

René Voss – Attorney at Law

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

April 15, 2012 Sent to:
comments-pacificsouthwest-sequoia-tule-river-hotspings@fs.fed.us

Rick Stevens – District Ranger
Western Divide Ranger District
32588 Highway 190
Springville, CA93265

**cc: Ara Marderosian
Georgette Theotig**

Subject: Long Meadow Restoration Project Draft DM Comments for Sequoia
ForestKeeper & Kern-Kaweah Chapter of the Sierra Club

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (the Club) thank you for the opportunity to comment on the draft Decision Memo (DM) for this project.

Previous Comments

On January 30, 2012, SFK and the Club submitted scoping comments for this project. Those comments continue to apply to the draft DM, and therefore we incorporate those comments as a part of these comments in full. See Exhibit A, attached hereto. While they should already be a part of the project record, we have included the photographs cited by link at the bottom of page 5 and the top of page 6 of those comments are attached hereto as Exhibits B and C, respectively.

DM Comments

1. The Project does not fit the selected Categorical Exclusion (CE)

In order to justify this project as an action that is categorically excluded from analysis in an EA or EIS, the DM suggests that it can use the CE for “(6) Timber stand and/or wildlife habitat improvement projects that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. (36 CFR 220.6(e)(6)).” (CE #6). See Draft DM, p. 3. That CE, however, is not an appropriate fit for this project, and there is no rational explanation provided for why the Sequoia NF may be authorized to use this CE to exclude this project from an appropriate NEPA analysis in, at least, an EA.

CE #6 was meant for timber stand and wildlife habitat projects, such as:

- (i) Girdling trees to create snags;
- (ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;
- (iii) Prescribed burning to control understory hardwoods in stands of southern pine; and
- (iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

36 C.F.R. § 220.6(e)(6). But digging out an incised creek with bulldozers and creating plugs with the materials to form ponds cannot reasonably be considered to resemble the examples

given under CE #6. This project does not improve timber stands. Moreover, there is no rational explanation for how this project would improve wildlife habitat. The scoping notice only stated that, “The purpose of the Long Meadow Restoration Project is to move toward, or achieve, the desired condition of returning the stream channel to its proper hydrological function while decreasing erosion and sedimentation.” Because this project does not fit CE #6 or any other CE, the Forest Service should have prepared at least an EA.

2. Extraordinary Circumstances – Paleontological Resources in Meadow Sediments

In our scoping comments, we stated that the Giant Sequoia National Monument Proclamation includes protection for “objects of interest,” which includes “Other paleontological resources are found in meadow sediments, which hold detailed records of the last 10 millennia of changing vegetation, fire regimes, and volcanism in the Sierra Nevada.” 65 Fed. Reg. 24,095, 24,096 (April 25, 2000). This project would disturb these paleontological resources in meadow sediments and therefore have an adverse impact on “objects of interest.” This adverse effect on these resource conditions must be considered an extraordinary circumstance that precludes use of any categorical exclusion under NEPA to explore alternatives that would not disturb these resource conditions. However, there is no mention anywhere in the draft DM about these adverse effects or consideration of this extraordinary circumstance. Although 36 C.F.R. § 220.5(b) lists resource conditions, there can be other extraordinary circumstances in addition to those effects, such as adverse effects on “objects of interest” protected under the Antiquities Act by Presidential Proclamation.

Moreover, while the draft DM acknowledges that the project would potentially affect resource conditions for floodplains and wetlands, the measure for whether the effects on these resource conditions is not whether they will be adverse but whether they are substantial enough to be considered an extraordinary circumstance, whether adverse or beneficial. Installing plugs in the meadow could cause substantial flooding in the meadow (see Exhibit A, p. 2, Figure 1), which could even cause a failure of the plugs that causes significant discharge of the fill material into the stream and other downstream habitat. Such a failure happened in Perazzo Meadow in 2010 in the Sierraville Ranger District of the Tahoe National Forest: “Three of the uppermost plugs in the restoration project failed during the high spring runoff during a rain on snow event this spring.” See Exhibit D, PDF p. 4 & photograph. The potential for failure, which has previously occurred elsewhere, given the fact that flooding does occur in the Giant Sequoia National Monument, means the potential for effects on these resource conditions must be considered an extraordinary circumstance.

3. The Project should be analyzed under at least an EA

The NEPA regulations at 36 C.F.R. § 220.6(c) state that “If 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.” Based on our scoping comments, we believe we have presented substantial evidence that the environmental effects from the project are at least “uncertain,” and so the Forest Service must prepare an EA.

In addition, the draft DM does not disclose the potential that the plugs may fail in an event similar to that in Perazzo Meadow, and needs to disclose the environmental effects of this type of failure on the meadow and the downstream environment as part of the EA.

4. The Halstead Meadow Restoration Alternative should be studied in detail

The Forest Service provides a rationale for dismissing an alternative that has been successfully implemented in Sequoia National Park based on speculation without actual analysis. Instead, the Halstead Meadow Restoration option is a reasonable alternative, which should have been fully analyzed in this project.

Regardless of the explanation given about the trips needed to fill the gully and the potential for adverse effects on roads, because the Halstead restoration technique appears to have worked to achieve the same outcomes as those described in this project it must be considered a reasonable alternative and should be analyzed in full. Yes, the difficulty and cost of attaining the material to do so should be considered in making the final decision, but that does not excuse consideration of this technique here to achieve a more natural outcome to restoration by reestablishing the sheet flow of water through the meadow that can maintain a water table near the soil surface for most of the summer across the entire meadow.

As stated in our scoping comments, the Upper Halstead Meadow Report of February 2011 concluded that:

The restoration of Upper Halstead Meadow has achieved its primary goal of establishing a sheet flow hydrologic regime and perennially saturated soils in the area of filled gully as well as the adjacent hydrologically impacted sections of the meadow. The geomorphic goal of creating level topography across the valley width was achieved, and almost immediately upon completion of the gully-fill geomorphic restoration, the water table rose to the surface and sheet flow occurred across the entire Upper Halstead Meadow.

Id. at 25. These results reflect the same goals expressed in this project, and therefore it must be studied in detail.

Because the techniques used for meadow restoration at Halstead Meadow will meet the desired conditions and purpose and need for the Long Meadow restoration project, they must be considered as an alternative to the pond and plug technique in the proposed action.

5. No Mention of Clean Water Act and Stream Alteration Permits.

The Long Meadow Project cannot be started until the Forest Service acquires a U.S. Army Corps of Engineers Section 404 Permit, Section 401 Permit from California Regional Water Quality Control Board, and a Streambed Alteration Agreement from California Department of Fish & Game. The draft DM, however, makes no mention of these constraints and what it would entail to procure these permits. Those should be discussed in detail in any analysis.

6. No response to our request that grazing should be permanently retired in Long Meadow.

Even though the draft DM states that the Forest Service will “Install a temporary fence (in place approximately five to seven years) to keep horses out of the project area” it does not respond to our suggestion to permanently retire grazing so any restoration efforts may be undone in the future. Moreover, there is no discussion about other potential grazing that may occur in the future in this grazing allotment. Will cattle be allowed to graze in this area in the future, or will grazing be limited to horses.

For Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club,



René Voss – Attorney at Law
15 Alderney Road
San Anselmo, CA 94960
Tel: 415-446-9027
renepvoss@gmail.com

Ara Marderosian – Executive Director
Sequoia ForestKeeper
P.O. Box 2134
Kernville, CA 93238-2134
(760) 376-4434
ara@sequoiaforestkeeper.org

Georgette Theotig – Chair
Kern-Kaweah Chapter of the Sierra Club
P.O. Box 38
Tehachapi, CA 93581-0038
(661)822-4371
gtheotig@sbcglobal.net