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Sent to:  
[acolson@fs.fed.us](mailto:acolson@fs.fed.us)  
cc: Ara Marderosian  
Georgette Theotig

Subject: “Issuance of Miscellaneous Outfitter Guide Special Use Permits Proposal”  
Scoping Comments by Sequoia ForestKeeper and Kern Kaweah Chapter of the  
Sierra Club

Thank you for the opportunity to comment on the proposed **Issuance of Miscellaneous Outfitter Guide (OFG) Special Use Permits (SUP) Proposals**. And thanks for the time on the phone on Aug. 2, 2010 to clarify some of the authorities use for these SUPs.

Sequoia ForestKeeper (SFK) and Kern Kaweah Chapter of the Sierra Club (KK Sierra Club) would like to comment on several of the proposals listed in the July 16, 2010, scoping notice.

Generally, they would like to discourage the practice of lumping together different types of proposals from various Ranger Districts that are subject to different authorities. They believe that this is not a good way to make projects clear for the public or encourage the best public feedback on those proposals. Instead, some of these proposals should be broken out as separate proposals by each district or by type of special use.

Specific Comments

1. The Larry Lowell Hunting SUP should restrict the use of dogs for hunting

The proposal states:

**8. Larry Lowell Hunting OFG** – This OFG is not currently under SUP. I propose to issue a two-year SUP. If the permit holder has a good record and desires to continue this service after the initial two-years, I would extend the SUP for an additional eight years. Services provided include guiding parties of one or two hunters with the use of dogs to hunt bear, bobcat, and gray fox during the legal season from September through February. Guiding will occur as per California State Fish and Game regulations. Use will occur on the Kern River and Western Divide Ranger Districts, including the Giant Sequoia National Monument (emphasis added).

In general, SFK and the KK Sierra Club oppose the use of dogs off-leashes or not under the control of the owner for hunting, especially hunting bears, in the Sequoia NF and Giant Sequoia

National Monument. Hunters should have to keep their dogs under their control per the state law, so they should have to be leashed at all times. Fish and Game Code section 3008 requires hunters to maintain physical control over dogs, which is not possible if they are off-leash and beyond the visual range of the hunter.

The KK Sierra Club board recently passed the following resolution in preparation for these comments:

The Kern-Kaweah Chapter of the Sierra Club requests that the California Fish & Game Commission modify the proposed 2010 hunting regulations to protect the imperiled Pacific fishers. We are calling for a halt to the practice of releasing packs of unleashed dogs by black bear hunters in the Giant Sequoia National Monument and other Forest Service lands that contain the last living remnants of the fisher. The vicious behavior that dogs revert to when they hunt in packs is well documented. Even docile family pets have been known to attack wild animals and domestic livestock when they run in packs. We believe that the fisher will be in great peril if uncontrolled hunting hounds are released into their habitat. Because of the potential for incidental take of fishers by hunting hounds, we are asking that regulations be adopted to require bear hunters to keep their dogs leashed and in their control when hunting in fisher habitat.

KK Chapter Excom Resolution, passed unanimously on July 23, 2010.

The Fish and Game Code requires “*physical control*” of a dog while it is hunting. The Fish and Game Code states:

The physical control of a dog by its owner while the dog is engaged in hunting in an area where the owner is otherwise authorized to hunt, shall be as required by this code or regulations made pursuant thereto.

(Fish & Game Code section 3008.) Fish and Game Code section 4756 states: “Except as provided in this section it is unlawful to use dogs to hunt, pursue, or molest bears.” Thus, off-leash hunting with dogs is not allowed.<sup>1</sup> This foreseeable occurrence must be addressed in the environmental analysis and prevented by adoption of conditions in the SUP that require hunters to maintain physical control of the hunting dogs at all times.

While some dogs may be trained to go after certain animals, including those trained to “tree” bears, it is more likely that dogs that are allowed to roam the forest in groups or “packs” will not restrict themselves to only pursuing a targeted game species.

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<sup>1</sup> Furthermore, Currently, Title 14 California Code of Regulations section 365 states “(c) Bag and Possession Limit: . . . Cubs and females accompanied by cubs may not be taken. (Cubs are defined as bears less than one year of age or bears weighing less than 50 pounds.)” (Cal. Code Regs. § 365.) The Fish and Game Code states, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & Game Code section 1-89.1(86).) Therefore, when off-leash dogs “pursue” a female bear with cubs or “pursue” cubs in the wild, or even merely “attempt” to pursue them, the hunter who is responsible for them commits an illegal “take” in violation of Title 14 California Code of Regulations section 365, even if the hunter does not capture or kill the mother bears or cubs.

Most concerning to SFK is that dogs could potentially chase, interact with, and “tree” Pacific fishers. This would be harmful to this species because permitting such interactions between dogs and a “candidate” species under the Endangered Species Act (ESA) would likely stress individual fishers and their kits, could cause death if a dog actually caught a fisher or its kits, or could cause eventual death by the transmission of a disease known to be transmitted by dogs that fishers are susceptible to, including canine distemper, canine parvo, and possibly toxoplasma gondii. Canine distemper is now one of the leading causes of death of Pacific fishers in the Southern Sierra Nevada, and it is logical to assume that transmission of this disease is being caused by dogs.

For this reason, there is a potential for adverse environmental consequences, and this SUP should not be issued by categorical exclusion from analysis under the National Environmental Policy Act (NEPA). Instead, the Forest Service should develop an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that analyzes and mitigates the environmental consequences on both game, non-game, sensitive, and ESA candidate species such as the Pacific fisher.

According to our conversation on Aug. 2, you said that this SUP would be issued under the “five acre & less” CE, FSH 1909.15 at 31.2(3). The authority for that is now 36 C.F.R. § 220.6(e)(3), which has the same language. But this is not the appropriate CE in this case because this particular hunting SUP would have an effect on more than five acres. The SUP covers the entire Kern River and Western Divide Ranger District, so the contiguous acres covered would be much greater than on 5 “contiguous” acres.

In fact, analyzing this outfitter SUP without doing at least an EA is not envisioned by the Forest Service’s NEPA regulations. 36 C.F.R. § 220.6(d)(8) regulations restrict the use of CEs for outfitter special uses to those that are one year or less in duration. *See* example (i) (“Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide.”). Here, the proposal is to issue the SUP for two years and possibly eight more years based on certain conditions (see above).

Moreover, extraordinary circumstances prohibit the issuance of a SUP by CE. *See* 36 C.F.R. § 220.6(a). Here, the Forest Service must consider a listed resource condition in determining whether an extraordinary circumstance exists: “(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.” 36 C.F.R. § 220.6(b)(1)(i). The Pacific fisher is both a “species proposed for Federal listing” under the ESA and a “Forest Service sensitive species.” In addition, the Pacific fisher is an “object of interest” protected under the Giant Sequoia National Monument Proclamation, and the use of dogs could potentially harm them.

“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. 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. § 220.6(c). At the very least, because canine distemper and parvo can be transmitted by dogs to fishers (these diseases are

known to cause their deaths), there is enough uncertainty and potential for a significant environmental effect on the Pacific fisher that an EA or EIS must be prepared.

This EA or EIS should include a range of alternatives to the proposed action, including prohibiting the use of dogs as part of this SUP. Another alternative that should be fully considered, if dogs are used, is a restriction that dogs be kept leashed and under control at all times.

The SUP should require that, if any dogs are used for hunting, the outfitter must show proof of immunization for canine distemper and parvo for each dog used under the SUP.

2. The Admo Tours SUP should make it very clear that motorized vehicles are prohibited in Wilderness, generally, and prohibited on trails in the Giant Sequoia National Monument

The proposal states:

**[Item] 3. Admo Tours, Inc.** – This OFG is not currently under SUP. I propose to issue a two-year SUP. If the permit holder has a good record and desires to continue this service after the initial two-years, I would extend the SUP for an additional eight years. The services provided include guiding dual-sport motorcycles on trails and dirt and paved roads approved for such use. OFG plans 5-10 tours per year with 6-15 riders per trip including guides. OFG will stress courteous use of trails and roads while promoting protecting forest resources. Use will occur on the Kern River and Western Divide Ranger Districts, including the Giant Sequoia National Monument (emphasis added).

Any motorized vehicles and bicycles are prohibited by law in congressionally designated Wilderness areas, and the SUP should make clear that the outfitter knows where any Wilderness boundaries are located and that any mechanized vehicles are prohibited in Wilderness. Furthermore, Sequoia ForestKeeper opposes the use of any motorcycles or other forms of motorized transport in Inventoried Roadless Areas (IRAs), and would encourage the Forest Service to place restrictions on this permit that limits the outfitter to areas outside IRAs as well.

Moreover, the Giant Sequoia National Monument restricts the use of motorized vehicles to designated roads in the Monument and prohibits them from trails, generally. The SUP should also make sure the outfitter is clear about this.

Thank you for stating that the “OFG will stress courteous use of trails and roads while promoting protecting forest resources.” SFK supports every opportunity to provide public education on forest protection and courteous use of forest trails and roads, especially to motorized or mechanized trail users.

3. The Hermosa Tours and Bionicon SUPs should stress that bicycles are prohibited in Wilderness and restrict use and shuttling services only to trails open to bicycles

The proposals state:

**[Item] 2. Hermosa Tours, LLC** – This OFG is not currently under SUP. I propose to issue a two-year SUP. If the permit holder has a good record and desires to continue this service after the initial two-years, I would extend the SUP for an additional eight years. The services provided include five-day trips using mountain bikes on trails and dirt and paved roads approved for this use. The applicant proposes weekly trips scheduled from September through October with 15 riders (including guides) per trip. OFG will stress courteous use of trails and roads while promoting protecting forest resources. Use will occur on the Kern River and Western Divide Ranger Districts, including the Giant Sequoia National Monument (emphasis added).

**[Item ] 6. Bionicon (Ride KRV)** – This OFG is not currently under SUP. I propose to issue a two-year SUP. If the permit holder has a good record and desires to continue this service after the initial two-years, I would extend the SUP for an additional eight years. The service provided entails shuttling mountain bikes for mountain bike enthusiasts (locals and visitors) to various trailheads on the Kern River Ranger District (emphasis added).

Any bicycles or mechanized transport are prohibited by law in Congressionally designated Wilderness areas, and the SUP should make clear the outfitter knows where any Wilderness boundaries are located and that any mechanized vehicles are prohibited in Wilderness.

All trails in the Sequoia National Forest or Giant Sequoia National Monument should be generally designated closed to bicycle use, unless specifically authorized for that use, and the outfitters should be informed of this restriction.

a. SUP for Hermosa Tours

The SUP for Hermosa Tours should specifically list only those trails and roads the outfitter/permittee can use that are designated open to bicycles and prohibit the use of all other trails and roads not designated open.

Thank you for stating that the “OFG will stress courteous use of trails and roads while promoting protecting forest resources.” SFK supports every opportunity to provide public education on forest protection and courteous use of forest trails and roads, especially to motorized or mechanized trail users.

b. SUP for Bionicon

Also, the SUP for Bionicon should specifically list only trails and roads the shuttle service/permittee can use to drop off mountain bikes and mountain bike enthusiasts that are designated open to bicycles, and prohibit dropping off mountain bikes and mountain bike enthusiasts at all other trailheads and roads not designated open. Moreover, the Forest Service should ask the shuttle service to explicitly discourage mountain bike enthusiasts from using any trails not specifically open to bicycles.

This SUP should also include the statement that the “OFG will stress courteous use of trails and roads while promoting protecting forest resources.” SFK supports every opportunity to provide public education on forest protection and courteous use of forest trails and roads, especially to motorized or mechanized trail users. We encourage you to include this education by Bionicon of mountain bike enthusiasts it shuttles to open trailheads as well.

Again, thank you for the opportunity to comment, and if you should have any questions, please don't hesitate to contact me.

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

A handwritten signature in black ink, appearing to read 'René Voss', with a long horizontal flourish extending to the right.

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