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9 COALITION FOR PRESERVATION OF PUBLIC LAND, and
10 SACRAMENTO RIVER PRESERVATION TRUST

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 SHASTA RESOURCES COUNCIL, a
14 California public benefit corporation; and
15 SHASTA COALITION FOR
16 PRESERVATION OF PUBLIC LAND, a
17 California unincorporated association;
18 SACRAMENTO RIVER PRESERVATION
19 TRUST, a California public benefit
20 corporation,

21 Plaintiffs,

22 v.

23 UNITED STATES DEPARTMENT OF THE
24 INTERIOR; DIRK KEMPTHORNE, in his
25 official capacity as Secretary of the
26 Department of the Interior; INTERIOR
27 BOARD OF LAND APPEALS; BUREAU OF
28 LAND MANAGEMENT; JIM CASWELL, in
his official capacity as Director of the Bureau
of Land Management; MIKE POOL, in his
official capacity as California State Director of
the Bureau of Land Management; STEVEN W.
ANDERSON, in his official capacity as Field
Manager of the Redding Field Office of the
Bureau of Land Management; BRENT
OWEN, and KIMBERLY D. HAWKINS;

Defendants,

CASE NO. 2:08-CV-00645-WBS-CMK

**STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Date: March 30, 2009
Time: 2:00 p.m.
Court Rm.: 5
Judge: William B. Shubb

Filing Date of Action: March 24, 2008

1 Pursuant to Local Rule 56-260, Plaintiffs provide this Statement of Undisputed Facts in
2 Support of their Motion for Summary Judgment.

3 **STATEMENT OF UNDISPUTED FACTS**

- 4 1. The United States Federal Government owned a 215.85-acre parcel of land on the
5 western edge of the City of Redding in Shasta County. Administrative Record
6 (“AR”) at 000450.
- 7 2. The parcel, known to local residents as “Area 51”, is undeveloped and contains a
8 network of trails used by the public for hiking, biking, horseback riding, and other
9 recreational activities. AR at 000044 and 001401.
- 10 3. The land is dotted with a number of archaeological sites. AR at 000450.
- 11 4. The Federal parcel also contains a portion of Salt Creek, which provides habitat for
12 federally threatened Central Valley steelhead trout and Chinook salmon. AR at
13 000400.
- 14 5. The creek is also designated as Critical Habitat for Central Valley steelhead trout by
15 the National Oceanographic and Atmospheric Administration (“NOAA”). AR at
16 001347-001355.
- 17 6. The 566-acre non-Federal parcel at issue in this case is located adjacent to
18 Buckhorn Reservoir, between Weaverville and Redding, in Trinity County. AR at
19 000450.
- 20 7. The instant exchange, referred to as the Salmon Creek Resources Land Exchange,
21 was proposed to BLM on April 22, 2001. AR at 000044.
- 22 8. BLM prepared an Environmental Assessment (“EA”) to analyze the proposed
23 exchange pursuant to the National Environmental Policy Act (“NEPA”). AR at
24 000385.
- 25 9. The Salmon Creek Resources Exchange’s purpose, as stated in the EA, is to
26 “consolidat[e] land ownership in the Grass Valley Creek watershed area [in Trinity
27 County], while also disposing of lands identified in the [Redding Resource
28 Management Plan] as surplus.” AR at 000390.

- 1 10. BLM's stated purpose for acquiring this specific non-Federal parcel is to restore
2 "critically eroding land in the Grass Valley Creek Watershed Area." AR at 000389.
- 3 11. BLM has held several meetings with local groups to analyze the proposed
4 exchange. AR at 000044.
- 5 12. BLM analyzed three alternatives: (1) the Proposed Action, (2) a No Action
6 Alternative, and (3) a Sale Alternative. AR at 000391-000392.
- 7 13. BLM also considered six other alternatives but dismissed them from further
8 analysis. AR at 000392-000396.
- 9 14. BLM has solicited comments from the community. AR at 000444.
- 10 15. The majority of the comments that BLM received were submitted by local residents
11 who suggested that BLM should examine other alternatives that would maintain
12 public access to the Federal parcel and its recreational trails, limit development and
13 protect trout and salmonid habitat. *See generally* AR at 000526, 000596, and
14 000650.
- 15 16. A number of commenters highlighted the presence of protected fishes in Salt Creek.
16 AR at 000516, 000526, 000529, 000599, 000608, 000616, 000618, 000623,
17 000627, and 000644.
- 18 17. The California Department of Fish and Game also highlighted the presence of
19 protected fishes in Salt Creek and the creek's importance for ongoing projects to
20 increase spawning habitat. AR at 001873.
- 21 18. Commenters expressed concern that further development would increase the
22 population density and exposure to fire danger. AR at 000613, 000661, and
23 000711.
- 24 19. BLM considered placing restrictions on the Federal parcel at issue here in the form
25 of easements to ensure public access prior to exchanging the land but later
26 dismissed that alternative from further analysis. AR at 000393.
- 27 20. One of BLM's stated reasons for not fully analyzing an alternative involving the
28 placement of restrictions on the Federal parcel in the form of easements to ensure

1 public access prior to exchanging the land was that it would require an additional
2 appraisal in order to properly value the land as burdened by an easement and that it
3 would also make the land untradeable. AR at 000393.

4 21. The private parties had to pay BLM \$137,000.00 in order to bring about an equal
5 exchange. AR at 000459.

6 22. As currently appraised, the value of the Federal parcel is roughly 18 percent higher
7 than the private parcel involved in the exchange. AR at 000459.

8 23. BLM's second stated reason for rejecting an alternative involving the placement of
9 restrictions on the Federal parcel in the form of easements to ensure public access
10 prior to exchanging the land was that the Redding Resource Management Plan
11 ("RMP") states that "land use authorizations which reduce the marketability of an
12 exchange parcel will not be authorized." AR at 000393.

13 24. Another alternative examined by BLM but excluded from further analysis was
14 selling the property to a local agency. AR at 000395.

15 25. Over the course of the project review process, BLM received multiple offers from
16 local agencies and community groups to purchase the Federal parcel and manage it
17 for open space and recreational use. AR at 001905, 001938, 001953, and 002036.

18 26. In 2002, the Shasta Community Services District ("SCSD") communicated its
19 willingness to purchase the property and maintain it for public use. AR at 001938.

20 27. In 2004 the Trails and Bikeway Council and the SCSD jointly submitted an
21 application to purchase the Federal parcel through the Recreation and Public
22 Purposes Act, 43 U.S.C. § 869 *et seq.*, and requested a meeting with BLM. AR at
23 001905.

24 28. In March 2005, Plaintiff Shasta Resources Council offered to purchase the Federal
25 parcel with funds from a community assessment district. AR at 002036.

26 29. BLM rejected Shasta Resources Council's offer from further analysis because it
27 reasoned that the district had "not yet been established", "no lands were offered for
28 exchange", "there was no guarantee that the [district] would achieve the highest

1 bid” and “the Grass Valley Creek parcel would not be acquired. . . .” AR at
2 000395.

3 30. BLM characterized Shasta Resources Council’s proposal as being submitted months
4 after the comment period had ended. AR at 000395.

5 31. In June 2006, Shasta Resources Council submitted to BLM a “fully funded” offer to
6 purchase the Federal parcel. AR at 001953.

7 32. BLM was contacted by Senator Barbara Boxer’s office regarding the option of
8 selling the Federal parcel and then obtaining the non-Federal parcel through use of
9 the Federal Land Transfer Facilitation Act. AR at 001698.

10 33. As a consequence of the exchange, BLM fully expects the Federal parcel to be
11 developed for residential use. AR at 000434-000435 and 000453.

12 34. BLM predicted that the effects of privatizing the Federal parcel will be both short-
13 term construction-related impacts and long-term impacts such as “increased noise,
14 traffic, vehicle emissions, dust, soil, erosion and runoff, loss of some open space
15 and trails, impacts to fish and wildlife habitat, impacts to 13 historic mining-related
16 and prehistoric archaeological sites, [and] reduction of scenic quality.” AR at
17 000434.

18 35. BLM characterized the above-referenced impacts as “minor” and “normal” and
19 “assume[d] that potential adverse effects could be further reduced or eliminated in
20 accordance with local development permit requirements.” AR at 000434.

21 36. BLM’s EA stated that continued land exchanges will have impacts that are “similar
22 to the indirect effects of the proposed exchange, but on a larger scale.” AR at
23 000434.

24 37. BLM further noted that the west Redding area is developing rapidly and that “BLM
25 lands will contribute a total of approximately 10% of the land base made available
26 for residential purposes in west Redding.” AR at 000435.

27 38. BLM also stated that it “has initiated a number of other disposal actions in this area
28 with similar indirect effects. . . .” AR at 000435.

- 1 39. BLM found that based on “[p]ersonal communications with staff of the California
2 Department of Fish and Game and remarks from local residents. . . Chinook Salmon
3 appear in Salt Creek mostly downstream of the subject parcel.” AR at 000400.
- 4 40. During the comment portion of the environmental review process, BLM received
5 numerous comments from groups who highlighted the Federal parcel’s importance
6 to local anadromous fishes. AR at 001126.
- 7 41. There are no figures or studies presented in the EA’s fisheries section. AR at
8 000418.
- 9 42. BLM concluded that potential impacts of the exchange on fisheries would be
10 “insignificant” because County, State and Federal laws would “ensure the
11 appropriate environmental conservation for future development actions.” AR at
12 000418-000419.
- 13 43. The California Department of Fish and Game (“DFG”) ultimately supported the
14 acquisition of the non-Federal parcel, but also repeatedly expressed reservations
15 about the projected sediment runoff from the Federal parcel into Salt Creek
16 associated with any future development. AR at 001757, 001763, and 001873.
- 17 44. DFG “continue[d] to be concerned with the erosive potential of the BLM property
18 surrounding Salt Creek and the effects of the sediment load on fishery resources. . .
19 .” AR at 001757.
- 20 45. When discussing soils and erosion potential of the development facilitated by the
21 proposed exchange in the EA, BLM concluded that development will increase the
22 alluvial load in the streams. AR at 000422.
- 23 46. BLM also noted in the EA that because of the alluvial load the branches of Salt
24 Creek on the parcel are of limited value to salmonids. AR at 000400.
- 25 47. BLM also relied on an opinion from NOAA Fisheries that the exchange will not
26 affect Critical Habitat. AR at 003009.
- 27 48. BLM “tiered” its EA from the 1992 Redding Resource Management Plan (“RMP”)
28 Final Environmental Impact Statement (“EIS”). AR at 000409.

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- 49. The 1992 EIS does not address the Federal parcel at issue in this exchange. AR at 004450-004773.
- 50. The 1992 EIS never analyzed the fisheries in Salt Creek or their later designation as Critical Habitat for Central Valley steelhead trout. AR at 004450-004773.
- 51. On April 26, 2006, BLM issued its Decision Record, Finding of No Significant Impact and Environmental Assessment of the Salmon Creek Resources Land Exchange. AR at 000385, 000445, and 000461.
- 52. On April 26, 2006, BLM approved an exchange, denominated CA-43098-FD/PT, of the 215.85-acre parcel of federal land located in Shasta County for the 566-acre parcel of private land located in Trinity County. *Decision Record*, AR at 000450-000465.
- 53. Plaintiffs filed an appeal with the Interior Board of Land Appeals, which affirmed BLM's decision. AR at 004228.
- 54. BLM issued two land patents to Defendants Brent Owen and Kimberly D. Hawkins in October of 2007. AR at 004365.
- 55. Plaintiffs filed the instant Complaint for Declaratory and Injunctive Relief on March 24, 2008.

Dated: January 9, 2008

Respectfully submitted,
REMY, THOMAS, MOOSE and MANLEY, LLP

By: /s/ Sabrina V. Teller
Sabrina V. Teller
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SHASTA RESOURCES COUNCIL, SHASTA
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