

# THE SESPE WILD

The Newsletter of the Keep the Sespe Wild Committee

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## PINE MOUNTAIN LOGGING APPEAL - BRIEF FILED

DECEMBER 2023

Attorneys with the Environmental Defense Center (EDC), Santa Barbara, filed on 12/22/23 their opening brief to appeal the approval by a lower court of the U.S. Forest Service's plan to log hundreds of acres of old-growth conifer forests along the ridge of Pine Mountain, at the high point of the watershed of Sespe Creek.

The EDC represents Los Padres ForestWatch, Keep Sespe Wild, the American Alpine Club and the Earth Island Institute in this case.

The appeal was filed with the Ninth Circuit Court of Appeals; three of this court's nine judges are selected to hear any particular appeal. (Back page has a photo of these trees.)

### HERE ARE EXCERPTS FROM THE APPEAL-

This case addresses the United States Forest Service's failure to protect one of the most beloved areas of Los Padres National Forest in southern California. Reyes Peak (elevation 7,514 feet) and its surrounding forest and chaparral offer unparalleled opportunities for high-elevation recreation, such as camping, hiking, and rock-climbing, and are home to over 400 species of native plants and sensitive wildlife, including the endangered California condor. The area is also a sacred landscape to the Chumash people and contains an abundance of

sensitive religious and cultural sites.

Despite the area's popularity and importance, the Forest Service plans to log the forest, including some of the largest trees (up to sixty-four inches in diameter), and masticate the chaparral, including rare old-growth chaparral, on 755 acres of the Reyes Peak region. Moreover, when approving the Reyes Peak Forest Health and Fuels Reduction Project under the

National Environmental Policy Act (NEPA), the Forest Service did not prepare an environmental impact statement ("EIS"), or even an environmental assessment ("EA"). Instead, the agency relied on three "categorical exclusions" ("CEs") which, unlike an EIS or EA, do not require detailed analysis of a project's environmental impacts, nor consideration of alternatives that would lessen the project's harm. The Forest Service proceeded with the CEs despite the fact that over ninety-nine percent of the submitted comments raised serious concerns about the Project's impacts.

The Forest Service's reliance on CEs for this Project violates NEPA. CEs can only be used for projects that will not cause significant environmental impacts, either individually or cumulatively. CEs also cannot be used to approve a project when "extraordinary circumstances" exist.

Here, the Forest Service failed to properly examine the Reyes Peak Project's potential harm to sensitive religious or cultural sites, a protected roadless area (the Sespe-Frazier Inventoried Roadless Area), and a potential wilderness area. The Forest Service's cultural impacts analysis, for example, entirely ignores evidence submitted by Plaintiffs, Tribes, and ethnohistory experts.

The Forest Service also contravened the requirements of the CEs found in the Healthy Forests Restoration Act ("HFRA"). Specifically, the agency failed to: (1) ensure protection of "old-growth and large trees," (2) develop the Project through a collaborative process, and (3) demonstrate that the Project complies with the CEs' location requirements.

Finally, the Forest Service's approval of the Project violates the Roadless Area Conservation Rule ("Roadless Rule"). Approximately forty

percent of the Reyes Peak Project occurs within the Sespe-Frazier Inventoried Roadless Area. The Roadless Rule contains only a narrow exception for the logging of “generally small diameter timber.” Here, the Forest Service violated that exception by authorizing the logging of trees up to sixty-four inches in diameter in the Sespe-Frazier Inventoried Roadless Area.

The Project was initiated in the wake of Executive Order 13855, which directed the Forest Service to sell 3.8 billion board feet of timber. To meet this goal, Forest Service memos encouraged agency staff to invoke CEs and “explore creative methods” to avoid NEPA environmental review under EISs or EAs.

Plaintiffs, and many other organizations and individuals, submitted comments opposing the Project—of the approximately 16,000 comments submitted, over ninety-nine percent were opposed. This overwhelming public opposition came from diverse entities, including: leaders from Native American groups; a group of ethnohistorians and archaeologists; University of California Professor Carla D’Antonio; Ojai Mayor Johnny Johnston; Ventura County Supervisors Linda Parks, Matt LaVere, Carmen Ramirez, and Steve Bennett; State Senator Hannah-Beth Jackson; Congressmembers Julia Brownley and Salud Carbajal; over fifty local businesses; and seventy environmental organizations.

### **SUMMARY OF THE ARGUMENT**

The Forest Service’s authorization of the Reyes Peak Project violates NEPA, HFRA, and the Roadless Rule. The Forest Service violated NEPA and HFRA when it relied on CEs to approve the Reyes Peak Project. First, the use of CEs was improper due to the potentially significant impacts, i.e., “extraordinary circumstances,” caused by the Project. Specifically, the Forest Service ignored substantial evidence in the record showing the potential for significant impacts to Native American religious and cultural sites, a roadless area, and a potential wilderness area. In addition, the HFRA CEs contain specific criteria that have not been met in this case. Nowhere did the Forest Service identify where old-growth exists in the Project area, and the agency failed to account for the Project’s exceptions that authorize the logging of an unknown number of large trees; conse-

quently, the Forest Service failed to adequately explain how the Reyes Peak Project will “maximize the retention of old-growth and large trees.”

The HFRA CEs also mandate that the Forest Service use a collaborative process when developing a project. That did not happen for the Reyes Peak Project because the Forest Service neglected to include Plaintiffs and other stakeholders in the critical initial stages of project development and made no changes to the Project to address Plaintiffs’ concerns.

Finally, the Forest Service failed to properly locate the Project. The agency nowhere explained how the Project will in fact be located “in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III.” Moreover, the evidence in the record shows that chaparral belongs in Fire Regime Group IV, and therefore the chaparral part of the Project is not eligible for the HFRA CEs.

The Forest Service also violated the Roadless Rule, which prohibits logging in inventoried roadless areas unless the logging is limited to “generally small diameter timber.” Here, forty percent of the Reyes Peak Project would occur in the Sespe-Frazier Inventoried Roadless Area, where the Forest Service has authorized the logging of trees up to sixty-four inches in diameter. Because the Forest Service wrongly focused on medium and large-sized trees, rather than small trees, the agency violated the Roadless Rule.

### **THANKS FOR DONATING TO SUPPORT OUR APPEAL ON BEHALF OF THE PINE MOUNTAIN FORESTS**

We are pleased to report that our supporters responded very generously to our request for donations to help to fund the Environmental Defense Center (EDC) to appeal to protect the high-elevation conifer forests atop Pine Mountain from the U.S. Forest Service’s ill-advised proposal to log old-growth trees there.

We set up a GoFundMe site and sent that link to those who receive our quarterly newsletter electronically; we also requested support from those who receive our hard copy newsletters, which have a remit envelope enclosed.

The site brought in \$3,200, the remit envelopes \$5,500 - totaling \$8,700, meaning that we exceeded our initial goal of \$6,000 for the EDC.



## A LIFETIME CALIFORNIA CONDOR SIGHTING ATOP JOHNSTON RIDGE

Returning from a visit to the Sespe Hot-springs in late October, we had passed the top of the Johnston Ridge hill climb, and were following the contours trail leading to Mutau Flat. Ahead we could clearly see these two adult condors (each standing about 4.5 feet tall) perched on dead tree branches right next to the trail. We stood and watched them for at least 20 minutes, but eventually we had to get going.

We fully expected them to fly off when we got too close, but they stayed on those branches until we were right beside them. After snapping this picture, they both took flight, and of course they headed out across the steep valley below.

In doing so, they passed right over our heads. What an experience! Two of the biggest land birds on Earth, weighing maybe 28 pounds, gliding past only a few feet above us, and soaring away across the valley.

It would seem they were attracted to a deer kill nearby, as we saw where a heavy carcass had been dragged across the trail just there.



*This stretch of Sespe Creek, looking downstream just after you've waded across three creek crossings from the Piedra Blanca trailhead in Rose Valley, has moved north, closer to the Sespe trail than it has been for many years. It has long had the appearance of a dry creek bed there, but now it has become the main channel again. Winter storm flows in Southern California frequently cause creek channels to move around across the wider floodplain.*

## HIGHWAY 33 IS NOW OPEN AGAIN UP TO ROSE VALLEY AND THE SESPE TRAILHEADS

After being closed for close to a year since the early 2023 winter storms damaged Highway 33 in multiple locations, the highway was closed from Matilija Canyon all the way over the summit, and down to Ozena. So the middle Sespe has had a lovely break in 2022 from the human traffic it usually attracts all year.

In mid-December CalTrans announced that Hwy. 33 was re-opening. There are still three locations before Rose Valley where traffic is down to one lane, with traffic signals controlling passage. The first is even before you reach Friends' Ranch packing house; the next, close to the site of Wheeler's Hotsprings, and the last - where the distance between the two signals is about one mile - is around the final bend in the highway before the Rose Valley turn-off.

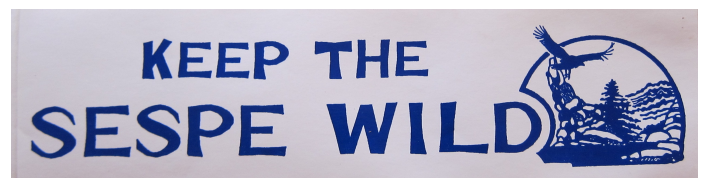
We advise taking advantage of this access to Sespe Creek sooner rather than later, as with a second wet winter forecast it is quite possible that further storm damage along Hwy. 33 could lead to a new road closure for another, well, who knows how long.



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SESPE WILD T-SHIRTS: \$20 incl. tax & shipping.

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White T-shirts - 5-color logo on back, small blue pocket logo on front.

State white or blue, and what size -  
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T-shirts are 100% organic cotton fabric.

SESPE WILD BUMPERSTICKERS: \$2

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Allow a few weeks for delivery.



The high-elevation conifer forest atop the Pine Mountain ridge line at around 7,000 ft. in elevation. The machinery needed to log thousands of these trees would completely churn up the soils on these steep slopes, across hundreds of acres. Evidence from multiple large fallen trees (no burn marks) is that there has been no large fire here for decades, or even centuries.



