

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT A. LUCIANO, JR., Trustee)	
of the Robert A. Luciano Jr.)	2:11-cv-1831-GEB-KJN
Revocable Trust Dated February)	
25, 1995,)	
)	<u>ORDER REQUIRING BRIEFING; AND</u>
Plaintiff,)	<u>CONTINUING HEARING</u>
)	
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.)	
)	

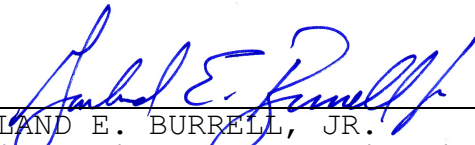
Review of Plaintiff's Complaint has prompted the Court to require briefing on the issue whether Plaintiff's Administrative Procedure Act ("APA") claims are actionable claims. This briefing will be required since judicial review is not authorized under the APA to the extent that the challenged agency 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

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

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

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

12 Dated: March 28, 2013

13
14 
15 _____
16 GARLAND E. BURRELL, JR.
17 Senior United States District Judge
18
19
20
21
22
23
24
25
26
27
28