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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

PARTNERS IN FORESTRY COOPERATIVE, <i>et al.</i> ,	)	
	)	Case No. 2:12-CV-00184-RHB
Plaintiffs,	)	
	)	Hon. Robert Holmes Bell
v.	)	
	)	
UNITED STATES FOREST SERVICE, <i>et al.</i>	)	FEDERAL DEFENDANT'S
	)	MOTION TO STRIKE
Defendants;	)	
	)	

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Federal Defendant hereby moves to strike in its entirety “Plaintiffs’ Submission of Appraisal Referred to in Plaintiffs’ Summary Judgment Reply Brief and Declaration of Counsel in Support” (hereinafter, “Declaration” or “Decl.”), ECF No. 72, on the following grounds:

- Plaintiffs’ Declaration is untimely. Plaintiffs submitted the Declaration seven and half months after the deadline for objections to the Administrative Record set by this Court in the Case Management Order. *See* ECF No. 30;
- Plaintiffs’ Declaration violates W.D. Mich. LCivR 7.1;
- Plaintiffs have not met their burden to show that the Declaration is part of the Administrative Record. Plaintiffs’ claims in this action are brought under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, which directs that “the court shall review the whole record or those parts of it cited by a party,” and makes no provision for extra-record review. 5 U.S.C. § 706(2)(f); *see also Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977) (stating that “review is to be based on the full administrative record” that was before the agency at the time of its decision);
- None of the Sixth Circuit’s narrow exceptions to the APA’s record review rule apply to Plaintiffs’ Declaration. *See Sierra Club v. Slater*, 120 F.3d 623, 638 (6th Cir. 1997); *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1427 (6th Cir. 1991); and
- The Forest Supervisor (the Responsible Official who approved the Project) considered the Regional Review Appraisers’ evaluations of the full appraisals, and those evaluations are already in the Administrative Record. *See, e.g.*, AR000680-713, AR00718-34, AR001489-92. The Administrative Record already includes stand level data from the Forest Service’s vegetation database (FSVeg) that is generated and updated by field

inventory work and modeling. *See* AR01063-65 (map showing Parcels overlaid with vegetative compartments and stand numbers); AR01066-69 (vegetation composition information by compartment and stand for Parcels); AR01438-45 (vegetation specialist report describes existing vegetative condition and silviculturist's review of the stands); AR01573-76 (Revised Environmental Assessment discussing vegetation affected environment).

This motion is made upon this Notice, the brief in support, and all pleadings, records, and other documents on file with the Court in this action.

In accordance with W.D. Mich. LCivR 7.1(d), counsel for Federal Defendant conferred with counsel for the parties via email on May 16 and 20, 2013. Plaintiffs oppose this motion. The Delich Defendants support this motion.

Respectfully submitted on this 20th day of May, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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