

## René Voss – Attorney at Law

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June 13, 2014

**Sent via e-mail to:**  
**pshibley@fs.fed.us**

Penelope Shibley, District Planner  
Sequoia National Forest, Kern River Ranger District  
105 Whitney Road  
Kernville, CA 93238

cc: Ara Marderosian  
Stephen Montgomery, Alison Sheehy  
Rick Stevens, Alfred Watson  
Art Colson, Barbara Johnston

### **Subject: Mike Berry/Neil Ray Outfitter Guide Temporary Special Use Permit Proposal**

Hi Penelope and Artie,

1. Project Comments for Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club: Please consider the following as comments for the proposed Mike Berry/Neil Ray Outfitter Guide Temporary Special Use Permit (SUP).

Artie, thanks for calling me back yesterday to clarify what will be included in the SUP regarding the use of dogs, since the scoping notice was not as specific as the previous Bears2013.pdf SUP. The current scoping notice states:

“Each outfitter shall: ... • not use dogs while conducting authorized services.”

The previous SUP, however, provided more specificity and stated:

“Each outfitter shall: ... • not use or have dogs belonging to outfitter or clients while conducting authorized services on National Forest System land.”

You clarified over the phone that this latter and more specific statement will again be used in the new SUP. If you can confirm, in response to this message, that this more specific statement will be included in the SUP, this will resolve our concerns for the proposed SUP.

2. Other Concern (to be addressed by the District Rangers and Supervisor’s Office):

More generally, we do have a concern with the way the 2013 SUP was scoped and approved, which is not directly related to the proposed project. However, we would like a clarification and some assurances from District Rangers Rick Stevens and Al Watson, as well as from Barbara X Johnston, about the scoping/SOPA process going forward for similar projects; that is, any CE’d projects for which a decision memo may or may not be required.

In the 2013 SUP for Mike Berry/Neil Ray (Bears2013.pdf, attached), it states:

Scoping for this use was conducted on 08/09/13. Concerns raised included proximity of hunting to private property, inadvertent "take" or sensitive species such as fisher, and prohibiting the use of dogs.

These issues are addressed in the operating plans for these SUPs.

We reviewed all the SOPAs for 2013 and found no mention of a proposal for this project. Moreover, there is no record of this project anywhere on the project website for Sequoia National Forest. If only internal scoping was conducted, that is unacceptable and inconsistent with the letter and intent of the Forest Service's NEPA and CEQA regulations, as well as direction from the Chief: Scoping (40 CFR 1501.7). (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§ 220.6).

36 C.F.R. § 220.4(e). This regulations makes no distinction between proposed actions that move forward with a decision memo (36 C.F.R. § 220.6(e)) or without (id. § 220.6(d)). In fact, the Chief of the Forest Service has provided further direction, which emphasizes the need for public scoping: The Forest Service will continue to offer public involvement opportunities for categorically excluded projects as provided for in the agency's NEPA Procedures, see 36 CFR 220.4(d) (SOPA) and 36 CFR 220.4(e) and 220.6(c) (scoping).

Tidwell Direction (March 5, 2014, attached). This direction is consistent the CEQ NEPA regulations, which specifically define scoping and state that the lead agency shall: (1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c).

40 C.F.R. § 1501.7(a) (note: the limited exception only applies to classified materials).

Please provide us with assurances that these directives and regulations will be followed in the future and that ALL proposed actions/projects will be listed on the SOPA and publically scoped. Unless we receive assurances that PUBLIC scoping will be conducted for ALL proposed actions/projects on the Sequoia National Forest, we will likely have to resort to a monthly FOIA to the Supervisor's Office to request this missing documentation.

We request a written response from the Supervisor's office and/or the District Rangers.

Thank you, and have a good weekend.

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

Sincerely,

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

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Attachments: Tidwell Direction re ARA Repeal 3-5-2014.pdf; Bears2013.pdf