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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO DIVISION

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

14 Plaintiffs,)

15 v.)

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

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

**PLAINTIFFS' STATEMENT
OF UNDISPUTED FACTS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Date: July 21, 2016
Time: 2:00 p.m.
Place: Courtroom 7, 14th Floor
Judge: Hon. Morrison C. England, Jr.

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1 Pursuant to Local Rule 260, AMY GRANAT; CORKY LAZZARINO; SIERRA ACCESS
2 COALITION; CALIFORNIA OFF-ROAD VEHICLE ASSOCIATION; THE COUNTY OF
3 PLUMAS; and THE COUNTY OF BUTTE (collectively, the “Plumas National Forest Group”),
4 hereby submit this Statement of Undisputed Facts, with “page references to declarations and other
5 supporting documentation” on record in this case, in Support of Plaintiffs’ Motion for Summary
6 Judgment against UNITED STATES DEPARTMENT OF AGRICULTURE, a federal agency;
7 TOM VILSACK, in his official capacity as Secretary of the UNITED STATES DEPARTMENT
8 OF AGRICULTURE; UNITED STATES FOREST SERVICE, a federal agency; THOMAS L.
9 TIDWELL, in his official capacity as Chief of the UNITED STATES FOREST SERVICE;
10 RANDY MOORE, in his official capacity as PACIFIC SOUTHWEST REGIONAL FORESTER;
11 ALICE CARLTON, in her official capacity as the former PLUMAS NATIONAL FOREST
12 SUPERVISOR; AND EARL FORD, in his official capacity as PLUMAS NATIONAL FOREST
13 SUPERVISOR, (“Federal Defendants”), under the National Environmental Policy Act, the
14 National Forest Management Act, and the Administrative Procedure Act. Referenced
15 documentation is set forth in the Federal Register and the Administrative Record. Plumas National
16 Forest Group cites in support of their motion the following facts:

17 **THE 2005 TRAVEL MANAGEMENT RULE**

18 1. In 2005, the United States National Forest Service (the “Forest Service”) issued its
19 Travel Management Rule. 70 Fed. Reg. 68,264, *et seq.* (Nov. 9, 2005), codified at 36 C.F.R.
20 § 212.50 (the 2005 Travel Management Rule).

21 2. At the time the 2005 Travel Management Rule was promulgated, the National
22 Forest Transportation System included both a managed system of roads and trails and, “[i]n
23 addition to this managed system of roads and trails, many National Forests contain[ed] user-created
24 roads and trails.” 70 Fed. Reg. at 68,264.

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

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1 4. Motor vehicles “represent an integral part of [the] recreational experience,” in
2 National Forests and are “a legitimate and appropriate way for people to enjoy their National
3 Forests—in the right places, and with proper management.” 70 Fed. Reg. at 68,264.

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

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

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

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

20 9. The specific criteria that the Forest Service must use for the designation of roads,
21 trails, and areas on National Forest System lands include effects on damage to soil, watershed,
22 vegetation, and other forest resources; harassment of wildlife and significant disruption of wildlife
23 habitats; conflicts between motor vehicle use and existing or proposed recreational uses of
24 National Forest System lands or neighboring federal lands; and conflicts among different classes
25 of motor vehicle uses of National Forest System lands or neighboring Federal lands. 36 C.F.R. §
26 212.55(b).

27 10. After National Forest System roads, National Forest System trails, and areas on
28 National Forest System lands have been designated for motor vehicle use in accordance with the

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

4 **IMPLEMENTATION OF THE TRAVEL MANAGEMENT**
5 **RULE BY THE DEFENDANTS AT THE PLUMAS NATIONAL FOREST**

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

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

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

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

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

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

7 | 16. The Forest Service’s Draft Environmental Impact Statement (“DEIS”) is dated
8 | December, 2008. AR PLU-B-000649-1107.

9 | 17. The Plaintiffs in the Plumas National Forest Group filed numerous comments on
10 | the DEIS, setting forth their objections, including but not limited to those documented in AR
11 | PLU-B-001139, AR PLU-B-001223, AR PLU-B-001180, AR PLU-B-001582-83, and AR
12 | PLU-B-001582-830. *See* Granat Decl. ¶¶ 4-18, Lazzarino Decl. ¶¶ 5-15, Perreault Decl. ¶¶ 5-20,
13 | Crump Decl. ¶¶ 7-14.

14 | 18. The Final Environmental Impact Statement (“FEIS”), AR PLU-B-000039-639, and
15 | Record of Decision (“ROD”), AR PLU-B-000009-38 (collectively, the “Decision Documents”),
16 | are dated August, 2010.

17 | 19. The ROD bans off-road vehicle use on all Maintenance Level 3 roads in Plumas
18 | National Forest. AR PLU-B-000104.

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

22 | 21. Of the inventoried 3,236 routes, 3,036 routes were not included in the alternatives
23 | analysis of the Decision Documents. AR PLU-G-001242-1253 (Beckwourth); AR PLU-G-001256
24 | -1261 (Feather River); PLU-G-001277-1292 (Mount Hough).

25 | 22. The FEIS did not include a discussion of Plumas County or Butte County plans and
26 | policies in relation to motorized vehicle use on County roads, possible conflicts between the goals,
27 | policies, and standards of the Butte County General Plan and the Plumas County General Plan, or
28 | conflicts with the Plumas County Regional Transportation Plan. AR PLU-B-000039-639.

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

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

15 25. The cumulative impacts analysis in the FEIS is limited to the boundaries of Plumas
16 National Forest. AR PLU-B-000089-90.

17 DATED: March 30, 2016

18 Respectfully submitted,

19 DAMIEN M. SCHIFF
20 THEODORE HADZI-ANTICH

21 By /s/THEODORE HADZI-ANTICH
22 THEODORE HADZI-ANTICH

23 Attorneys for Plaintiffs AMY GRANAT, *et al.*
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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California by using 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 Eastern District Court's CM/ECF system.

/s/THEODORE HADZI-ANTICH
THEODORE HADZI-ANTICH

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