IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT A. LUCIANO, JR., Trustee of the Robert A. Luciano Jr. Revocable Trust Dated February 25, 1995, Plaintiff, v. UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF AGRICULTURE; TOM VILSACK, Secretary of Agriculture; UNITED STATES FOREST SERVICE; TOM TIDWELL; RANDY MOORE; EARL FORD; DEB BUMPUS; and Does 1-25, Defendants.	2:11-cv-1831-GEB-KJN ORDER REQUIRING BRIEFING; AND CONTINUING HEARING

Review of Plaintiff's Complaint has prompted the Court to require briefing on the issue whether Plaintiff's Administrative Procedure Act ("APA") claims are actionable claims. This briefing will be required since judicial review is not authorized under the APA to the extent that the challenged agency action or inaction "is committed to agency discretion by law." Reeb v. Thomas, 636 F.3d 1224, 1226 (9th Cir. 2011). In this action, Plaintiff appears to challenge the U.S. Forest Service's refusal to complete Plaintiff's various "proposals for the exchange of" Plumas National Forest land with Plaintiff's "private lands" under the Small Tracts Act and the Federal Land Policy and Management Act. (Compl. ¶¶ 1, 30, ECF No. 1.) However, neither party briefs in

pending cross-motions for summary judgment whether the "agency action" or inaction Plaintiff challenges "is committed to agency discretion by law." 5 U.S.C. § 701(a).

Therefore, each party shall file a brief discussing this issue no later than April 15, 2013. Each party may file a response brief no later than April 22, 2013. A hearing on this issue is scheduled to commence at 9:00 a.m. on May 6, 2013.

Further, since this issue should be decided before any hearing is conducted on the pending cross-motions for summary judgment, the hearing on the cross-motions for summary judgment currently scheduled for April 8, 2013, is continued to commence at 9:00 a.m. on August 12, 2013.

Dated: March 28, 2013

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