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Sent to:  
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**Subject:** Tobias Project EIS Supplemental Scoping Comments for Sequoia ForestKeeper, the Kern-Kaweah Chapter of the Sierra Club, and Western Watersheds Project

Sequoia ForestKeeper, the Kern-Kaweah Chapter of the Sierra Club, and Western Watersheds Project wish to provide the following supplemental comments in preparation of the Draft EIS for the Tobias Project based on new information.

On February 28, 2015, we provided initial scoping comments for the Tobias Project. Since that time circumstances have changed with regard to the status of the California spotted owl (CSO) and the Pacific fisher relevant to the Tobias Project. Moreover, the Sequoia National Forest is planning the Summit Project, located directly south and adjacent to the Tobias Project in the Kern River Ranger District, which would add cumulative effects to Pacific fishers and their habitat, along with the various other projects proposed in the Greenhorn Mountains.

In its scoping notice, the adjacent Summit Project proposal stated that its analysis will include a full EIS with at least 4 alternatives, including the proposed action, no action, a non-commercial alternative, and an alternative that implements the new “*Draft Interim Recommendations for the Management of California Spotted Owl Habitat on National Forest System Lands 29 May 2015.*” See Exhibit 1, attached. This latter document was not available at the time the Tobias Project was scoped. Although the draft document includes numerous errors and inconsistencies, and a final version must be issued to clarify these inconsistencies, the science and management recommendations therein should be considered in the Tobias Project.

These CSO management recommendations will be used to inform the forest plan revision for the Sequoia National Forest, as required by the settlement agreement in *Sierra Forest Legacy, et al. v. Bonnie*, No. 13-16105, Dkt. ## 15, 16, p. 5 (9th Cir. Oct. 9 & 20, 2014, respectively), attached as Exhibit 2. Moreover, the settlement agreement requires that these CSO management recommendations must be used to craft an alternative in vegetation management projects similar to the Tobias Project. See *id.*, pp. 5-6. The U.S. Fish and Wildlife Service (FWS) found that recent listing petitions for the CSO presented substantial scientific or commercial information indicating that the Endangered Species Act (ESA) listing as threatened or endangered may be warranted. 80 Fed. Reg. 56423, 56426 (Sept. 18, 2015).

Therefore, in addition to the alternatives that are currently being developed, we request that an

alternative consistent with the CSO management recommendations be developed.

As discussed in our previous scoping comments, the Tobias Project is also entirely within the Southern Sierra Pacific Fisher Conservation Area. Since project scoping began, the State of California has listed the Southern Sierra Pacific Fisher as a threatened species under the California Endangered Species Act. The FWS has also proposed listing the fisher under the federal Endangered Species Act as threatened. 79 Fed. Reg. 60419 (Oct. 7, 2014). After the last round of scoping, the FWS has indicated that it will make a final determination on the proposed rule to list the fisher by no later than April 7, 2016. 80 Fed. Reg. 19953 (April 14, 2015).

Also after the last round of scoping, the Forest Service has issued a near-final draft of its *Southern Sierra Nevada Pacific Fisher Conservation Strategy* (Fisher Conservation Strategy), which was released for peer review in June 2015, attached as Exhibit 3. The Fisher Conservation Strategy includes specific direction for fisher habitat management in the Southern Sierra Pacific Fisher Conservation Area. The Fisher Conservation Strategy will also be used to inform the forest plan revision for the Sequoia National Forest. *See Sierra Forest Legacy, et al. v. Bonnie*, No. 13-16105, Dkt. ## 15, 16, p. 3 (9th Cir. Oct. 9 & 20, 2014, respectively).

We also request that the Fisher Conservation Strategy's science and its management direction be considered and incorporated into the Tobias Draft EIS.

The importance of the southern-most habitat of the fisher, where the Tobias Project is located, cannot be overstated because it contains the highest occupancy rates, greatest genetic diversity, and best average habitat quality for the fisher in the Sierras. The Fisher Conservation Strategy delineates this area as "Core 2" and describes it as follows:

Core 2 includes the southwestern tip of the Sierra Nevada and Greenhorn Mountains—between the Kern River and Bear Creek in the Tule River watershed—mostly on Sequoia National Forest and Giant Sequoia National Monument (Figure 3). It has the highest recorded fisher occupancy rates (Zielinski et al. 2013a), highest predicted average habitat quality (Table 1), and highest genetic diversity (Tucker et al. 2014) in the Assessment Area. Genetic patterns suggest this area may have served as a refuge for fishers following European settlement—perhaps due to steep terrain that limited human impacts compared to other areas (Beesley 1996)—and the population may have re-expanded northward from this area during the 20th century.

Zielinski et al. (2004a) found fishers to have smaller home ranges in Core 2 than in other regions, which they suggested may be due to high quality habitat (dense mixed-coniferous forests, large trees, and abundant black oak). Statistical analysis of female home range composition shows that home ranges in the high-quality habitat in the western portion of Core 2 have higher average tree basal area, greater black oak basal area, greater diversity of tree diameter classes, more dense (>70%) canopy cover, and a greater coverage of high-value fisher CWHR (California Wildlife Habitat Relationships) reproductive habitat than home ranges in Cores 4 and 5. These results probably reflect the greater availability of old-

forest habitat conditions from which fishers can select home range areas, compared with other cores.

This core may be less in need of fisher habitat restoration than others, but management should help maintain habitat resiliency, ideally using fire as a natural process. Much of the core is within the Giant Sequoia National Monument and Golden Trout Wilderness, where current management calls for restoration of essential ecological processes and patterns that enhance forest ecosystem resilience to stressors (e.g., uncharacteristic wildfire, climate change) and protect or enhance high-value wildlife habitat. Management treatments include the use of prescribed fire, wildfire managed for resource objectives, or mechanical treatments to increase resiliency and help restore fire as an ecological process.

Fisher Conservation Strategy, p. 14.

### Consideration of Referenced Scientific Studies

Scientific studies referenced in these comments (and our original scoping comments) and not provided as exhibits are being provided in a DVD by mail to the project planner and for the project record.

### Supplemental Comments

NEPA requires agencies to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). The regulations encourage accuracy in presenting scientific data and analysis in the environmental impact statement (40 CFR 1500.1(b), 1500.4, and 1502.24). At a minimum, an agency must “identify any methodologies used and make explicit reference by footnote to the scientific and other sources relied upon for conclusions” in the EIS (40 CFR 1502.24).

Moreover, Forest Service regulations require that the agency use the best available scientific information to inform the planning process (36 C.F.R. § 219.3 (2012)), and in planning projects, which implement forest plans, that it consider the best available science in their analysis. 36 C.F.R. § 219.35(a), (d) (2000).

To correctly apply these standards, the Forest Service should seek out and consider all existing scientific evidence relevant to the decision. It cannot ignore existing data or scientific reports. The Forest Service must determine which data and scientific studies are the most accurate, reliable, and relevant, based on science that is reliable, peer reviewed, or otherwise complies with valid scientific methods. It must also disclose and discuss any science or data that it rejected as less accurate, reliable, or relevant than the science or data it actually applied in its analysis.

#### 1. The Fisher Conservation Strategy

The Forest Service must consider the recent *Southern Sierra Nevada Pacific Fisher Conservation Strategy* in its analysis. The June 2015 Forest Service-sanctioned team of

researchers and managers released the *Southern Sierra Nevada Pacific Fisher Conservation Strategy* for peer review. This strategy and the accompanying Conservation Assessment represent the best available scientific information, which must be considered and incorporated into the design of the Summit Project.

## 2. The CSO Management Recommendations

The Forest Service must use the new CSO management recommendations to inform all alternatives in the Tobias Project. The CSO management recommendations must inform the environmental analysis for all the alternatives because they represent the most recent and best available scientific information about habitat conservation and management for the CSO.

## 3. Cumulative effects from the Tobias Project, the newly-proposed Summit Project, and other projects in the vicinity must be analyzed in detail in the Tobias EIS.

In addition to the past cumulative effects from the Ice Project and salvage logging after the Shirley Fire, the analysis must discuss the Tobias Project in relation to other past, present, and foreseeable future projects, including the newly-proposed Summit Project, which is located directly to the south of the project area on the Kern River Ranger District. The analysis must also include the Frog Project, which is directly north of the Tobias Project area, and the Rancheria Project, which is directly south of the Ice and Summit project areas.

In addition, cumulative effects analyses should also include the White River and Saddle projects, as well as the Ice Helicopter Units (all in the GSNM and which are currently enjoined, but remain under contract and could be logged in the future), the Red Mountain Project, and any other projects implemented or proposed around the Alta Sierra communities on public and private lands.

Cumulative effects should consider effects on Townsend's big-eared bat, ring-tailed cat, Pacific fisher, northern flying squirrel, Mt. Pinos sooty grouse, mountain quail, California condor, golden eagle, sharp-shinned hawk, northern goshawk, great gray owl, California spotted owl, black-backed woodpecker, pileated woodpecker, gregarious slender salamander, Greenhorn Mountains slender salamander, yellow-blotched ensatina, southern mountain yellow-legged frog, foothills yellow-legged frog, Blainville's horned lizard, Sierra night lizard, southern rubber boa, western bumble bee, Piute cypress, southern honeysuckle, Tulare cryptantha, Kern County larkspur, Greenhorn fritillary, tube flower bluecup, Munz's iris, gray-leaved violet, three bracted onion, Shirley meadows star tulip, forget-me-not popcornflower, and slender leaved ipomopsis.

## 4. Thresholds for cumulative restorative treatments should not exceed, on average, 2.6% of Pacific fisher habitat per year, but the cumulative treatment acres from various projects likely exceed this threshold, putting fisher habitat and fisher use of the areas at risk.

The types of treatments proposed in the Tobias Project are referred to in Zielinski et al. (2013b) (Exhibit 4) as restorative, which include fuel reduction thinning, prescribed fire, or pre-commercial (hand) thinning. Zielinski et al. (2013b) suggest that fishers occupy habitat at the highest rates where restorative treatments "are applied at rates that do not exceed about 13% of

an area in 5 years ....” or 2.6 % per year. See p. 825. Zielinski et al. (2013b) noted that although fishers showed no aversion to including treated areas within their home ranges, Garner (2013) found that “fishers avoided using treated areas when resting and foraging.” *Id.*

We aver that, cumulatively, the Tobias, Summit, Ice, Rancheria, and Frog Project treatments are likely to exceed this 2.6% average treatment acreage per year, and thereby the proposed treatments “may put fisher habitat and fisher use of these areas at risk.” *Id.* The Forest Service must therefore rethink its course of treatments in the fisher’s habitat in the Greenhorn Mountains.

The application of treatments on this larger scale in the fisher’s core habitat along the ridge in the Greenhorn Mountains south and north of Alta Sierra, which includes the treatments in the Tobias, Ice, Rancheria, Summit, and Frog Projects (see Exhibits 5a & 5b). The effects on fisher core habitat are calculated in Table 1., below, over 20 years.

Project	Total Fisher Habitat Acres	Treatment Acres in Fisher Habitat	% of Habitat	Implementation Time-Frame	Average Yearly Habitat Treatments
Summit	10,000	2,500	25%	2015-2025	
Ice	10,000*	3,500	35%	2005-2015	
Rancheria	5,880	5,880	100%	2015-2020	
Tobias	7,000**	5,420	77%	2015-2025	
Frog	5,100**	1,630	32%	2014-2016	
<b>TOTAL</b>	<b>27,980***</b>	<b>18,930</b>	<b>68%</b>	<b>2005-2025 (20 years)</b>	<b>3.4%/year</b>

\* Mostly overlaps with Summit

\*\* Only estimated fisher habitat acres are included

\*\*\* Discounted Ice/Summit Project areas due to overlap

Table 1. – Treatment Acres and Average Yearly Habitat Treatment Percentages in the Greenhorn Mountains.

But more relevant going forward is what will happen when we look only at treatments proposed over the next 10 years. If we remove the Ice units from the equation, which were already implemented over the last 10 years, the time-frame for implementing the remaining four projects is the next 10 years (or 11 years if we consider that the Frog project implementation began in 2014). The implications of treatments over this time-frame are most concerning and are described in Table 2., below.

Project	Total Fisher Habitat Acres	Treatment Acres in Fisher Habitat	% of Habitat	Implementation Time-Frame	Average Yearly Habitat Treatments
Summit	10,000	2,500	25%	2015-2025	
Rancheria	5,880	5,880	100%	2015-2020	
Tobias	7,000*	5,420	77%	2015-2025	
Frog	5,100*	1,630	32%	2014-2016	
<b>TOTAL</b>	<b>27,980</b>	<b>15,430</b>	<b>55%</b>	<b>2014-2025 (11 years)</b>	<b>5%/year</b>

\* Only estimated fisher habitat acres included

Table 2. Treatment Acres and Average Yearly Habitat Treatment Percentages in the Greenhorn Mountains from 2014 to 2025.

Those treatment amounts are nearly twice the 2.6% average per year maximum, which if exceeded, according to Zielinski et al. (2013b) “may put fisher habitat and fisher use of these areas at risk.”

Given that only the Frog Project is currently partly implemented, the Forest Service must re-think its course with regard to the remaining projects, which pose a significant risk that fishers will abandon the area and that the area will no longer be viable as fisher habitat.

Enclosed as Exhibit 5c are the decisions and analyses for some of these adjacent projects.

5. Additional science regarding fuel reduction treatments should be considered.

The Proposed Action summary suggests that commercial thinning, as proposed, will reduce potential for severe fire. Research conducted after the Rim Fire, however, found evidence to contradict this claim. It found

that wildfire burning under extreme weather conditions, as is often the case with fires that escape initial attack, can produce large areas of high-severity fire even in fuels-reduced forests with restored fire regimes.

Lydersen et al. (2014) (enclosed as Exhibit 6). Please analyze the implications of this data in the Tobias DEIS.

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



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