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Sent to:
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Eric LaPrice – District Ranger
Western Divide Ranger District
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cc: Ara Marderosian
Steve Montgomery
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Chris Sanders

Subject: **Bull Run Roadside Hazard Tree Mitigation Project Scoping Comments (2nd) for Sequoia ForestKeeper & Kern-Kaweah Chapter of the Sierra Club**

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (SC) thank you for the opportunity to comment.

Background and Introduction

Please consider these introductory sections as a part of our comments.

This is SFK's and SC's second response to the Forest Service's requests for scoping comments for the proposed project(s). The first proposal was submitted to the public via press release with extremely limited information on October 31, 2016. In the release, the Forest Service mentioned a vague proposal "to remove the trees they determine to be hazardous along the roads in the Tobias and Spear Creek areas, including the area within Giant Sequoia National Monument."

Seeking further information, on October 31, 2016, we submitted questions about the exact scope and location of the project(s), the authorities to be used to analyze and implement the project, and how the project would justify removing trees from the Giant Sequoia National Monument (GSNM).

On November 30, 2016, we received a 2-page response letter, which included the following basic information. In sum, District Ranger Eric LaPrice stated:

1. The proposal will be broken into 2 project: Spear Creek in the GSNM and Bull Run in the old Tobias Project area, overlapping the Cedar Fire area. He stated that he would prepare EAs for each project, and the estimated size for Bull Run and Spear Creek were 2,000 and 1,500 acres, respectively.
2. The 300 ft distance from each side of the roads was justified using the Region's Hazard Tree Guidelines, which suggest a distance 1.5 times the height of the largest trees, which are 200 ft in the project area. He also stated that he did not intend to use hazard tree inspection forms.
3. With regard to the "clear need" to remove trees from the GSNM, he stated that the analysis would be described in the EA, and that leaving all hazard trees would result in excessive fuel loading, described it as a threat to public safety, and that it would inhibit restoration.
4. He stated that he expect that a BE/BA will be made available "when the preliminary EAs are ready for public comment this spring."

After he provided us with leave to submit our comments past the November 30 deadline, in response to these clarifications, SFK and SC submitted more detailed comments on December 20, 2016. Our comments were based on details in the November 30 response letter, which clearly state that EAs would be prepared for each project.

The New Proposal

Since that time, the Forest Service has dramatically increased the size Bull Run Project. Originally at 2,000 acres, the project has been expanded and now includes not only the old Tobias Project area, but also a portion of the Summit CE Project in the Kern River RD within the Cedar Fire burn area. The size of roadside logging in Bull Run alone is now 3,500 acres, not including the adjacent Spear Creek project in the GSNM, which was estimated to be an additional 1,500 acres. Thus, together, the Forest Service intends to log about 5,000 acres in the Cedar Fire area, not including any additional salvage logging in areas outside the stated road corridors. Yet, the Forest Service has not released any further details about the Spear Creek proposal, even though it has told us that the project is still under development.

We note here that the area where the Spear Creek Project was proposed overlaps the White River Project area, which remains enjoined under the *Sierra Club v. Bosworth* decision. On December 15, 2016, the Forest Service and Sierra Forest Products cancelled the White River timber sale contract; however, the White River project decision has not been withdrawn.

The scoping letter includes the following description of the project and actions, as well as a number of statements:

The purpose of this project is to mitigate the hazard to public safety posed by the dead and dying trees along roads in the Cedar Fire area and to perform reforestation work in the area to re-establish and improve wildlife habitat and a healthy and resilient ecosystem. Reforestation work would include planting and seeding the area.

The project is needed because public safety is threatened by the dead and dying trees.

The project area would extend 300 feet to either side of the roads involved to ensure that trees on slopes, having the potential to hit the road, would be removed. ... *If we do not mitigate the roadside hazards, we would have to close a large network of roads for public safety.*

Scoping Letter, p. 1-2. Of particular note here, the Forest Service clearly acknowledges that even though it may not be their preference, one option is to close these roads to for public safety.

To abate hazards, the Forest Service proposes the following actions:

- Hazard tree identification would follow Hazard Tree Guidelines for Forest Service Facilities and Roads in the Pacific Southwest Region.
- It is expected that hazardous trees within 300 feet of each side of the road would be felled, if it is determined that they could potentially strike within the road's clearing width, or could roll or slide into the clearing width after they have fallen.
- Trees would be removed using hand tools (such as chainsaws), and/or mechanically using a feller-buncher.
- Felled trees would be moved off site if they represent an obstruction to use and maintenance within the road's clearing width or if it is determined that their presence would increase future ground fuel loading outside the clearing width.

- Logs may be chipped, pile burned or burned on landings in air curtain burners. Logs considered to have commercial value may be sold as saw timber, cull logs, firewood, chips, posts, and poles. Branches and limbs having commercial value may also be sold as firewood, boughs, and poles.

The Forest Service anticipates that project implementation could begin as early as the spring of 2017.

Perhaps the most troubling statement is near the end of the letter: *“I am contemplating the use of a categorical exclusion because during the early scoping period, no potentially significant issues or concerns were identified and no extraordinary circumstances were identified.”* This statement directly contradicts earlier statements that the Forest Service would prepare EAs for both the Bull Run and Spear Creek projects. Based on those statements we reasonably assumed that the Forest Service would produce EAs, and our first set of comments did not identify potentially significant issues or extraordinary circumstances. We do so now.

Issues and Comments

1. The proposal will adversely and significantly affect Pacific Fishers, California spotted owls, Northern goshawks, American marten, mountain yellow-legged frogs, California condors, three bat species, and other species.

Even though the Cedar Fire burned through the area, most wildlife species continue to use the patchwork of burned forest areas for various habitat needs, including nesting, denning, sheltering, and foraging. Because the Bull Run portion of the Cedar Fire area overlaps the analysis areas for both the Tobias and Summit CE projects, information and analyses from those projects are highly relevant to the Bull Run project analysis. Both the Tobias and Summit CE projects included substantial information about the use of these areas by wildlife, which includes many Forest Service sensitive species and species listed as threatened or endangered under the Endangered Species Act (ESA).

Attached are the BEs and BAs for those projects, which show that many of these species use the Bull Run Project area and that the project had adverse effects on those species:

- Exhibit A – Tobias Draft Wildlife Report
 - Discusses effects on Northern goshawk, California spotted owl, Marten, Townsend’s big-eared bat, Pallid bat, and Fringed myotis bat
- Exhibit B – Tobias Draft Mountain yellow-legged frog (MYLF) & California Condor BA
- Exhibit C – Tobias Draft Fisher Report
- Exhibit D – Summit CE BE and BA for Animals
 - Discusses effects on California condor, Northern goshawk, California spotted owl, Marten, Townsend’s big-eared bat, Pallid bat, and Fringed myotis bat, and Relictual (Green Mtn.) slender salamander
- Exhibit E – Summit CE Supplemental BE for Pacific fisher

As an example of the adverse effects on wildlife, the Tobias Draft Wildlife Report specifically illustrates how logging will affect a California spotted owl PAC and HRCA (even after a fire burns through the area). See Exhibit A, pp. 63-71. The analysis describes and the figures show the effects from the Tobias Project alternatives, which included the no-action alternative, both with or without subsequent wildfire. Therefore, this analysis is highly relevant and should inform the Bull Run analysis.

But that analysis does not include the additional potential adverse effects of hazard tree logging after a fire, which is proposed along roads that cut through the CSO PAC and HRCA, as well as Pacific fisher

habitat. The adverse effects on the owls' and fishers' habitat must be discussed in the NEPA analysis. We aver that adverse effects on owls and fishers is likely greater than those from the Tobias project.

The Summit CE Biological Evaluation for animals also shows several CSO PACs in the Cedar Fire burn area. *See* Exhibit D, p. 32 of 36. Moreover, it is our understanding that at least one additional CSO PAC, and perhaps more, exist between the Summit CE and Tobias project areas.

Because CSOs don't just abandon their habitat after a fire and use all burn severities for nesting, roosting, and foraging due to their propensity for high site fidelity [*see* Bond et al. (2009) (Exhibit G) and Hanson and Odion (2016) (Exhibit H)], the Forest Service must determine whether the owls persist in the Bull Run Project area. This will require surveys of presence (or absence) according to established protocols, which must occur before completion of the NEPA analysis.

Moreover, the Forest Service must maintain a limited operating period (LOP), prohibiting vegetation or fuel reductions treatments within approximately ¼ mile of a CSO activity center during the breeding season (March 1 through August 15), unless surveys confirm that California spotted owls are not nesting. And prior to implementing activities within or adjacent to a California spotted owl PAC and the location of the nest site or activity center is uncertain, the Forest Service must conduct surveys to establish or confirm the location of the nest or activity center (SNFPA ROD, p. 60, S&G #75).

For the same reasons, the Bull Run project may adversely affect Pacific fishers and American marten, which include fire areas in their range of habitat needs. And because the fire burned in a patchwork of severities, it is likely that the Bull Run Project area still contains low-severity or unburned areas that will likely function as marten and fisher denning habitat. *See* Hanson and Odion (2016) (Exhibit H).

To protect unknown maternity den sites for American marten from disturbance during vegetation treatments in areas of suitable habitat during the reproductive season, the Forest Service must implement a LOP from May 1 through July 31 (SNFPA ROD, p. 62, S&G #88). And to protect fisher den site buffers from disturbance the Forest Service must implement a LOP from March 1 through June 30 for vegetation treatments (SNFPA ROD, p. 61, S&G # 85).

Moreover, should a goshawk nest be detected through any phase of the project, the Forest Service must delineate a PAC and implement a limited operating period (LOP) prohibiting vegetation treatments within approximately ¼ mile of the nest site during the breeding season (February 15 through September 15) (SNFPA ROD, p. 60, S&G #76).

Finally, as described in the various BEs and BAs for Tobias and Summit CE, the Forest Service must also analyze adverse effects from the proposed Bull Run project on Townsend's big-eared bats, Pallid bats, Fringed myotis bats, MYLFs, California condors, Relictual (Green Mtn.) slender salamander, and other species that may be present.

We aver that the proposed roadside hazard logging, as proposed, will significantly and adversely affect all of the mentioned species.

2. The use of feller-bunchers will adversely and significantly affect soil and aquatic resources.

Post-fire soils are highly fragile and potentially erosive and even more so when mechanical equipment is placed on them. The fact that the Forest Service plans to use feller-bunchers to fell and remove trees in the Bull Run area means the project will adversely and significantly affect soil and aquatic resources.

As we already provided in our initial comments, “Forest ecosystems are especially vulnerable to postfire management practices because such practices may influence forest dynamics and aquatic systems for decades to centuries.... The following practices are generally inconsistent with efforts to restore ecosystem functions after fire: ... *ground-based postfire logging*, removal of large trees, and road construction.” Beschta et al. (2004) (Exhibit I) (emphasis added).

With regard to ground-based post-fire logging, the science synthesis in Beschta et al. (2004) states that “abundant scientific evidence suggests that commonly applied postfire treatments may compound ecological stresses. For example, soil exposure and the compaction of ground-based yarding equipment may substantially increase erosion following postfire salvage logging.” *Id.*, p. 959. “[U]se of ground-based logging equipment will cause additional site disturbance and soil compaction. Decreased infiltrations, increased overland flow, and accelerated sedimentation following ground-based logging not only degrade forest soils...but can also affect aquatic systems, including survival of salmonids and other aquatic species.” *Id.*, p. 960 (internal citations omitted).

In fact, “soil disturbance during ground-based logging that is severe enough to ‘mix’ or break through soil layers would also cause significant compaction, contributing to accelerated surface erosion and long-term reductions in soil productivity.” *Id.* “Soil compaction can persist for 50-80 years in many forest soils ... and even longer in areas with high clay content, which is substantially longer than the negative influence on soils that may be associated with fire... Because soils and soil productivity are irreplaceable in human time scales, postfire management practices that compact soils, reduce soil productivity, or accelerate erosion should not be undertaken or allowed to continue.” *Id.*, p. 961 (internal citations omitted).

The Beschta study recommends that “the most critical step in undertaking ecological restoration in the postfire environment is to forgo those activities and land uses that either cause additional damage or prevent reestablishment of native species, ecosystem processes, or plant succession....” *Id.*, p. 959.

But if the Forest Service does proceed with using ground-based equipment such as feller bunchers, it must recognize and analyze these significant adverse effects on soils and aquatic resources, which are likely to result from the use of mechanical equipment in the Bull Run project area.

3. Due to the size of the project, the Forest Service should prepare a full Environmental Impact Statement (EIS), similar to the Tobias Project.

In our initial scoping comments, we suggested that an EIS was necessary for the combined size of the Bull Run and Spear Creek project, which at the time was estimated at roughly 3,500 acres. Together, however, those projects would now likely disturb closer to 5,000 acres, which is greater than the disturbances proposed in the Tobias EIS.

Initially, we compared the proposed action of the combined projects to the Tobias Project, for which the Forest Service prepared a Draft EIS. Now, at a combined 5,000 acres, the proposed actions are even greater than the 4,898 acre Tobias Project, which was located in the same area where the fire burned. A closer look at the Tobias Project, however, reveals that only 1,117 acres of the area was proposed for commercial thinning, and that logging the 3,500 acres of the Bull Run proposal alone is more than 3 times as large. *See* Exhibit A, pp. 5-6.

In 2010, the Forest Service also recognized the significance of postfire logging when it prepared an EIS for the Piute Fire Restoration Project. *See* Exhibit J. That project was much smaller than the currently-proposed Bull Run project and included the following treatments:

- 350 acres of commercial logging of merchantable dead and dying conifers

- An unspecified amount of removal of hazard trees
- 1900 acres of piling and burning fuels
- 500 acres of tree planting, and
- Repair and maintenance of existing roads.

Exhibit J, p. i.

Because the impacts from logging in a postfire area could have significant, lasting effects, and because the Forest Service has prepared full EISs for similarly-sized or even smaller project, it should probably prepare an EIS for the Bull Run project.

4. The Forest Service must prepare at least an EA for the Bull Run Project.

Recognizing the potential for significant effects from logging after a fire, the Forest Service has prepared EAs for similar projects, including a similarly-size post-fire roadside hazard project, for which it considered alternatives to tree removal.

In 2009, the Sequoia prepared an EA for the Vista postfire and roadside hazard project. *See* Exhibit K. There, the fire was only 402 acres and also included a CSO PAC and fisher habitat. Activities included:

- 130 acres of salvage logging
- 90 acres of hand planting
- 143 acres of fuel treatments
- 5 acres of contour felling within riparian conservation areas,
- 1500 ft of temporary road construction, and
- Roadside hazard removal along 3 miles of road.

Id., pp. 5-6.

Also in 2009, the Sequoia prepared an EA for the Piute Fire Roadside Hazard Tree Removal Project. *See* Exhibit F. This project is similar to the proposed Bull Run roadside hazard project, although the treatments along roads were “within 200 feet of each side of the road prism.” *Id.* p. 4. Otherwise the actions are similar to those for Bull Run, which included:

- Commercial timber sale to remove hazard trees for safety purposes along approximately 32 miles of roads affected by the 2008 Piute Fire,
- Treatment of activity-created slash by lop and scatter, pile and burn, chipping, or a combination of these methods to retain adequate soil cover while reducing hazardous fuel loading, and

Id., pp. 4-5. At 33 miles of road treatments, the Bull Run Project is almost identical in length to the Piute roadside hazard project, for which the Forest Service prepared an EA. However, with treatments within 300 ft from each side of the road prism, the impact is actually at least 1.5 times that with respect to acreage.

For those reasons, the Forest Service should prepare, at least, an EA.

5. The Forest Service cannot categorically-exclude (CE) the Bull Run Project under NEPA.

A CE is not appropriate because similar projects in the Sequoia have required at least an EA (or even an EIS). But a CE is also not appropriate because there are substantial cumulative effects, extraordinary

circumstances, the project triggers several NEPA significance factors, and the project size and type do not fit any of the Forest Service's CE categories.

- a. *There are cumulative adverse effects when the Bull Run Project is considered with other projects on wildlife and other resources.*

A thorough NEPA analysis must consider the many cumulative effects from project activities when combined with past, present, and reasonably foreseeable future actions, which include:

- Effects from various firefighting activities, such as dozer lines, hand lines, burn-out operations, BAER activities, etc.
- Effects from adjacent projects that have cumulative impacts on various resources, including the
 - Spear Creek Roadside Hazard Project
 - Frog Timber Sale Project
 - Summit Healthy Forest Project (Summit CE)
 - Alta Fuels Reduction and Forest Health Project (formerly the Summit EIS Project)
 - Foreseeable post-fire hazard logging in the Cedar Fire area on both the Western Divide and the Kern River Ranger District
 - White River Timber Sale Project (partially in Monument portion of the Cedar Fire area and to the northwest in areas outside the fire area)
 - Other past, present, and foreseeable future actions in the analysis area.
- Effects on the Pacific fisher from all projects in the Greenhorn Mountain Core area and the overall Southern Sierra Fisher Conservation Area (SSFCA). *See* Exhibit C, p. 99, Map 11 (showing "SSFCA Cumulative Effects" projects).
- Combined effects from the various proposed actions, considering the future potential for additional drought-related tree mortality expected in 2017 and beyond.

Because there are adverse cumulative effects to vulnerable sensitive species, such as the Pacific fisher, California spotted owl, and other species, and cumulative effects from projects that are directly-adjacent, similar, or connected, use of a CE is precluded.

- b. *There are extraordinary circumstances that preclude use of a CE.*

Categorical exclusions (CEs) are not permitted in the Bull Run area because there would be significant direct and cumulative adverse effects on proposed, threatened, and sensitive species, as well as rare plants, which constitute extraordinary circumstances that require analysis in an EA or EIS.

The Forest Service Handbook and NEPA regulations state that "[i]f the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists, precluding use of a categorical exclusion." FSH § 1909.15, Ch. 31.2; *see* 36 C.F.R. § 220.6(b)(2).

There is a great deal of uncertainty of the significance of effects from the proposed action, considering the recent tree die-off and the Cedar Fire with regard to the Pacific fisher.

In recent statements by the Forest Service contractor, the Conservation Biology Institute (CBI), the Forest Service's own fisher experts (CBI) cautioned that "**how fishers are actually responding to these recent changes in forest structure is currently unknown, as field data from fishers using such a post-mortality landscape are as of yet unavailable.**" Exhibit L (bold in original). CBI concluded that "fisher field data collected over the next several years will reduce uncertainties about how fishers are using the post-mortality landscape." *Id.*

Given the uncertainties and unknown effects of the tree mortality on fishers, the effects from the Cedar Fire, and the combined effects from project activities on fishers, this raises uncertainty over the significance of the proposed activities, and an extraordinary circumstance exists.

Moreover, an extraordinary circumstance exist because “Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species” are present in the project area, and a cause and effect relationship exists, and the degree of the potential effect of the proposed action on these species and their habitat is significant, which determines that extraordinary circumstances exist. 36 C.F.R. § 220.6(b)(1)(i); FSH § 1909.15, Ch. 31.2(1); 36 C.F.R. § 220.6(b)(2).

- c. *The proposed project triggers Significance factors that require preparation of an EIS, or at least an EA.*

To determine whether a proposed project will have “significant” impacts on the environment, an agency must evaluate “the degree to which the effects on the quality of the human environment are likely to be highly controversial,” and “the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. §§ 1508.27(b)(4), (b)(5).

The Forest Service therefore must consider the extent to which the Bull Run Project is affecting wildlife resources and whether the project is highly controversial or involves unknown risks, given the uncertainty and unknown risk to the fisher from the tree mortality event. *See* Exhibit L (CBI statement about uncertainty). A proposal is highly controversial when “substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor,” *Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1536 (9th Cir. 1997) (internal quotation marks omitted), or there is a “substantial dispute [about] the size, nature, or effect of the major Federal action. . . .” *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (alteration in original) (internal quotation marks omitted).

Given the statements from CBI that the effects to fisher from the tree mortality event are unknown, substantial questions arise concerning the likelihood and significance of adverse environmental effects from continued implementation of Bull Run Project in addition to these unknown effects. Moreover, CBI’s statements also raise substantial questions, given the highly uncertain results in determining the continued suitability of Pacific fisher habitat in the project area and the overall Sequoia National Forest. *See* Exhibit M, PDF p. 5 (CBI finding that 92.5% (49/53) of suitable hexagons for fisher habitat have become unsuitable, including those where the Bull Run Project is located).

- d. *The Bull Run Project does not fit into any of the Forest Service’s CE categories.*

There is no CE category that comes close to allowing 3,500 acres of tree felling and logging for public safety, forest restoration, and a residual commercial timber sale. In fact, because the Forest Service plans to sell dead or dying timber, the project must be classified as a timber salvage operation. And because the CE for timber salvage is limited to 250 acres or less in size, a CE cannot be used for the Bull Run project.

4. The EA or EIS should consider several alternatives.

We request that the Forest Service fully analyze the following alternatives in an EA or EIS:

- a. *Cut and Leave Alternative* – Fell and leave tree boles as large down woody material, and remove only the tops, limbs, and slash to avert fuel loading and fire risk. This alternative is feasible and

was analyzed fully in the Piute Roadside Hazard EA (*see* Exhibit F), and therefore it should be feasible here.

- b. *Reduced Distance from Road Prism Alternative to 200 feet* – The Forest Service should study an alternative that uses the traditional 200 ft distance from the road prism as the default distance, similar to that in the Piute Roadside Hazard EA. *See id.* If the Forest Service needs specific exceptions for individual trees on steep upslope areas from the road, it could include guidelines for those exceptions in this alternative to make it more feasible.
- c. *Road Closure Alternative* – This is a viable alternative. In its scoping notice the Forest Service stated: “If we do not mitigate the roadside hazards, we would have to close a large network of roads for public safety.” p. 2. In fact, the Forest Service has already closed many of the roads after the fire, making this an option for the future, regardless of the Forest Service’s or public’s desires otherwise.
- d. *Road Closure Alternative that Closes Spurs or Unneeded Roads* – In our initial scoping comments, we asked the Forest Service to eliminate several road segments from the Bull Run proposal. We modify that request and ask that an alternative with the following, or a subset of the following, eliminated roads be considered (refer to scoping map):
 - 25S06
 - 24S80 or 24S77B (past the 24S77 turnoff)
 - 24S80A
 - 24S35A
 - 25S38A
 - 25S37
 - 25S16 (last mile)

6. Prepare One Environmental Analysis, not Two, in conjunction with the Spear Creek Project.

“Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a); *see also* 40 C.F.R. § 1508.25(c)(2) & (c)(3) (suggesting that the best way to adequately assess the combined impacts of similar projects with cumulative effects and with common timing or geography, is to treat them in a single impact statement).

The Forest Service has broken the Cedar Fire roadside hazard tree abatement activities into two projects, which include the currently proposed Bull Run Project and the anticipated Spear Creek Project, and it continues to want to analyze each project separately.

It is unclear how this can be justified, since the proposals have identical goals and both propose removal of excess material with a commercial timber sale. The only distinction is that the Spear Creek portion of the project is in the Giant Sequoia National Monument (GSNM) portion of the Sequoia National Forest, and the other is in the general forest. While the areas may have different management standards, both are a subset of the Sequoia National Forest Plan, as amended by the GSNM Plan. They are clearly related to each other close enough to be, in effect, a single course of action, since they both stem from the Cedar Fire and both involve the same course of actions, which were initially proposed in the news release as one action. Moreover, the combined impacts are cumulative with common timing and geography, and so this proposal should be evaluated in a single environmental analysis. It should not be difficult to prepare

alternatives and mitigation measures that ensure compliance with standards in both Monument and non-Monument areas.

7. The Forest Service should keep its promise that it will provide another comment period for the Preliminary EA (PEA).

In the November 30, 2016 letter to us in which he said he produce EAs for each project, District Ranger Eric LaPrice also stated that further documents would be made available “when the preliminary EAs are ready for public comment this spring.” Given that there still isn’t sufficient information available and there is great uncertainty with regards to the effects of the project, it makes sense to have another comment period, as promised, when the Forest Service releases its PEA (or Draft EIS). We urge the Forest Service to keep this promise.

8. A 300 ft distance from the road cannot be justified on the downslope side of the road, and, instead, 200 ft should be maximum downslope distance.

Most roads proposed for treatments are roughly built along contours where there is an upslope and downslope side of the road. The proposal, however, makes no distinction between these areas and has proposed a 300 ft distance for tree felling on both sides of the road, based on 1.5 times the height of the tallest trees according to the Region 5 hazard tree guidelines.

However, when a 200 ft tall tree falls toward the road on its downslope side, gravity prevents them from traveling any further upslope, and there the 1.5 times distance in the guidelines is meaningless. Therefore, to institute a 300 ft distance on the downslope side of the road for safety is illogical and unnecessary.

We therefore urge that the proposal specifically limit tree felling to no more than 200 feet on the downslope side of each of the road segments proposed for treatments.

9. Delay tree marking until after the expected spring flushing of pines and firs.

Again, we urge that hazard tree identification and marking should not be done until after the spring of 2017, since many pines and some firs may have survived the fire, even though most needles may have scorched or singed and turned orange. Many pines and some firs will “flush” in the spring after a fire and are still alive, even if they looked dead after the fire. *See* Figure 1., below. This has occurred in various fires in the recent past, especially in areas where there is mixed fire severity, such as in the Cedar Fire.

Actual proportions and extent of high-severity fire may be even lower than reported due to the failure of remote sensing to account for post-fire “flushing” and “epicormic branching.” *See* Hanson, C.T., and M.P. North. 2006. *International Journal of Wildland Fire* 15: 31-35; Hanson, C.T. 2007. *Doctoral dissert., U.C. Davis*; Odion, D.C., and C.T. Hanson. 2006. *Ecosystems* 9: 1177-1189.

Percent Survival for Jeffrey and Ponderosa pine with 100% Initial Crown Scorch

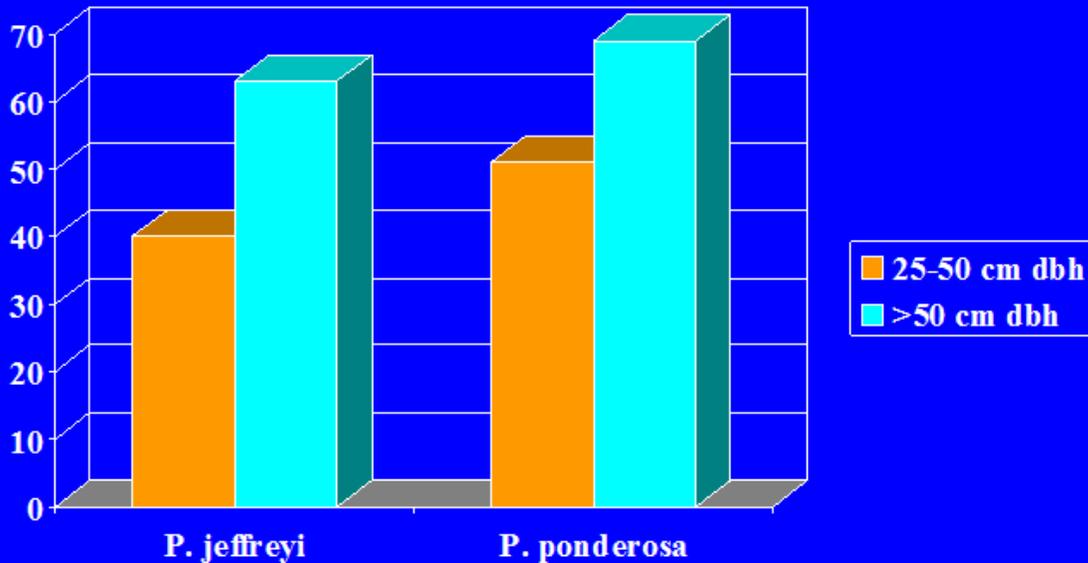


Figure 1. Jeffrey and Ponderosa Pine Survival Rates with 100% Crown Scorch

10. The Forest Service must seek out and consider the “best available science” to inform its analysis.

The Forest Service “should seek out and consider all existing scientific evidence relevant to the decision and it cannot ignore existing data. . . . The Forest Service must determine which data are the most accurate, reliable, and relevant, and that will be reviewed deferentially, but it still must be good science—that is reliable, peer reviewed, or otherwise complying with valid scientific methods.” *Ecology Center v. U.S. Forest Service*, 451 F.3d 1183, 1194, n. 4 (10th Cir. 2006).

This also means that, in the final analysis, the Forest Service should disclose and discuss any science that it rejected as less accurate, reliable, or relevant than the science it actually applied to the project.

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

René Voss – Attorney at Law