

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARTH ISLAND INSTITUTE, and
CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

v.

TOM QUINN, in his official
capacity as Forest Supervisor
for the Tahoe National
Forest; and UNITED STATES
FOREST SERVICE, an agency of
the Department of
Agriculture,

Defendants.

No. 2:14-cv-01723-GEB-EFB

**ORDER DENYING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION***

Plaintiffs seek a preliminary injunction enjoining implementation of the United States Forest Service's Big Hope Fire Salvage and Restoration Project ("Big Hope Project") with the exception of felling "true hazardous trees on roads maintained for public use (otherwise known as maintenance level 3, 4, & 5 roads) after . . . August 31, 2014," until "Defendants fully comply with the [National Environmental Policy Act ('NEPA') and the National Forest Management Act ('NFMA')]." (Pls.' Mot. for Prelim. Inj. ("PI Mot.") 1:16-19, ECF No. 20.)

* This matter is suitable for decision without oral argument. E.D. Cal. R. 230(g). Therefore, the August 1, 2014 hearing is vacated.

1 For the reasons stated below, although Plaintiffs are
2 "likely to suffer irreparable harm" in the absence of a
3 preliminary injunction, Plaintiffs have not shown that "the
4 balance of equities tips in [their] favor" or that a preliminary
5 "injunction is in the public interest." Winter v. Natural Res.
6 Def. Council, 555 U.S. 7, 20 (2008) (stating the elements a
7 plaintiff must satisfy to obtain a preliminary injunction).
8 Therefore, Plaintiffs' motion for a preliminary injunction is
9 DENIED, and the Court need "not address the underlying merits of
10 [P]laintiffs' claims." Id. at 31.

11 I. FACTUAL BACKGROUND

12 During August and September 2014, the American Fire
13 burned approximately 22,480 acres of National Forest System
14 ("NFS") lands in the Tahoe National Forest and approximately
15 4,960 acres of private land. (Admin. Record ("AR") 7, 288.) "An
16 interdisciplinary team assessed the effects of the fire . . . to
17 develop a proposal for post fire treatment activities One
18 of the resulting proposals became the [Big Hope Project]." (AR
19 8.)

20 The Big Hope Project Area boundary includes
21 approximately 23,000 acres of NFS lands and approximately 5,000
22 acres of privately owned land. (Id.) The Big Hope Project's
23 proposed treatment activities include:

24 salvage harvest of fire-killed trees with
25 ground based equipment (approximately 3,010
acres) [;]

26 salvage harvest of fire-killed trees with
27 aerial (cable or helicopter) logging systems
(approximately 435 acres);

1 . . . removing trees posing a safety hazard
2 along roads and trails and at trailheads and
3 recreations sites (approximately 125 miles /
4 5,520 acres) [;]

5 site preparation, conifer tree planting, and
6 release of planted trees in burned areas
7 (approximately 7,300 acres); and

8 road repair and maintenance, as needed, for
9 approximately 125 miles of existing National
10 Forest Transportation System (NFTS) roads.

11 (AR 289.) "Some areas would receive various combinations of
12 treatments. The total footprint of treatments on national forest
13 lands under the [Big Hope Project] would be approximately 10,566
14 acres." (AR 9.)

15 The Big Hope Project's stated purposes are: "(1)
16 recovering the economic value of fire-killed trees; (2) reducing
17 public safety hazards along roads and trails and at trailheads
18 and recreation sites; (3) reducing the danger and difficulty of
19 suppressing future wildfires; and (4) re-establishing forested
20 conditions and habitats in burned forest stands in the American
21 Fire area." (AR 9, 288.)

22 The Big Hope Project's Environmental Assessment ("EA")
23 and Emergency Service Determination explain the scope of the Big
24 Hope Project's roadside hazard tree removal as follows:

25 Roadside hazard tree removal . . . is
26 designed to insure safe travel routes on
27 Forest Service System Roads for public,
28 special use permittees, private landowners,
employees, contractors, recreational users
and any visitor who drives these roads to
access private lands. [The Project] proposes
to treat 5,519 acres for roadside hazards.

(AR 44.)

1 Approximately 125 miles of roads and
2 trails within the American Fire Area have
3 been identified as needing hazard tree
4 abatement under the Big Hope Project.
5 Designated recreation trails that need hazard
6 tree abatement include the Western States
7 Trail (approximately 7 miles of singletrack
8 segments of the Trail and approximately 18
9 miles of Trail segments that are shared with
10 roads); the Loop 6 Off Highway Vehicle Route
11 (approximately 2.25 miles); and Grouse Creek
12 Jeep Trail (approximately 1 mile). Hazard
13 tree abatement is proposed for the Robinson
14 Flat Recreation Site as well as at specific
15 trailheads, parking areas, and other
16 locations used for race event aid stations,
17 including Devils Thumb, Deadwood, Sailor
18 Flat, and Ford Point. . . . The road systems
19 in this area are utilized by the public for
20 recreational uses, including hunting,
21 fishing, hiking, camping, wood cutting,
22 picnicking, and sightseeing. This area is
23 also used by local miners for mineral
24 extraction as permitted on National Forest
25 System lands.

26 (AR 4625.)

27 The purpose [of the Big Hope Project's
28 roadside hazard tree removal] is to remove
currently hazardous trees (dead trees and
live trees with high failure potential) and
trees that are predicted to die from fire-
injuries (and will therefore become hazardous
in the near future) that may fall and hit the
road prism in a timely, efficient and cost-
effective manner.

 In the context of recreation resource
management, hazard is some exposure to the
possibility of loss or harm. With reference
to trees, it is the recognized potential that
a tree or tree part will fail and cause
injury or damage by striking a target. It is
often . . . common practice to refer to such
trees as "hazard" or "danger trees". . . .
All standing trees alive or dead within areas
occupied by people, structures and property
present some level of hazard. Potential for
failure by itself does not constitute a
hazard. Hazard exists when a tree of
sufficient size and mass to cause injury or
damage is within striking distance of any
object of value (people, property, etc.).
Hazard increases with increasing tree defect,

1 potential for failure, potential for damage
2 and target value. Management actions are
3 taken to mitigate the hazard when risks are
4 unacceptable.

5 *The Hazard Tree Guidelines for Forest*
6 *Service Facilities and Roads in the Pacific*
7 *Southwest Region* (Angwin et al 2012) provides
8 direction on hazard tree identification and
9 abatement. In addition, since it is
10 reasonably anticipated that tree mortality
11 associated with fire-injury may occur for
12 years subsequent to the American Fire, the
13 project will also use the "*Marking Guidelines*
14 *for Fire-injured Trees in California*" (Smith
15 and Cluck 2011) which is based upon tree
16 mortality models from the latest scientific
17 research by Pacific Southwest Region Forest
18 Health Protection Staff and Fire Sciences
19 Laboratory at the Rocky Mountain Research
20 Station (Hood et al. 2010; Hood et al. 2007;
21 Hood 2008; Ryan and Reinhardt 1988).

22

23 Within hazard tree treatment areas, all
24 trees of merchantable size that meet the high
25 failure potential marking criteria of the
26 *Hazard Tree Guidelines for Forest Service*
27 *Facilities and Roads in the Pacific Southwest*
28 *Region* (Angwin et al. 2012) or the Pm of 0.7
marking criteria of the *Marking Guidelines*
for Fire-Injured Trees in California (Smith
and Cluck 2011) would be harvested.

The roadside hazard tree removal as
implemented through the marking guidelines
would result in reduced snags and green trees
with defects within striking distance of
roads and facilities. It would also reduce
the amount of fire-injured trees that would
likely die[,] resulting in reduced snag
recruitment within striking distance of roads
and facilities. The purpose and spirit of the
marking guidelines is to remove those trees
that are current hazards due to structural
defect (includes dead trees) and those that
are predicted to die and become hazards in
the near future in order to protect forest
visitors and improve safety and access. The
marking guidelines would retain those trees
that are not deemed a current or future
potential hazard in order to provide
continuous forest cover that maintains high
visual quality and enhances ecological and

1 recreational values.

2 (AR 44-45.)

3 Some hazard tree removal occurred immediately following
4 the American Fire as part of a series of "burned area emergency
5 response (BAER) treatments." (AR 4618.)

6 BAER activities focused on actions needed to
7 address immediate threats to public safety
8 and resource damage. These actions included a
9 limited scope of . . . felling imminent
10 hazard trees along approximately 22 miles of
11 roads and trails . . . Hazard trees felled
12 during fire suppression and BAER activities
13 consisted of older dead, decomposed and
14 structurally unsound trees; recent fire-
killed trees that were structurally sound at
the time were left standing. In addition,
hazard trees were removed along only a small
subset of the burned area's roads and trails.
As standing fire-killed trees along the roads
and trails in the burned area deteriorate and
decay over time, threats to human health and
safety will increase.

15 (Id.)

16 The EA indicates that if the Project's hazard tree
17 removal does not occur, "[p]ublic safety w[ill] be at risk due to
18 standing hazard trees near trails trailheads and dispersed
19 recreation sites." (AR 153.)

20 The Big Hope Project's salvage harvest "proposes to
21 economically recover fire-killed trees through salvage on
22 approximately 3,443 acres." (AR 45.) "Hazard trees would be
23 removed along roads in the salvage areas as well." (Id.) Gross
24 timber sale revenue from the salvage harvest is estimated at
25 approximately \$10 million, with approximately \$962,500 of net
26 revenue going directly to the Forest Service for implementation
27 of the Project. (AR 31, 158.) Implementation of the Big Hope
28 Project is anticipated to

1 provide an estimated 380 jobs in the lumber
2 and wood products sector during
3 implementation of the timber sales and 170
4 jobs under the service contracts for site
5 preparation, tree planting, and release
6 treatments. In total, the [Big Hope Project]
7 is estimated to directly create 550 jobs from
8 the gross timber revenue, combined with
9 Congressional appropriations. An estimated
10 additional 940 jobs would be created through
11 the multiplier effect. Workers will need
12 supplies, equipment, fuel, and repair shops,
13 which will indirectly benefit the local
14 community.

9 (AR 291-92.) Of the referenced jobs, over fifty of them are
10 expected to go to employees who work for several companies owned
11 by Nathan Bamford and his family. (Decl. of Nathan Bamford ¶¶ 1-
12 7, ECF No. 24.) Nathan Bamford is a co-owner of Intervenor J.W.
13 Bamford, Inc. ("Bamford"), the purchaser of the Project's salvage
14 sale.¹ (Id. at ¶¶ 2-3.)

15 The Forest Service requested an Emergency Service
16 Determination ("ESD") for the Big Hope Project "based on threats
17 to human health and safety . . . and the loss of commodity value
18 that would jeopardize critical restoration and resource
19 protection activities if the project is delayed." (AR 4675.) The
20 Chief of the Forest Service found that the Big Hope Project
21 qualifies as an "emergency situation" under 36 C.F.R. § 218.21
22 and granted the ESD on June 13, 2014. (AR 4676.)

23 The ESD states:

24 Without an ESD, the Big Hope . . .
25 project would begin implementation in October
26 2014, at the earliest, due to the need to
27 offer a predecisional objection opportunity.
The normal operating period in this area is
June 1 to October 15 and therefore there is a
high likelihood that implementation would not

28 ¹ Bamford purchased the salvage sale on July 14, 2014. (Id. at ¶ 3.)

1 begin until 2015.

2 The forest estimates that the delay
3 would reduce timber sale volume from 48
4 million board feet to about 20 million board
5 feet. This reduction would result in sales
6 that would be deficit [sic] and likely
7 offered at base rates. Preliminary appraisal
8 indicates the cost of logging and the
9 reduction in volume and value would almost
10 certainly lead to no bids for the sales.

11 Net return to the Government with an ESD
12 is estimated to be about \$964,000; without an
13 ESD and with no bid, there would be no sale
14 return to the Government and a delay of other
15 actions to protect human health and safety
16 until funds became available.

17 (AR 4676.)

18 The ESD states "the ability of the Tahoe National
19 Forest to accomplish the purpose and need for the project is
20 strongly tied to the timing of the salvage harvest and hazard
21 tree removal." (AR 19.)

22 Local timber industry representatives
23 . . . expressed interest in the project
24 provided that salvage harvest and hazard tree
25 removal operations can be completed by the
26 end of the 2014 field season. The Forest's
27 assessment of available logging and trucking
28 capacity indicates that the timber volume
included in the Big Hope Project could be
removed over an estimated five-month period.
Winter weather usually precludes logging and
trucking operations after November. Hence, an
ESD would provide the needed five month
operating period from early July to late
November/early December to complete salvage
harvest and hazard tree removal activities by
the end of the 2014 field season. . . .
[I]mplementing the project in 2014 would
result in the lowest economic losses to the
government due to less timber deterioration,
thereby allowing the Forest Service to
effectively conduct the restoration work
associated with removing the burned timber.
Finally, implementation of the Project in
2014 would address hazards to human health
and safety within the project area at the

1 start of the summer season when this area
2 receives its highest levels of human use.

3 Without an ESD, . . . award of the
4 timber sale contracts would be delayed until
5 [at least] early October 2014, providing
6 possibly up to two months to conduct salvage
7 harvest and hazard tree removal under the
8 most favorable weather conditions. The
9 likelihood of receiving bids for a contract
10 this late in the season is extremely low due
11 to both substantial deterioration of the
12 timber² during [July - October] and the
13 difficulty a contractor would have in
14 mobilizing woods workers and equipment so
15 late in the season. The risk to the
16 contractor would be extremely high and the
17 Forest's sensing with industry indicates that
18 a contract offered this late in the season
19 would receive no bids. . . . Prospective
20 bidders have indicated little to no interest
21 in the salvage project after 2014 due to loss
22 of value to the timber as a result of
23 deterioration of the fire killed trees.

24 (AR 4624-25.) Bamford, the ultimate purchaser of the salvage
25 harvest states it "purchased the [salvage sale] with the
26 expectation that salvage work could commence promptly so that the
27 work can be completed this year, while the wood still has value."

28 (Decl. of Nathan Bamford ¶ 13.)

The ESD also states: "Ultimately, if the Big Hope
Project is delayed, the cost of removal will far exceed the value
of the trees, and the Forest Service will be faced with the
dilemma of responding to increasing safety hazards . . . with no
funds available" (AR 4631.) Without a salvage harvest
sale, "[f]unds for neutralizing hazard trees . . . would have to
come completely from congressionally appropriated funds." (AR
160; see also AR 4636 ("Actions that still must be completed,

² The ESD sets forth the scientific bases for its conclusions concerning
timber deterioration levels at pages 14-17. (AR 4626-4632.)

1 such as ensuring human health and safety, would be delayed and
2 would only proceed to the extent that funds became available.”.)
3 Forest Supervisor for the Tahoe National Forest, Tom Quinn, avers
4 that “[Congressionally appropriated funds] are extremely
5 limited[,] and the Forest is facing a backlog in this work,
6 making [it] infeasible over this large [project] area” to fell
7 the hazard trees. (Decl. of Tom Quinn ¶ 29, ECF No. 39-2.)
8 Plaintiffs object to the Court’s consideration of this paragraph
9 of Mr. Quinn’s declaration, arguing it “contains unsubstantiated
10 opinion and improper legal argument.” (Pls.’ Mot. to Strike
11 Extrarecord Evid. 5:17, ECF No. 44.) However, Mr. Quinn’s
12 knowledge of the Tahoe National Forest’s budgetary constraints
13 can be inferred “by virtue of his . . . position [as Forest
14 Supervisor for the Tahoe National Forest].” United States v. Real
15 Prop. Located at 475 Martin Lane, Beverly Hills, Cal., 298 F.
16 App’x 545, 551 (9th Cir. 2008); accord Barthelemy v. Air Lines
17 Pilots Ass’n, 897 F.2d 999, 1017 (9th Cir. 1017) (“[P]ersonal
18 knowledge and competence to testify [can be] reasonably inferred
19 from [a declarant’s] position[] and nature of [his] participation
20 in the matters to which [he] swore”). Therefore,
21 Plaintiffs’ evidentiary objection is overruled.³

22 I. DISCUSSION

23 Plaintiffs seeking a preliminary injunction must
24 establish that “(1) they are likely to succeed on the merits; (2)
25 they are likely to suffer irreparable harm in the absence of
26

27 ³ Plaintiffs also object to several other paragraphs in Mr. Quinn’s
28 declaration. However, those objections need not be addressed since the
remaining averments were not considered in deciding Plaintiffs’ preliminary
injunction motion.

1 preliminary relief; (3) the balance of equities tips in their
2 favor; and (4) a preliminary injunction is in the public
3 interest." Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1021 (9th
4 Cir. 2009) (citing Winter, 555 U.S. at 20).

5 **A. Irreparable Harm**

6 Plaintiffs argue concerning irreparable harm, in part,
7 as follows:

8 The Big Hope . . . project[] . . .
9 involve[s] the logging of several thousand
10 acres of post-fire habitat, removing and
11 degrading thousands of acres of rare and
12 biodiverse complex early seral forest
13 [{"CESF"}], removing a substantial and
14 significant amount of all the suitable Black-
15 backed Woodpecker habitat which currently
16 exists on the Tahoe . . . National Forest.
17 The[] Project[] also involve[s] removal of
18 thousands of acres of suitable habitat for
19 the imperiled California spotted owl
20 If planned logging is permitted, thousands of
21 acres of rare and precious habitat would be
22 irreparably removed, and Plaintiffs' ability
23 to view, enjoy, photograph, and study these
24 unlogged areas and the rare species which
25 inhabit them in an unlogged/natural state
26 would be lost for generations, as would
27 Plaintiffs' ability to enjoy nature's
28 renaissance on display, observing unmanaged
complex early seral forest on these acres as
it changes through the years.

These irreparable harms outlined above—
to both the Plaintiffs' members and the
wildlife that currently inhabit this burned
forest ecosystem which is proposed for
logging—are likely because they would occur
as soon as the trees are felled, which
according to Defendants will begin on August
1, 2014.

(PI Mot. 22:23-28.)

Plaintiffs "have shown that the [Big Hope] Project will
lead to the [salvage harvesting] of thousands of [acres] of
[CESF]. The logging of [CESF], if indeed incorrect in law, cannot

1 be remedied easily if at all.” League of Wilderness
2 Defenders/Blue Mountains Biodiversity Project v. Connaughton, 752
3 F.3d 755, 764 (9th Cir. 2014); accord Amoco Prod. Co. v. Vill. of
4 Gambell, Alaska, 480 U.S. 531, 545 (1987) (“Environmental injury,
5 by its nature, can seldom be adequately remedied by money damages
6 and is often permanent or at least of long duration, i.e.,
7 irreparable.”). Accordingly, “[t]he harm here . . . is
8 irreparable for the purposes of the preliminary injunction
9 analysis.” Id.; see also Alliance for the Wild Rockies v.
10 Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) (indicating the
11 lost use and enjoyment of 1,652 acres of harvested forest
12 constitutes an irreparable injury).

13 However, that is not the end of the inquiry. “A
14 preliminary injunction is an extraordinary remedy never awarded
15 as of right.” Winter, 555 U.S. at 24. “In each case, courts ‘must
16 balance the competing claims of injury and must consider the
17 effect on each party of the granting or withholding of the
18 requested relief.’” Id. (quoting Amoco Prod. Co., 480 U.S. at
19 542). “In exercising their sound discretion, courts of equity
20 should [also] pay particular regard for the public consequences
21 in employing the extraordinary remedy of injunction.” Id. “Our
22 law does not . . . allow [the Court] to abandon a balance of the
23 harms just because a[n] . . . environmental injury is at issue.”
24 Lands Council v. McNair, 537 F.3d 981, 1005 (9th Cir. 2008),
25 overruled on other grounds by Amer. Trucking Ass’ns Inc. v. City
26 of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). “Indeed, the
27 Supreme Court has instructed us not to ‘exercise [our] equitable
28 powers loosely or casually whenever a claim of environmental

1 damage is asserted.'" Id. (quoting Aberdeen & Rockfish R. Co. v.
2 Students Challenging Regulatory Agency Procedures, 409 U.S. 1207,
3 1217-18 (1972)).

4 **B. Balance of Hardships / Public Interest**

5 Since the parties' arguments concerning the balancing
6 of hardships and public interest factors are sometimes conflated,
7 the Court discusses these factors together.

8 Plaintiffs contend both "the balance of the harms and
9 public interest weigh in favor of the issuance of an injunction
10 in this case." (Pls.' Reply 8:12-13, ECF No. 43.) Plaintiffs
11 argue: "The only hardship the Forest Service may claim is that
12 their revenue will be reduced if Plaintiffs' request is granted,
13 but the loss of anticipated revenues does not outweigh the
14 potential irreparable damage to the environment." (PI Mot. 24:1-3
15 (ellipses, internal quotation marks, and citation omitted).)
16 Plaintiffs contend "economic loss during the pendency of an
17 injunction does not represent a complete and total loss, akin to
18 the loss of habitat, but rather a delay and potentially a
19 reduction in revenue." (Pls.' Reply 8:2-6.) Plaintiffs further
20 argue that injunctive relief serves the public interest of
21 "ensuring careful consideration of environmental impacts before
22 major federal projects go forward, and suspending such projects
23 until that consideration occurs comports with the public
24 interest." (Id. at 24:7-14 (internal quotation marks and
25 citations omitted).)

26 Defendants and Bamford counter that the balance of
27 hardships and public interest favor denial of Plaintiffs' motion.
28 Defendants argue: "A delay in project implementation could be the

1 death knell for [the] project. . . . [I]f the project[] do[es]
2 not go forward[,] . . . the government will lose the opportunity
3 to receive the prime economic value of the timber and could lose
4 the ability to do the project[] at all" (Defs.' Opp'n
5 25:6, 26:19-26, ECF No. 39.) Defendants further argue, *inter*
6 *alia*, the project

7 promote[s] public safety. . . . Fire-killed
8 trees pose serious safety hazards along the
9 roads, recreation sites, trailheads, and
10 parking areas in Aspen and Big Hope. Removal
11 of hazard trees along roads and heavily used
trails is essential for providing safe access
to the area for the public, Service
employees, contractors and adjacent private
land owners.

12 (Defs.' Opp'n 24:15-21.) Defendants also argue "the[]
13 communit[y's] econom[y] would benefit from [the] project. . . .
14 [Without the project,] the public will lose the benefit of a
15 boost to the local economy as a result of the [project's]
16 creation of jobs" (*Id.* at 25:23, 26:19-22.) In addition
17 to the public interests raised by Defendants, Bamford argues its
18 private economic interests also weigh against granting a
19 preliminary injunction. (Intervenor's Opp'n 11:4-22, 16:4-26, ECF
20 No. 29.)

21 Plaintiff replies that Defendants' "public health and
22 safety" argument is "devoid of substance" since "Defendants have
23 already completed hazard tree removal on the main roads through
24 the first areas[,] and "Plaintiffs are not requesting to enjoin
25 hazard tree felling on roads maintained for public use . . .
26 beyond August 31, 2014." (PI Mot. 25:7-12, 5:13-18.)

27 "Balancing the equities in this case requires
28 comparison between the irreparable environmental harms pled by

1 the [Plaintiffs], on the one hand, and the economic interests of
2 [Bamford and the Defendants], on the other hand." Connaughton,
3 752 F.3d at 765. "Both the economic and environmental interests
4 are relevant factors, and both carry weight in this analysis."
5 Id.

6 "The public interest inquiry primarily addresses impact
7 on non-parties rather than parties." Connaughton, 752 F.3d at
8 766. "On the side of issuing the injunction, [the Court]
9 recognize[s] the well-established 'public interest in preserving
10 nature and avoiding irreparable environmental injury.'" Alliance
11 for the Wild Rockies, 632 F.3d at 1138 (quoting Lands Council,
12 537 F.3d at 986). "Th[e Ninth Circuit] has also recognized the
13 public interest in careful consideration of environmental impacts
14 before major federal projects go forward, and . . . ha[s] held
15 that suspending such projects until that consideration occurs
16 'comports with the public interest.'" Id. (quoting South Fork
17 Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior,
18 588 F.3d 718, 728 (9th Cir. 2009)). "[A] preliminary injunction,
19 however, [should not be granted] unless those public interests
20 outweigh other public interests that cut in favor of not issuing
21 the injunction." Id.

22 Here, although the Big Hope Project results in the
23 irreparable salvage harvesting of thousands of [acres] of [CESF],
24 the balance of hardships and public interest weigh against
25 granting a preliminary injunction. As explained in the ESD,
26 because of timber deterioration rates and the approaching close
27 of the harvesting season in December 2014, a delay in commencing
28 the Big Hope Project, even until October 2014, jeopardizes the

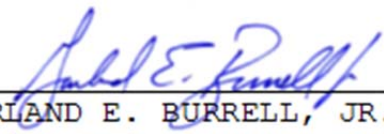
1 entire project. Thus, Bamford and Defendants' economic losses, as
2 well as the loss of approximately 1,000 jobs locally, would be
3 permanent, not temporary. Further, without realizing the profit
4 from the salvage harvest, the Forest Service would be unable to
5 remove the hazard trees threatening public health and safety.
6 Although the Forest Service already removed some of the hazard
7 trees in its immediate response to the American Fire, that
8 emergency response was done "along only a small subset of the
9 burned area's roads and trails" (22 miles of roads and trails out
10 of the total 125 miles identified for treatment). (AR 4618.)

11 The Court finds "these [permanent] economic [losses],
12 in combination with the [public] safety concerns . . . outweigh
13 [the referenced] harms to environmental interests." Earth Island
14 Inst. v. Carlton, 626 F.3d 462, 475 (9th Cir. 2010) (affirming
15 district court's denial of preliminary injunction motion); see
16 also Lands Council, 537 F.3d at 1005-06 (affirming district
17 court's denial of preliminary injunction motion, stating: "Though
18 preserving environmental resources is certainly in the public
19 interest, the Project benefits the public's interest in a variety
20 of other ways.").

21 For the stated reasons, Plaintiffs' preliminary
22 injunction motion is DENIED.

23 Dated: July 31, 2014

24
25
26
27
28



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