

René Voss – Attorney at Law

15 Alderney Road
San Anselmo, CA 94960
Tel: 415-446-9027
renepvoss@gmail.com

February 28, 2013

Artie Colson (acolson@fs.fed.us)
Kern River Ranger District
Sequoia National Forest

Subject: Input for Multiple Activities in 2013

Mr. Colson,

Please accept the following input on behalf of Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (SC) with regard to various activities that may occur in 2013.

The Kern River Ranger District (KRRD) is seeking input on various activities, such as filming and still photography, bass tournaments and other water based recreation events on Lake Isabella and the Kern River, a variety of gatherings, guided backpacking, rock climbing, snowmobiling, cross-country skiing, mountain biking, and non-wilderness pack and saddle stock trips, weddings, and research studies. *See* E-mail from Artie Colson, titled “Forest Service Seeks Input for Multiple Activities in 2013.”

1. Extraordinary circumstances or uncertainty whether the proposed action may have a significant effect on the environment

SFK and SC are particularly interested in receiving notice of any specific proposals that involve either (1) ground-disturbing activities or (2) recreation activities involving snowmobiling, snow grooming, and mountain biking, including any special use permit applications for guiding those activities, whether temporary (short-term) or longer-term. SFK and SC believe that the use of snowmobiles (anywhere) and mountain bikes on trails, or guiding those activities, are extraordinary circumstances that require a more detailed analysis in an environmental assessment due to inherent conflict with non-motorized or non-mechanized recreation users, including with cross-country skiers or snow shoers (for snowmobiles) and hikers and horseback rider (for mountain bikes). In addition, any allowance of mountain bikes on trails in an inventoried roadless area (IRA) or potential wilderness should be considered an extraordinary circumstance because there is an inherent conflict with the area’s future availability as Wilderness if mountain bikes are allowed on trails in the IRA. Since mountain bikes are not allowed in designated Wilderness, allowing them on trails in IRAs creates an inherent conflict when the areas are considered for potential wilderness designation during forest planning.

Moreover, “[i]f the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.” 36 C.F.R. § 220(c).

2. Additional Specific NEPA, Notice, Comment, and Appeal Procedures

Even if no extraordinary circumstances exist, any activity listed in the e-mail from Artie Colson may need documentation in a Decision Memo, unless it is clear that the project or activity clearly fits into one of the categories listed in 36 C.F.R. § 220.6(d). If it is clear that the project or activity fits into one of the categories listed in 36 C.F.R. § 220.6(e), then a decision memo is necessary. However, if the activity does not clearly fit into either set of categories, the Forest Service must prepare at least an EA (or EIS) because a local district ranger cannot create his or her own categories excluded from NEPA analysis.

Because extraordinary circumstances could exist with any type of project or activity, the Forest Service should always conduct public scoping for even the most benign activities, including those that do not appear to require a decision memo. And according to the holding in *Sequoia ForestKeeper v. Tidwell*, 847 F. Supp. 2d 1217 (2012), any project or activity that is categorically excluded fits into a category for which a decision memo is required must be appealable.

The following process or categories should be used for the activities listed in the e-mail:

Environmental Assessment or Environmental Impact Statement Required:

- Initial approval for or multi-year approval of “guided backpacking, rock climbing, snowmobiling, cross-country skiing, mountain biking, and non-wilderness pack and saddle stock trips” as discussed above.

Decision Memo Required:

- Any renewal of a permit for guided backpacking, rock climbing, snowmobiling, cross-country skiing, mountain biking, and non-wilderness pack and saddle stock trips where the initial decision was made with an EA or EIS. *See* 36 C.F.R. § 220.6(e)(3)(viii). But if the scope of the activity increases or the type of activity changes, do an EA or EIS.
- Filming and still photography (of any kind if it could potentially cause ground disturbance or disturbance of wildlife). *See* 36 C.F.R. § 220.6(e)(3)(iii).

Letter to File OK; No DM Required if Conditions Met:

- weddings (without ground disturbance and not in sensitive areas)
- bass tournaments and other water based recreation events on Lake Isabella and the Kern River (unless there is a potential for ground disturbing activities to the lakeshore or stream/river banks)
- a variety of gatherings (if small, without causing ground disturbance or potentially affecting wildlife or a sensitive area)
- filming and still photography (only if commercial or documentary filming without causing ground disturbance or potentially affecting wildlife or a sensitive area)

- research studies (unless the study causes ground disturbance or potentially affects wildlife or a sensitive area)

For these, use 36 C.F.R. § 220.6(d)(8): “Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands.” Determining whether the project potentially causes ground disturbance or is proposed in a sensitive area or disturbance to wildlife should be done through scoping. If there is such an effect, do at least a decision memo under 36 C.F.R. § 220.6(e)(3).

If you should have any questions, please contact the undersigned.

For Sequoia ForestKeeper and Sierra Club,

A handwritten signature in blue ink, appearing to read 'René Voss', with a stylized flourish at the end.

René Voss – Attorney at Law
renepvoss@gmail.com