

SIERRA CLUB



KERN-KAWEAH CHAPTER



CENTER for BIOLOGICAL DIVERSITY

Because



**THE HUMANE SOCIETY**  
OF THE UNITED STATES

August 5, 2011

Priscilla Summers, District Ranger  
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Sent to:  
[tdseeley@fs.fed.us](mailto:tdseeley@fs.fed.us)  
cc: **Richard Garcia**  
cc: **René Voss**

Subject: "High Sierra Guide Service/Mike Berry Guide Service Outfitter Guide Special Use Permits Proposal" Scoping Comments by Sequoia ForestKeeper, Kern Kaweah Chapter of the Sierra Club, Center for Biological Diversity, and The Humane Society of the United States

Thank you for the opportunity to comment on the proposed issuance of High Sierra Guide Service/Mike Berry Guide Service Outfitter Guide Special Use Permits Proposal.

**EXTEND THE COMMENT PERIOD**

A two week comment period is completely inadequate especially since the scoping letter dated July 21, 2011 was not received from the US Post Office until July 26, 2011. The comment period should be extended to allow sufficient time to provide comprehensive information for decision making.

### **Specific Comments**

The proposal states:

The Kern River and Western Divide Ranger Districts of the Sequoia National Forest and Giant Sequoia National Monument are asking (or public comments on a proposal to *issue* two (2) outfitter/guide 10-year priority special use permits to Mike Berry Guide Service (Outfitter) and High Sierra Guide Service (Outfitter), Both Outfitters propose to conduct guided hunting trips for black bear, gray fox and bobcat under the California Fish & Game regulations using hunting dogs on both ranger districts. The authorized activities will remain unchanged from the previously issued permits, which expired on February 28, 2011.

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, gray fox, and bobcat in the Sequoia NF and Giant Sequoia National Monument and especially in the Southern Sierra Fisher Conservation Area. 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.

Since there is still no management plan for the Giant Sequoia National Monument (Monument), all projects are required to comply with Judge Breyer's order in *Sierra Club v. Bosworth*, 465 F.Supp.2d 917, 929 (N.D. Cal. 2006). There, the court held that the Proclamation is the dominant authority in the Monument.

In the interim, and until the Forest Service issues a new Management Plan, the Monument shall be managed consistent with the Monument Proclamation of April 15, 2000, and in accordance with direction from the 1988 Sequoia National Forest Land and Resource Management Plan, as amended by the 1990 Mediated Settlement Agreement and the 2001 Sierra Nevada Forest Plan Amendment.

Since the Special Use Permits (SUPs) apply to the Monument, and the Proclamation states that the Monument was designated “for the purpose of protecting the objects,” this project, which proposes to kill black bear, gray fox, and bobcat, which are some objects of interest in the Monument, should be postponed until there is a management plan for the Monument that defines their population status (are there few, many, stable population?).

The Kern-Kaweah Chapter Sierra Club Executive Committee 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 Executive Committee 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.

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 can be caused by dogs.

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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.

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.

The scoping letter uses the term “priority use service days.”

Authorized operating seasons (not to exceed 50 priority use service days) will be:

- Mike Berry Guide Service      September 20 through February 28
- High Sierra Guide Service      September 15 through February 28

We would prefer having such terms defined rather than having to guess the meaning. Please define this and any other undefined terms.

Since Black Bears hibernate in the winter will hunters guided by these outfitters be killing bears while they hibernate?

The scoping letter says:

Both Outfitters propose to conduct guided hunting trips for black bear, gray fox and bobcat under the California Fish & Game regulations using hunting dogs on both ranger districts.

How will the dogs be prevented from randomly harassing species other than the black bear, gray fox and bobcat? How will the dogs distinguish between gray fox and red fox, a rare Sierra species that is listed as threatened under California's ESA?

A pack of howling dogs harasses wildlife even if they are not themselves being chased. Dogs running loose at night, barking frantically without a doubt could stop the hunting activities of Pacific Fisher and American Marten, which are clearly identified for protection by the Proclamation, do not hibernate, and are greatly stressed already to find food. Dogs would disturb both these predators and their prey.

The Proclamation describes an entire ecosystem. There are no studies that disclose the status of the specific Monument species (black bear, gray fox and bobcat) that the hunters will target. There is no way to assure that additional species, ones not supposed to be hunted, will not be harassed, or their hunting interrupted, or their lives ended due to contracting a canine disease from hunting dogs.

The scoping letter says:

The Holder and his employees, contractors and representatives shall comply with all California Department of Fish & Game (CDF&G), Tulare and Kern County Animal Control regulations while conducting authorized activities.

How will the Forest Service enforce the requirement that the Holder and his employees, contractors and representatives comply with all regulations? How will the Forest Service enforce the requirement if the Holder and his employees, contractors and representatives conduct unauthorized activities?

Please send all future correspondence on this project to the persons listed below. Again, thank you for the opportunity to comment, and if you should have any questions, please don't hesitate to contact me.



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