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Appeal Deciding Officer
Forest Supervisor – Sequoia NF
1839 Newcomb Drive
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**cc: Ara Marderosian
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Subject: Long Meadow Restoration Project Appeal by Sequoia ForestKeeper, Kern-Kaweah Chapter of the Sierra Club & Western Watersheds Project

Sequoia ForestKeeper (SFK), the Kern-Kaweah Chapter of the Sierra Club (SC), and Western Watersheds Project (WWP) submit this administrative appeal in accordance with the requirements of 36 C.F.R. § 215 and the content requirements of 36 C.F.R. § 215.14. This is an appeal of the decision by Richard Stevens, District Ranger of the Western Divide Ranger District of the Sequoia National Forest, to proceed with the “**Long Meadow Restoration Project**” (or “Long Meadow Project”), signed on July 19, 2013. SFK, SC, and WWP request that the Forest Supervisor halt implementation of the project and remand the decision to the Forest Supervisor to demonstrate compliance with the National Environmental Policy Act (NEPA) and other concerns raised in our appeal points below. Appellants’ requested relief is included in each appeal point.

Appeal Issues

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 asserts 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* DM, p. 5. 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.

In response, the DM makes the following conclusory assertion as a justification for using CE #6:

I determined that the Categorical Exclusion category applied is appropriate for the Long Meadow Restoration Project, in that the restoration work will decrease further loss of meadow habitat important to many wildlife and aquatic species.

DM, p. 9. Although the purpose of the project is to restore the viability of species and restore the stream and meadow's hydrological functions, there is no further description of which wildlife species or which habitat for those species would benefit from the project. Without this information, the use of CE #6 is arbitrary and capricious.

Because this project does not fit CE #6 or any other CE, the Appeal Deciding Officer should remand the decision to the district to prepare at least an EA.

2. An EA must be Prepared to Disclose Direct, Indirect, and Cumulative Effects

The draft DM does not disclose the potential that the plugs may fail in a flood event and the analysis must to disclose this very likely environmental effect on the meadow and the downstream environment as part of the EA.

Installing plugs in the meadow has the very real potential to cause substantial flooding in the meadow. This has occurred at Big Meadow in the Giant Sequoia National Monument (see SFK-SC Draft DM Comments, Exhibit A, p. 2, Figure 1). This type of flooding has been known to cause a failure of the plugs resulting in significant discharges of the fill material from the plugs into the stream and other downstream habitat. This type of failure and discharge 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 SFK-SC Draft DM Comments, Exhibit D, PDF p. 4 & photograph. The potential for failure, which has previously occurred elsewhere, given the fact that flooding can occur in the Giant Sequoia National Monument as demonstrated in Big Meadows, means the potential for indirect and cumulative adverse effects from the project on the stream and downstream habitat must be considered in an EA. We raised this in our previous comments on the Draft DM.

The DM dismisses this concern and distinguishes the Perazzo Meadows failure by suggesting that the lack of Beaver activity in Long Meadow and project design incorporating a valley grade control structure somehow eliminates our concerns. But there is no explanation provided what a valley grade control structure accomplishes and how the lack of these and the presence of beavers caused the failure at Perazzo Meadows. These are conclusory statements without references to reports or real evidence. This type of explanation is best discussed in an Environmental Assessment under the heading of direct, indirect, or cumulative effects.

At the very least, appellants have raised a concern about the uncertainty of potential significant effects from the project, which requires the responsible official to prepare an EA. *See* 36 C.F.R. § 220.6(c) (“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 the likelihood of flooding and potential for substantial discharge of fill material as discussed above, we believe we have presented sufficient evidence that the environmental effects from the project are at least “uncertain,” and so the Forest Service cannot rely on a CE and must prepare an EA.

Thus, the Appeal Deciding Officer should remand the decision to district to prepare an EA to disclose the direct, indirect, and cumulative effects from the project.

3. The Halstead Meadow Restoration Alternative should have been studied in detail

As previously stated in our scoping and draft DM comments, the Forest Service provides a speculative rationale for dismissing an alternative, which has been successfully implemented in Sequoia National Park, based primarily on economics with little regard to the requirements of NEPA. It estimated that it would take 3400 cubic yards of material to fill the gully using 340 to 680 truckloads of soil.

The response states further, without foundation, that

[u]sing this amount of equipment [sic] to fill in the meadow would create an unacceptable level of compaction to the meadow’s natural structural surface along the multiple paths that would be needed to dump sufficient fill into the voided head-cut area.

DM, p. 10. But this is just the type of analysis that belongs in an EA to explore a design that may result in ways that will not create unacceptable compaction in the meadow. The issue of compaction was addressed by the National Park Service at Halstead Meadows as explained in its follow-up report. *See* SFK & SC Scoping Comments, Exhibit B, p. 12 (achieving significant reductions in compactions with soil amendments).

While admittedly expensive and requiring many trips by trucks to deliver the material, the Halstead Meadow Restoration option is a reasonable alternative, which should have been fully analyzed in an EA.

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 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, especially in a National Monument, in which it

proclamation states that Monument Management provides “an excellent opportunity to understand the consequences of different approaches to forest restoration.” Clinton GSNM Proclamation.

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, the Appeal Deciding Officer should remand the decision and instruct the district to fully analyze a Halstead Meadow-type alternative to the proposed action.

4. Extraordinary Circumstances – Paleontological Resources in Meadow Sediments

As in the draft, the final DM completely dismisses our concern about the effects on Monument “objects of interest” by concluding that there are no extraordinary circumstances to preclude use of a CE. *See* DM, p. 6.

In both of our previous 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 DM about these adverse effects or consideration of this extraordinary circumstance. Although 36 C.F.R. § 220.5(b) lists specific resource conditions, other extraordinary circumstances that result in adverse effects can trigger the need to preclude use of a CE. Here there is such an adverse effect on “objects of interest” protected under the Antiquities Act by Presidential Proclamation.

Moreover, while the 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. Installing plugs in the meadow could cause

substantial flooding in the meadow (see SFK & SC Draft DM Comments, 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, as discussed above. This potential for failure means the potential for effects on these resource conditions must be considered an extraordinary circumstance.

Because there are extraordinary circumstances that preclude use of a CE, the Appeal Deciding Officer should remand the decision and instruct the district to prepare an EA.

5. No Responses to our Grazing Comments

The initial scoping notice for the project states:

Historically, this area experienced intense grazing. Long Meadow is currently used for short term pasture of horses during the process of during cattle to a gazing allotment. Most of the meadow is fenced and there is a cabin, along with other structures, used as part of a grazing permit.

Scoping Notice, p. 1. In response, we requested that the Forest Service make sure that the causes for the meadow's degradation be addressed by considering retirement of the grazing allotment. But the DM provides no response. The only mitigation proposed for the project is to "Install a temporary fence (in place approximately five to seven years) to keep horses out of the project area." And as previously stated, there is no discussion about other grazing that has occurred in the past or may occur in the future in this grazing allotment that may cause future meadow degradation, such as weather cattle will be allowed to graze in the restoration area in the future, or whether grazing be limited to horses. Based on the findings of Sequoia ForestKeeper interns during the summer of 2013, there is clear evidence of continued degradation from cattle grazing in Long Meadow. *See* Exhibit 1 – Exhibit 1 - Long Meadow Report - SFK Interns 2013 (not yet available during the draft DM comment period).

Based on the presumption that grazing continues in Long Meadow, there are potential cumulative effects when the project is combined with effects from past, present, and reasonably foreseeable future grazing on Long Meadow. These must be analyzed in an EA.

The Appeal Deciding Officer should remand the decision to the district to provide a response to our concerns about future grazing in the Long Meadow area and require a cumulative effects analysis, which combines an analysis of grazing and the project's effects.

6. No Responses to our Clean Water Act and Stream Alteration Permit Comments

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. *See* SFK & SC Scoping Comments, Exhibit C, p. 2 of 3 ("obtain regulatory permits; Army Corps of Engineers, Section 404 Permit; Water Quality Waiver"), PDF p. 4 ("The project will include costs to acquire a U.S. Army Corps of Engineers Section 404 Permit, Section

401 Permit from California Regional Water Quality Control Board, and possibly a Streambed Alteration Agreement from California Department of Fish & Game.”). None of the materials provided the public ever makes mention of these permits and associated constraints, and there is no response to our comments on these issues, which may greatly affect this project.

The Appeal Deciding Officer should remand the decision to explain how the district will comply with the Clean Water Act and State law regarding permit before it can begin the project.

For Sequoia ForestKeeper, the Kern-Kaweah Chapter of the Sierra Club, and Western Watersheds Project.



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