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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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7 DENNIS D. MURPHY,

2:13-cv-02315-GEB-AC

8 Plaintiff,

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

9 v.

10 UNITED STATES FOREST SERVICE;
11 THOMAS TIDWELL, in his
12 official capacity as Chief of
13 the United States Forest
14 Service; NANCY J. GIBSON, in
her official capacity as
Forest Supervisor of the
United States Forest
Service,

15 Defendant.
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17 On Thursday, November 14, 2013, at approximately 6:00
18 p.m., Plaintiff filed a motion for a temporary restraining order
19 ("TRO") to "enjoin the Upper Echo Lake Hazardous Fuels Reduction
20 Project," ("Project") (Pl.'s Notice of Mot. 1:6-7, ECF No. 8),
21 which the Forest Service commenced on September 30, 2013. (Compl.
22 ¶ 27.) Plaintiff asserts it should be scheduled for hearing on
23 Monday, November 18, 2013.

24 As prescribed in Local Rule 231(b):

25 **Timing of Motion.** In considering a motion for
26 a temporary restraining order, the Court will
27 consider whether the applicant could have
28 sought relief by motion for preliminary
injunction at an earlier date without the
necessity for seeking last-minute relief by
motion for temporary restraining order.

1 Should the Court find that the applicant
2 unduly delayed in seeking injunctive relief,
3 the Court may conclude that the delay
4 constitutes laches or contradicts the
5 applicant's allegations of irreparable injury
6 and may deny the motion solely on either
7 ground.

8 Here, Plaintiff alleges: "On November 15, 2012, the
9 Forest Service issued a decision memo in which the agency
10 indicated its determination to implement the Upper Echo Lakes
11 project." (Compl. ¶ 26.) Moreover, Plaintiff avers that he wrote
12 "letters to the Forest Service outlining a variety of concerns
13 with the Project on July 22 and August 21, 2013." (Decl. of
14 Dennis D. Murphy, Ph.D 3:7-8, ECF No. 8-2). Plaintiff also
15 alleges, "On September 30, 2013, the Forest Service commenced the
16 Project over [his] objections," suspended the Project "[d]ue to a
17 federal government shutdown," and "resumed [the Project] sometime
18 after the shutdown ended on October 16, 2013, but before October
19 22, 2013." (Compl. ¶ 27.)

20 Plaintiff provides no explanation concerning why he
21 waited over one month after work on the project commenced to file
22 his motion for a TRO, which he expects to be scheduled for
23 hearing in virtually one business day. Since Plaintiff has not
24 provided sufficient explanation concerning why he "could [not]
25 have sought relief by motion for preliminary injunction at an
26 earlier [or future] date without the necessity for seeking last-
27 minute relief by motion for temporary restraining order," Local
28 R. 231(b), the TRO is denied on "procedural grounds alone," and
 it is "unnecessary to address the substantive issues" of
 Plaintiff's motion at this time. Jameson Beach Prop. Owners'
 Ass'n v. United States, 2:13-CV-01025-MCE-AC, 2013 WL 2297067, at

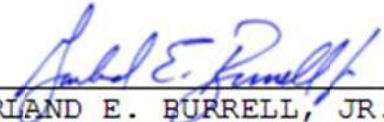
1 *4 (E.D. Cal. May 24, 2013).

2 Dated: November 15, 2013

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

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