PLU-A-000320-322 (Butte County Appeal). Motorized vehicle use can be managed in a way that  
10 avoids environmental harm, yet the Service has no evidence that existing access on the Plumas  
11 National Forest caused systematic environmental harm. *See* PLU-D-007149-7150 (SAC  
12 Comment). The majority of the Plumas National Forest's non-system routes were in fact planned,  
13 as they were built for logging, fire access, and other land management. PLU-D-007131 (SAC  
14 Comment).

15 43. Appendix A of the FEIS lists each route proposed for addition to the NFTS and  
16 identifies the alternative(s) under which the route is proposed, the type of vehicle(s) allowed, and  
17 the season when the route would be open. In addition, Appendix A identifies any resource  
18 concerns and necessary maintenance and mitigation measures. PLU-B-000090, -494-524.

19 **RESPONSE:** Disputed to the extent that the statement alleges that Appendix A accurately  
20 portrays the resource concerns, or necessary mitigation, for any given route. *See* PLU-A-000160-  
21 164, 000174-181 (SAC/CORVA Appeal). Appendix A contains no information with respect to  
22 the approximately 700 miles of routes that did not survive the Service's "first cut" paper analysis.

23 44. On August 30, 2010, the Forest Supervisor for the Plumas National Forest signed  
24 the Record of Decision ("ROD") for the Plumas National Forest Motorized Travel Management  
25 Project. PLU-B-0000028.

26 **RESPONSE:** Undisputed. The Forest Users note that the Service could have coordinated  
27 with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-000319-320  
28 (Butte County Appeal); PLU-A-000313-314 (Plumas County Appeal).

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 45. The FEIS and ROD were made available to the public. PLU-B-000001, 002, 009.

2 **RESPONSE:** Undisputed.

3 46. The ROD selected Alternative 5 as presented in the FEIS and shown on the map  
4 included with the ROD, with two minor modifications. PLU-B-000014-16. The ROD prohibits  
5 cross-country motorized travel and motor vehicle travel off designated NFTS roads and trails, and  
6 areas by the public, except as allowed by permit or other authorization.

7 **RESPONSE:** Disputed to the extent that the statement suggests that no significant changes  
8 occurred between the draft and final environmental impacts statements. *See* Pls.' Mem. Summ.  
9 J. at 28-29; Pls.' Resp. & Reply at 11-13.

10 47. The ROD increases the motorized trail network from 130 miles to 364 miles of  
11 NFTS motorized trails, a 234 mile increase. PLU-B-000017-18. Of the 234 miles, 156 miles are  
12 suitable for all vehicles, 39 miles are suitable for vehicles up to 50 inches wide, and 39 miles are  
13 suitable for motorcycles only. PLU-B-000016.

14 **RESPONSE:** Undisputed. The Forest Users note that, contrary to the impression created  
15 by the ROD's recitation, the net effect of the Service's project was to *decrease* access to the forest.  
16 *E.g.*, PLU-A-000160 (SAC/CORVA Appeal); PLU-A-000320-321 (Butte County Appeal).

17 48. The ROD incorporates changes to the vehicle class on Slate Creek Road (NFS  
18 24N28 road, 4.1 miles) to allow both highway and non-highway legal vehicles (mixed use) to use  
19 this maintenance level 3 (ML-3) road. PLU-B-000016.

20 **RESPONSE:** Undisputed.

21 49. The two minor modifications between the FEIS and the ROD are (1) the removal  
22 of approximately 600 feet at the end of Trail 8M11 based on asbestos results and (2) the removal  
23 of trails in California red-legged frog critical aquatic refuge areas. PLU-B-000014-15. The Sly  
24 Creek open area (located in the Pinkard critical aquatic refuge) was also dropped. PLU-B-000015.  
25 Eliminating trails in these aquatic refuge areas reduces potential effect to California red-legged  
26 frogs and complies with the programmatic agreement between the Forest Service, Region 5 Pacific  
27 Southwest and the U.S. Fish and Wildlife Service for threatened and endangered species. *Id.*

28 ///

PACIFIC LEGAL FOUNDATION  
 930 G Street  
 Sacramento, CA 95814  
 (916) 419-7111 FAX (916) 419-7747

1           **RESPONSE:** Disputed to the extent that the statement alleges that the Service’s actions  
 2 were compelled by the Endangered Species Act. The Act’s consultation provisions do not give  
 3 the Fish and Wildlife Service veto power over the Forest Service’s decision-making. *See City of*  
 4 *Tacoma v. FERC*, 460 F.3d 53, 76 (D.C. Cir. 2006) (“[T]he ultimate responsibility for compliance  
 5 with the [Endangered Species Act] falls on the action agency.”); 50 C.F.R. § 402.15(a) (“[T]he  
 6 Federal agency shall determine whether and in what manner to proceed with the action . . . .”).  
 7 Disputed also to the extent that the statement alleges that the potential effects were to actual frog  
 8 habitat. Many miles of routes were dropped owing to the effects to *potential* frog habitat. PLU-A-  
 9 000180 (SAC/CORVA Appeal); PLU-A-000321 (Butte County Appeal).

10           50. The ROD also includes mitigation measures for motorized trails with resource  
 11 concerns, allowing such trails to be added to the NFTS with negligible environmental impacts and  
 12 in compliance with law, regulation, and policy. PLU-B-000016. These trails would be added to  
 13 the NFTS, but not placed on the Motorized Vehicle Use Maps (“MVUM”) as open to the public  
 14 until the mitigation is completed. PLU-B-000015. Opening trails that require mitigation is  
 15 contingent on receiving adequate funds and/or volunteer labor to complete the work.  
 16 PLU-B-000016.

17           **RESPONSE:** Disputed to the extent that the ROD accurately portrays the resource  
 18 concerns, or necessary mitigation, for any given route. *See* PLU-A-000160-164, 000174-181  
 19 (SAC/CORVA Appeal). Many routes contained in the ROD’s Table 2—those routes that would  
 20 be designated once appropriate mitigation were identified, PLU-B-000035—still have not been  
 21 added to the National Forest Transportation System.

22           51. The Forest Service recognized that eliminating cross-country travel from designated  
 23 routes would reduce the availability of acreage for motorized vehicle use as well as motorized  
 24 vehicle access to dispersed recreation activities. PLU-B-000017. However, the addition of  
 25 previously unauthorized roads and trails to the NFTS will improve the quality of motorized  
 26 recreation opportunities by ensuring that these roads and trails receive adequate maintenance and  
 27 recreation management practices (such as signage, design features, law enforcement, educational

28 ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 materials, etc.) that are not otherwise available for unauthorized roads and trails. This will ensure  
2 the long term sustainability of these recreational resources. *Id.*

3       **RESPONSE:** Disputed to the extent that the Project’s limited additions to the National  
4 Forest Transportation System adequately compensate for the significant negative impacts to  
5 recreation and other types of access caused by the Project’s closure of hundreds of miles of non-  
6 system routes. *See* PLU-A-000151-153, 000158-159, 000167-175, 000178-179 (SAC/CORVA  
7 Appeal); PLU-A-000320-322 (Butte County Appeal); PLU-A-000314-315 (Plumas County  
8 Appeal).

9       52. The ROD also included implementation of mitigation measures designed to  
10 minimize, reduce, or eliminate impacts on sensitive natural and cultural resources for motorized  
11 routes added to the NFTS. PLU-B-000004, 018-021, 035-038.

12       **RESPONSE:** Disputed to the extent that the statement alleges that these mitigation  
13 measures were necessary. PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000321 (Butte  
14 County Appeal); PLU-A-000315 (Plumas County Appeal).

15       53. The alternative selected in the ROD provides access to over 110 dispersed  
16 recreation sites across the Forest. PLU-B-000097. Approximately 83 percent of the Plumas  
17 National Forest will be within ½ mile of an authorized road or trail once the Plumas Motorized  
18 Travel Management Project is fully implemented. PLU-B-000095 (Table 6). As the ROD further  
19 explains, the Plumas National Forest already contains an extensive network of existing roads and  
20 motorized trails. At the same time, the ROD removes duplicative routes and results in a more  
21 manageable system that better protects forest resources. *Id.*

22       **RESPONSE:** Disputed to the extent that mere geographic closeness is a good indicator  
23 of access or the quality of the recreational experience. *See* PLU-A-000152 (SAC/CORVA Appeal)  
24 (“While able bodied people may travel by foot, horse or bicycle in non-designated areas, the  
25 disabled, handicapped and elderly will have no way to access points of interest within the Forest  
26 including [dispersed] camping . . .”). The Project’s mass route closure was not the only  
27 manageable system. *See* PLU-D-007134-7135 (SAC Comment) (recommending the designation  
28 of all routes except those with “egregious damage,” and the development of a comprehensive plan



PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 | for resource damage mitigation and decommissioning on an annual basis). The Service never has  
2 | provided the public a map to these 110 “dispersed recreation sites.”

3 | 54. The decision resulted in only a minor reduction in road and trail density, from an  
4 | average of 2.44 miles per square mile to 2.09 miles per square mile. PLU-B-000017.

5 | **RESPONSE:** Disputed to the extent that road density is a good indicator of the quality of  
6 | motorized vehicle access. *See* PLU-E-000014-16 (Plumas County Comment) (discussing among  
7 | other things the importance of spurs and fire and emergency access routes). *See also* Resp. ¶ 53.  
8 | Generally, road and trail density are used to measure impacts to soil and water quality, not to the  
9 | quantity or quality of motorized vehicle access. *See* PLU-B-000017.

10 | 55. The 2013 Plumas National Forest MVUMs are available at PLU-J-00002-07. These  
11 | maps show the NFS roads, trails, and areas that are designated for motor vehicle use pursuant to  
12 | 36 C.F.R. § 212.51. The MVUMs also identify the vehicle classes allowed on each route and in  
13 | each area, and any seasonal restrictions that apply on those routes and in those areas.

14 | **RESPONSE:** Undisputed.

15 | 56. The ROD does not preclude consideration of additional trails and trail networks in  
16 | the future. The Forest is committed to continuing to refine the transportation system in the future  
17 | and provide for recreation areas while meeting Agency needs. PLU-B-000018-19; *see e.g.*,  
18 | PLU-B-001168-69 (noting that trails may be added in the future), -1178 (“nothing in this decision  
19 | prohibits future consideration of status changes to system roads.”), -1218 (“[f]uture analysis may  
20 | identify additional roads for Mixed Use Designation); PLU-J-000008, -10 (letters between Butte  
21 | County Board of Supervisors and Deputy Forest Supervisors discussing meetings and possibility  
22 | of mixed use on specific routes).

23 | **RESPONSE:** Disputed to the extent that the Service’s post-Project consideration cures the  
24 | errors in the agency’s original decision-making. *See, e.g.*, PLU-A-000314 (Plumas County  
25 | Appeal) (noting that the Service’s promise that it will use county roads as connectors when  
26 | considering future additions to the system does not address the transportation conflicts created by  
27 | the already closed routes). Many routes contained within the ROD’s Table 2—those routes that

28 | ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 | would be designated once appropriate mitigation were identified, PLU-B-000035—still have not  
2 | been added to the National Forest Transportation System.

3 |         57.     The Forest Service provided an administrative appeal period for the ROD and FEIS.  
4 | Nine individual appeals and associated attachments were received, and a reviewing official  
5 | addressed all nine appeals and their associated points in a written decision. PLU-A-000001, -04,  
6 | -07, -10, -13, -16, -19, -22, -25, -28, -142-566.

7 |             **RESPONSE:** Disputed to the extent that the statement alleges that the reviewing official’s  
8 | decision was correct. *See* Pls.’ Summ. J. Mem. at 11-30; Pls.’ Resp. & Reply.

9 |         58.     Two of the appellants, Plumas County and Butte County, alleged on appeal that the  
10 | Forest failed to coordinate with local governments. In addition to responding in writing to this  
11 | appeal, the Forest Service met with Plumas County representatives on at least two occasions and  
12 | met with Butte County officials in January 2011. PLU-A-000063, -121-23, -129-30, -134-35.

13 |             **RESPONSE:** Disputed. SAC and CORVA also raised the coordination issue in their  
14 | administrative appeal. PLU-A-000147-151. The Service’s post-Project interactions with county  
15 | officials do not, as a matter of fact, satisfy the agency’s obligations under NEPA and the Travel  
16 | Management Rule. *Cf.* PLU-A-000319-322 (Butte County Appeal). Neither do they satisfy those  
17 | obligations as a matter of law. *See Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007)  
18 | (“Post-hoc examination of data to support a pre-determined conclusion is not permissible because  
19 | ‘[t]his would frustrate the fundamental purpose of NEPA’ . . . .” (quoting *California v. Norton*, 311  
20 | F.3d 1162, 1175 (9th Cir. 2002))).

21 |         59.     The Forest Service responded that the issues raised by the counties on appeal were  
22 | the same as those raised as comments on the DEIS and had been considered. *See* PLU-A-  
23 | 000010-15. When Plumas County raised this claim of a failure to coordinate on appeal, the Forest  
24 | Service referred to a list of meetings held with Plumas County during the planning process as well  
25 | as mailing lists showing the contacts made to the county. PLU-A-000078; PLU-E-000058.  
26 | Similarly, the Forest Service responded to the appeal from Butte County with specific references  
27 | to earlier attempts to address those concerns. PLU-A-000083.

28 | ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1           **RESPONSE:** Undisputed as to the general characterization of the content of the Forest  
2 Service’s response to the Counties’ appeals. Disputed to the extent that the statement alleges that  
3 the Service’s interactions with County officials satisfied the agency’s coordination obligation. *See*  
4 *Resp.* ¶ 58.

5           60. An examination of the first cut spreadsheets shows that the Forest Service  
6 considered input from the public on dead-end spurs. To provide one example, the draft  
7 Beckwourth Inventory notes that Plaintiff Sierra Access Coalition proposed trail number 6936 for  
8 inclusion and identifies the trail as a “dead end spur” with a medium level of benefits and a  
9 medium level of concerns and risks. PLU-G-001245. The final Beckwourth Inventory provides  
10 this same information and identifies trail number 6936 as Trail 13M21A. PLUG-001239. Table 1  
11 in the FEIS, which identifies trails proposed for inclusion to the NFTS, then lists Trail 13M21A  
12 under Alternative Two. PLU-B-000077.

13           **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to  
14 the extent that the statement alleges that this consideration absolved the Service from its duty to  
15 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.  
16 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

17           61. PLU-D-012341 is a route designation form submitted by a member of the public  
18 requesting inclusion of route number 7209. Route 7209 (inventory number in the spreadsheet) is  
19 listed in the spreadsheet associated with the time frame when route designation forms were  
20 submitted (in 2007) at PLU-D-012280. This route is carried forward in the latest version of the  
21 spreadsheet at PLU-G-001238. This latest version of the spreadsheet adds a “trail number,” which  
22 is 12M12. *Id.*; PLU-B-0000076, 119, 516. Trail 12M12 is also listed in the ROD in table 2  
23 requiring mitigation before being added to the NFTS at PLU-B-000037.

24           **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to  
25 the extent that the statement alleges that this consideration absolved the Service from its duty to  
26 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.  
27 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

28 ///

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

1 62. PLU-D-012370 is a route designation form submitted by Sierra Access Coalition  
2 (“SAC”) requesting inclusion of route number 7252. Route 7252 is listed in the old spreadsheet  
3 at PLU-D-012279. This route is carried forward in the latest spreadsheet at PLU-G-001239 and  
4 is assigned trail number 13M10B. This trail number is found in the FEIS in Alternative 2 at  
5 PLU-B-000077, 518. This route was not included in Alternative 5, the selected alternative, and  
6 therefore this route is not included in the ROD.

7 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to  
8 the extent that the statement alleges that this consideration absolved the Service from its duty to  
9 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.  
10 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

11 63. PLU-D-012449 is a route designation form submitted by SAC requesting inclusion  
12 of route number 6048. Route 6048 is in the old spreadsheet at PLU-D-012271. This route is  
13 carried forward in the latest spreadsheet at PLU-G-001238 and is assigned trail number 10M12.  
14 This trail number is found in the FEIS at PLU-B-000074, 431, 510. Trail 10M12 is also listed in  
15 the ROD in table 1 and was added to the NFTS at PLU-B-000032.

16 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to  
17 the extent that the statement alleges that this consideration absolved the Service from its duty to  
18 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.  
19 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

20 DATED: June 9, 2016.

21 Respectfully submitted,

22 M. REED HOPPER  
23 DAMIEN M. SCHIFF

24 By           /s/ Damien M. Schiff            
25 DAMIEN M. SCHIFF

26 Attorneys for Plaintiffs  
27  
28

**CERTIFICATE OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I hereby certify that on June 9, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California through the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Damien M. Schiff  
DAMIEN M. SCHIFF

PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747