

SUPREME COURT COPY

No. S165549

IN THE SUPREME COURT OF CALIFORNIA

JUN 16 2009

ALAN RICHARD KLEIN; et al.

Plaintiff and Appellant,

vs.

UNITED STATES OF AMERICA; et al.

Defendant and Appellee.

On Certification from the United States Court of Appeals
for the Ninth Circuit
Ninth Circuit Court of Appeals No. 06-55510
United States District Court No. CV 05-5526-PA

APPELLANTS' MOTION FOR JUDICIAL NOTICE

SANTIAGO RODNUNSKY & JONES
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Attorneys for Plaintiffs and Appellants
ALAN RICHARD KLEIN and SHERYLL KLEIN

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ALAN RICHARD KLEIN and SHERYLL KLEIN

LEGAL ARGUMENT

I. THE COURT SHOULD TAKE DISCRETIONARY JUDICIAL NOTICE OF THE UNITED STATE FOREST SERVICE'S WEBSITE FOR THE ANGELES NATIONAL FOREST AS IT RELATES TO APPELLANT'S INVITEE STATUS

Appellants Alan Klein and Sheryll Klein hereby submit this Motion for Judicial Notice under California Evidence Code section 452(h). It is in this Court's discretion under California Evidence Code section 452(h) to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Appellants hereby submit a printout of the United States Forest Service's Website for the Angeles National Forest. The website information is relevant in this matter because Appellant has addressed arguments made by Union Pacific Railroad Company in its Amicus Curiae Brief with respect to common law trespasser-licensee-invitee status classifications within his Answer filed concurrently with this

Motion. Appellants cite to language contained on the Angeles National Forest's website to illustrate Appellant Alan Klein's common law status as a public invitee.

Therefore, Appellants respectfully request that this Court take judicial notice of the printout of the Angeles National Forest's website hosted by the United States Forest Service, the governmental agency that maintains, services, and operates the Angeles National Forest, attached hereto as Exhibit A.

CONCLUSION

For the foregoing reasons, this Court should grant Appellants' motion for judicial notice accordingly.

Dated: June 15, 2009

Respectfully submitted,
SANTIAGO RODNUNSKY & JONES
David G. Jones
Tamarã S. Fong

By: David G. Jones
Attorneys for Plaintiffs and Appellants
ALAN RICHARD KLEIN AND
SHERYLL KLEIN

DECLARATION OF TAMARA S. FONG


I, TAMARA S. FONG, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California. I am an associate in the firm of Santiago, Rodnunsky & Jones, and am an attorney of record for Appellants ALAN KLEIN and SHERYLL KLEIN in this action. I have personal knowledge of the facts set forth herein, and if called to testify, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the printout of the website for the Angeles National Forest hosted by the United States Forest Service as of June 15, 2009 (<http://www.fs.fed.us/r5/angeles/>).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of June, 2009 at Woodland Hills, California.



Tamara S. Fong

EXHIBIT A

Angeles National Forest

Welcome

Welcome to the Angeles National Forest!

To the millions of Los Angeles-area residents and to visitors from all over the world, the Angeles National Forest provides a thousand square miles of open space and a variety of recreation opportunities year-around.

The Angeles offers natural environments, spectacular scenery, developed campgrounds and picnic areas, swimming, fishing, skiing and the solitude of quiet wilderness areas. Trails winding throughout the forest accommodate hikers, equestrians, mountain bikers and off-highway vehicle enthusiasts. Please visit our recreational activities page for more information.

Many of the facilities and services in the Angeles National Forest are free. Some areas and facilities in the Angeles, as well as in the other national forests of Southern California, require the Adventure Pass or other recreation fees to help maintain, manage and improve the amenities that forest visitors enjoy.

To learn if fees are required at the area or facility you plan to visit, please consult the Recreation Fee Areas map or contact the Forest Service office nearest your destination. For more information on the Adventure Pass program, including where to purchase passes, please visit our Adventure Pass web page.

Again, welcome to the Angeles National Forest—YOUR great outdoors to visit, to care for and to enjoy!

Angeles National Forest Contributes to Economic Recovery

U.S. Forest Service Chief Abigail Kimbell announced the Agency's plan to participate in the nation's economic recovery program. The Forest Service has received \$1.15 billion from the American Recovery and Reinvestment Act.

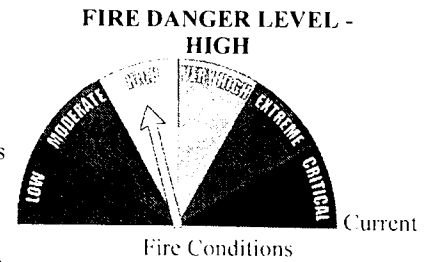
The first group of Forest Service projects nationwide created by the American Recovery and Reinvestment Act, totaling \$98 million, have been selected. These initial projects will create 1,500 jobs, giving the Agency the early opportunity to put people to work. The remaining projects, totaling \$1.052 billion, will be announced shortly and will create an additional 23,500 jobs nationwide.

First round projects on lands managed by the Forest Service in California will include maintenance and construction of facilities, roads and trails totaling 70 jobs and \$7.75 million. The jobs are estimated to last from four months up to a year. These projects will benefit 11 counties. [read more »](#)

Current Closures

The **Mount Lowe Truck Trail** (Forest Trail No. 2N50) has been closed from its intersection with Eaton Saddle, west ½ mile to its intersection with Markham Saddle. A 150 foot portion of the trail has collapsed making it dangerous to cross.

The **Buckweed Fire Closure** has been extended for one more year. The extension of this closure



NEWS

Crystal Lake High Value Tree Protection Project —

The San Gabriel River Ranger District, Angeles National Forest is seeking public comment on the proposed Crystal Lake High Value Tree Protection Project. The comment period closes July 15, 2009. [read more »](#)

Fire Lookout Volunteers Needed —

The Angeles National Forest Fire Lookout Association is currently seeking individuals for its volunteer Fire Lookout Program. The group works to restore, maintain and staff historic fire lookout towers in the San Gabriel Mountains. [read more »](#)

New Release of Motor Vehicle Map —

Angeles NF Motor Vehicle Use Map is now available for download. [read more »](#)

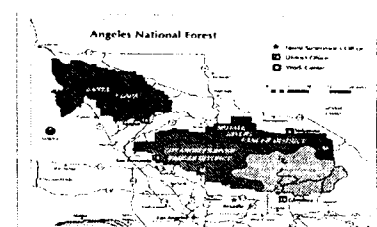
Bear Creek Trail Segment

Temporarily Closed — A segment of the Bear Creek Trail has been closed on the San Gabriel River Ranger District to repair damage from recent rock slide. [read more »](#)

Burned Area Emergency Response (BAER) —

- Ranch Fire BAER Report
- Buckweed Fire BAER Report

FOREST MAP



includes both the Rowher Flat and Drinkwater OHV areas. The signed order with the supporting documents has been posted on the Forest Orders webpage.

Posey Canyon/Ridge Route remains closed. — Closure of the area around the Posey Canyon/Ridge Route Pipeline Rehabilitation Project has been extended through December 19, 2009, for resource protection and public safety. The signed order with the supporting documents has been posted on the Forest Orders webpage.

William Rock area closure has been extended until December 31, 2009 to address concerns related to the protection of the Mountain Yellow-legged Frog and its critical habitat in the area. Hikers using the Pacific Crest National Scenic Trail will continue to be re-routed around the closed area. [read more »](#)

Antelope-Pardee 500kV Transmission Project Area — The signed order with the supporting documents has been posted on the Forest Orders webpage. [news release »](#)

Motor Vehicle Use Map

There are no areas on the Angeles National Forest that are open to cross-country travel. The Motor Vehicle Use Map displays roads and trails that are open for motor vehicle use by the public on the Angeles National Forest. The free map also displays public and private land ownership, plus any seasonal closures or restrictions by vehicle type.

Note: Rincon-Red Box OHV route is available by permit only and is subject to intermittent administrative closures. [map »](#)

Forest Service to Consider Barren Ridge Renewable Transmission Project (BRRTP) Proposal

The Forest Service is considering authorizing and/or amending special use authorization(s) to the City of Los Angeles, Department of Water and Power to construct, upgrade, and add facilities to a new and existing 230-kV electric transmission system in the Angeles National Forest. The proposed project (BRRTP), would deliver electricity from renewable energy projects in Mojave Desert and Owens Valley areas to the City of Los Angeles. [read more »](#)

Forest Service to Consider Tehachapi Renewable Transmission Project (TRTP) Proposal

The Forest Service is considering authorizing a special use permit for construction, use, and maintenance of new or upgraded high-voltage electric transmission lines in the Angeles National Forest. The proposed project, called Tehachapi Renewable Transmission Project (TRTP), includes a series of transmission line improvements to deliver electricity from wind projects in Kern County to southern California. [read more »](#)

Los Planes Forestal

El Servicio Forestal de los Estados Unidos a recstrenado los planes de manejo de tierras para los cuatro bosques nacionales del sur de California (más)

Current Conditions



Visit the Current Conditions page for road, trail, and campground closures or call a Forest Service

Adventure Pass

Southern California Adventure Pass Web Site



Use this link for information about the four southern forests.

KIDS KORNER

Kid's Korner: Fire in the forest isn't all bad! Visit Smokey Bear and Woodsy Owl in the Kid's Korner to learn more



about fire.

office near your planned destination to check on conditions before you leave your home.

CERTIFICATE OF SERVICE

I, Nancy Tsuzaki, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 5959 Topanga Canyon Boulevard, Suite 220, Woodland Hills, California, 91367, in said County and State.

On June 15, 2009, I served the following document(s):

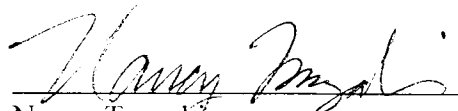
APPELLANTS' MOTION FOR JUDICIAL NOTICE

on the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

SEE ATTACHMENT A

- BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing on affidavit.
- BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00p.m. on the above-mentioned date.
- BY FACSIMILE:** From facsimile number (818) 593-7086, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated above, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission.
- BY FEDERAL EXPRESS NEXT DAY AIR:** On the above-mentioned date, I placed a true copy of the above-mentioned document(s) in a sealed envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by Federal Express or delivered same to an authorized courier or driver authorized by Federal Express to receive documents.
- I am employed in the office of David G. Jones, a member of the bar of this court, and that the foregoing document(s) was (were) printed on recycled paper.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2009


Nancy Tsuzaki

ATTACHMENT A

Klein et al. v. United States of America et al.
California Supreme Court Case No. S165549

Respondents UNITED STATES OF AMERICA; DAVID ANDERBERG
(CRC 8.25(a)(1))

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By Golden State Overnight

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