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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

JEANNE HIGGINS, 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,

AND

TUOLOMNE COUNTY, AMERICAN
FOREST RESOURCE COUNCIL,
CALIFORNIA FORESTRY
ASSOCIATION, WILLIAM AND MARY
CROOK, SIERRA PACIFIC
INDUSTRIES, YOSEMITE
STANISLAUS SOLUTIONS, and
CALIFORNIA FARM BUREAU
FEDERATION

No. 1-14-CV-01382-GEB-GSA

**ORDER DENYING PLAINTIFFS'
REQUEST FOR AN INJUNCTION
PENDING APPEAL^{2*}**

1
2 Defendant-
3 Intervenor,¹
4

5 On October 28, 2014, Plaintiffs filed a "NOTICE OF
6 MOTION AND MOTION FOR ISSUANCE OF AN INJUNCTION PENDING APPEAL,"
7 and an "APPLICATION TO SHORTEN TIME ON MOTION FOR INJUNCTION
8 PENDING APPEAL." Plaintiffs' application for an order shortening
9 time for the briefing on their motion was granted (ECF No. 81,
10 and the briefs have been considered.

11 Plaintiffs argue in their injunction pending appeal
12 motion that an injunction is required "to avoid likely
13 irreparable harm" in Stanislaus National Forest that would be
14 endured "from the removal of the preferred foraging habitat for
15 resident California spotted owls. . . [as a consequence of] the
16 Nevergreen, Double Fork and Triple A timber sales". (Mot.
17 Issuance of Inj. Pending Appeal ("Mot.") 2:11-15, ECF No. 71.)

18 Plaintiffs previously moved for a preliminary
19 injunction on September 19, 2014 (ECF No. 52,) which was denied
20 in an order issued on October 7, 2014. (Order Den. Pls.' Mot.
21 Prelim. Inj., ECF No. 65.) Plaintiffs current Motion for an
22 Injunction Pending Appeal is based on "documents already on file
23

24 ¹ Defendant Susan Skalski seeks to substitute as a party Jeanne
25 Higgins in her official capacity as Forest Supervisor for the Stanislaus
26 National Forest pursuant to Fed. Rule Civ. Proc. 25(d). When a public officer
27 who is a party to an action in her official capacity "ceases to hold office
28 while the action is pending," her "successor is automatically substituted as a
party." Fed. Rule Civ. Proc. 25(d). Therefore, Jeanne Higgins in her official
capacity as Forest Supervisor for the Stanislaus National Forest is
substituted for defendant Skalski in her official capacity as Forest
Supervisor for the Stanislaus National Forest.

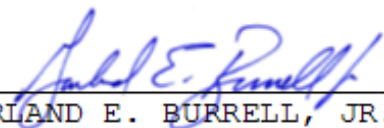
1 with th[e] Court" and does not raise any argument that was not
2 addressed in their prior motion for an injunction. (Mot. 4:1.)

3 The legal standard applicable to Plaintiffs' Motion for
4 an Injunction Pending Appeal is the same as the standard applied
5 to Plaintiffs' Motion for Preliminary Injunction. See Alaska
6 Conservation Council v. U.S. Army Corps of Eng'rs, 472 F.3d 1097,
7 1100 (9th Cir. 2006); Humane Soc. of U.S. v. Gutierrez, 558 F.3d
8 896, 897 (9th Cir. 2009) (citing Winter v. Natural Res. Council,
9 555 U.S. 7, 20 (2008)).

10 Since Plaintiffs' Motion for an Injunction Pending
11 Appeal presents no new argument or evidence and is reviewed under
12 the same legal standard as their prior motion for a preliminary
13 injunction, the instant motion is denied for the reasons stated
14 in the October 7, 2014 order denying Plaintiffs' motion for a
15 preliminary injunction.

16 Dated: November 7, 2014

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GARIAND E. BURRELL, JR.
Senior United States District Judge