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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL
DIVERSITY, EARTH ISLAND
INSTITUTE, and CALIFORNIA
CHAPPARAL INSTITUTE,

Plaintiffs,

v.

SUSAN SKALSKI, in her
official capacity as Forest
Supervisor for the Stanislaus
National Forest, and UNITED
STATES FOREST SERVICE, an
agency of the Department of
Agriculture,

Defendants.

No. 1:14-cv-01382-GEB-GSA

**DISPUTE RE WHETHER THE
ADMINISTRATIVE RECORD SHOULD BE
SUPPLEMENTED**

On September 17, 2014, Defendants United States Forest Service and Susan Skalski filed an Opposition to Plaintiffs' Motion to Supplement the Administrative Record, in which they state:

On September 16, the Court denied the Plaintiffs' motion for an injunction. Since the opinion does not rule on Plaintiffs' request to supplement the administrative record, Federal Defendants are filing this opposition in compliance with the Court's previous scheduling order, ECF 36.

(Opp'n to Mot. to Supplement Administrative Record ("AR") 1 n. 1, ECF No. 49 (citation omitted).)

1 Later on September 17, 2014, Plaintiffs filed a Reply,
2 in which they state, *inter alia*:

3 As an initial matter, yesterday's "Order
4 Denying Plaintiffs' Motion For Temporary
5 Restraining Order" highlights why this Court
6 should grant Plaintiffs' Motion to
7 Supplement. In that Denial, this Court
8 misunderstood Clark (2007), which directly
9 demonstrates why the declarations are
10 necessary for this Court to address
11 Defendants' NEPA obligations in this case as
12 it moves forward.

13

14 **Had this Court utilized the Bond Declaration,**
15 **as it should,** to help it with difficult
16 technical matters, it would understand what
17 Clark (2007) actually shows, and would not be
18 in the position of attempting, on its own, to
19 interpret scientific data that was ignored or
20 misrepresented by Defendants, and which is
21 properly explained for the Court by
22 scientific experts, such as owl expert Monica
23 Bond.

24

25 **[Other] errors can be avoided if the Court**
26 **allows itself to use the expert declarations**
27 **of Monica Bond, Derek Lee, and Dominick**
28 **DellaSala.** We therefore respectfully urge the
Court to accept the declarations for what
they are—helpful aids for the Court in
understanding difficult technical material.
They clearly are needed and should therefore
be allowed.

(Pls.' Reply in Supp. of Mot. to Supplement AR, 3:18-21, 4:6-10,
ECF No. 50 (emphasis added).)

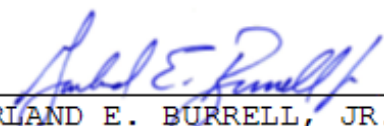
To the extent either or both of these filings indicate
the Court did not consider the Declarations of Monica Bond, Derek
Lee, and Dominick DellaSala in connection with Plaintiffs' Motion
for Temporary Restraining Order, the parties are referred to the
following portion of the September 16, 2014 Order Denying
Plaintiffs' Motion for a Temporary Restraining Order:

1 Plaintiffs move "to supplement the
2 administrative record in this case with the
3 declarations of Monica Bond, Derek Lee, and
4 Dominick DellaSalla." (Pls.' Mot. to
5 Supplement the AR 2:7-8, ECF No. 32.)
6 However, "[e]ven considering the
7 declarations, the [TRO] is denied at this
8 time. Therefore, the Court [need not decide
9 the motion to supplement the administrative
10 record when deciding whether to issue a
11 TRO.]" Willis v. Buffalo Pumps Inc., No.
12 12cv744 BTM (DHB), 2014 WL 1028437, at *3 n.1
13 (S.D. Cal. Mar. 17, 2014) (declining to reach
14 evidentiary objections raised in connection
15 with motion for summary judgment); accord
16 Hernandez v. City of Oakley, No. C-11-02415
17 JCS, 2012 WL 5411781, at *3 n.4 (N.D. Cal.
18 Nov. 6, 2012) ("The Court need not reach this
19 [evidentiary] objection because, even
20 assuming these [deposition] excerpts are
21 admissible, it finds in favor of Defendants
22 as to all of the remaining claims in this
23 action.").

24 (Order 2, n.3, ECF No. 48 (emphasis added).)

25 Since the TRO has been denied, and no matter is pending
26 requiring decision on Plaintiffs' Motion to Supplement the
27 Administrative Record at this time, the issue is not addressed.

28 Dated: September 17, 2014

29 
30 _____
31 GARLAND E. BURRELL, JR.
32 Senior United States District Judge