



## **Assessment Report**

# **Collaborative Effort to Determine Whether Modifications to the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act are Appropriate**

**Prepared for:  
U.S. Institute for Environmental Conflict Resolution**

**Prepared by:  
Todd Bryan, Ph.D.  
The Keystone Center  
October 20, 2008**

1600 Broadway, Suite 1920  
Denver, Colorado 80202



## **Introduction (adapted from the RSIQ)**

The following assessment and recommendations were written in response to a Request for Statements of Interest, Qualifications, and Cost Quotations (RSIQ) issued by the U.S. Institute for Environmental Conflict Resolution pursuant to a 2007 amendment to the Herger-Feinstein Quincy Library Group Forest Recovery Act.

In 1993, the Quincy Library Group (QLG), a coalition of local community activists, elected officials, and forest industry representatives developed the “Community Stability Proposal.” The Proposal recommended a short-term management strategy for the Lassen, Plumas and part of the Tahoe National Forests to address issues of forest health, ecological integrity, adequate timber supply, and local economic stability.

QLG lobbied Congress to test the management strategy described in the Proposal. Sponsored by Senator Dianne Feinstein, D-CA, and Representative Wally Herger, R-CA, the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act was signed into law by President Bill Clinton on October 15, 1998. The Act directs the implementation of a Pilot Project to demonstrate the effectiveness of implementing specific management actions referenced in the Community Stability Proposal.

The HFQLG Act affects management activities on 2.28 million acres across the Lassen and Plumas National Forests and the Sierraville Ranger District of the Tahoe National Forest. The Pilot Project is designed to implement and demonstrate the effectiveness of the stated management activities to meet forest health, ecological, economic, and fuel reduction objectives. These activities include shaded fuelbreaks or Defensible Fuel Profile Zones, group selection, individual tree selection, and riparian management.

From the beginning the QLG plan has not been without opposition. A range of interests, including national environmental organizations such as The Wilderness Society, Sierra Club, and the Natural Resources Defense Council, and local organizations and activists such as Sierra Forest Legacy, Plumas Forest Project, and Forest Issues Group, have raised concerns that the QLG plan favors commercial logging, especially the logging of large trees, at the expense of environmental values such as old forests and wildlife. However, QLG members, among others, dispute that the environmental values of old forest and wildlife are being expended in the HFQLG Pilot Project. Instead, QLG sees full Pilot Project implementation as the necessary first step in restoring healthy and sustainable, fire safe and fire resilient National Forests to this part of the Sierra Nevada.

The Final Environmental Impact Statement and Record of Decision for the Pilot Project implementation were released in August 1999. Both the Forest Service and the U.S. Fish and Wildlife Service, under the Clinton administration, concluded that the Act could not be fully implemented consistent with federal environmental laws based on potential adverse impacts to sensitive species that inhabit old forests, including the California spotted owl, the Pacific fisher, and the American marten. Proceeding cautiously, the Forest Service concluded that fully implementing the QLG plan “could pose a serious risk to the viability of the owl in the planning area, thereby making the implementation of

[the pilot project] inconsistent with the National Forest Management Act.” Based on these concerns, the Forest Service decided to implement the QLG plan only in part, excluding logging within suitable California spotted owl habitat until the issue could be further assessed in a Sierra-wide forest plan amendment.

At the close of the Clinton administration in 2001, the Forest Service adopted the Sierra Nevada Framework, an ecosystem-based management plan for all Sierra Nevada national forests, including the area covered by the QLG project. In adopting the Framework, the Regional Forester reiterated that “the entire level of management activity specified in the HFQLG legislation cannot be implemented without degrading owl habitat without increasing risk to owl viability.” To protect old forests and wildlife, the 2001 Framework included standards and guidelines that restricted full implementation of the HFQLG Act. Specifically, the 2001 Framework Record of Decision stated that “it will not be possible to construct approximately ten percent of the DFPZs because they would not be consistent with elements of the California spotted owl conservation strategy” (2001 ROD, page 50). Proceeding cautiously, the Regional Forester also stated, “I would expect the group selection provisions of the HFQLG pilot project as well as other treatments to be used,” and “I anticipate group selections will not exceed 4,000 acres of suitable owl habitat per year in the HFQLG pilot area” (2001 ROD, page 50).

QLG believes that much has changed since 1999 and 2001, even within the body of spotted owl ecological knowledge. Since 2001 the US Forest Service and US Fish and Wildlife Service have conducted two “meta-analyses” of California spotted owl populations. Using the most recent and most scientifically applicable analytical models on the demographic studies of California spotted owls in the Sierra Nevada, QLG contends that both agencies concluded that the 1999 and 2001 Forest Service analyses had been unreasonably pessimistic. Furthermore, the meta-analyses were strengthened by the availability of several more years of owl demographic data, which made owl population trends more clear. In 2006, the US Fish and Wildlife Service determined that the California spotted owl did not warrant listing or other protections under the Endangered Species Act of 1973.

The HFQLG Act was initially intended to last for five years. However, the Act has not been fully implemented for a variety of reasons, including the need to comply with federal environmental laws, particularly the procedural requirements of NEPA. As a result, the Act has been extended twice – first in 2003 and, most recently, in December 2007. The Pilot Project is now scheduled to conclude in September 2012.

Given that the Pilot Project is testing the QLG management strategy, monitoring has been especially important. This is accomplished through extensive monitoring across a number of areas identified in the Pilot Project Monitoring Plan. Reports are submitted annually to address key questions about the impacts of resource management activities.

In anticipation of the 2009 expiration of the Act, the Forest Service began the Independent Scientific Review required by the HFQLG Act in November 2007. The Pinchot Institute for Conservation, which is conducting the review, has already provided

feedback resulting in refinements to the resource monitoring. The Plumas-Lassen Administrative Study, conducted by the Pacific Southwest Research Station, also monitors the effects of Pilot Project activities, with the goal of studying the greater effects of implementation.

A series of resource management documents have also affected implementation. In January 2004, under the Bush administration, the Sierra Nevada Forest Plan Amendment Final Supplemental Environmental Impact Statement and Record of Decision (“2004 Framework”) were signed. In contrast to the 1999 QLG Record of Decision and the 2001 Framework, both of which limited implementation of the HFQLG Act based on environmental concerns, the 2004 Framework authorized full implementation of the pilot project. In making the 2004 Decision, the Regional Forester found that the 2001 Sierra Nevada Framework and “...its methods and standards cannot reverse the damage and growing threats of catastrophic wildfires quickly enough. Large, old trees, wildlife habitat, homes and local communities will be increasingly destroyed unless the Plan is improved” (2004 ROD, page 5, referring to the 2001 “Plan”). Environmental organizations, the State of California, and industry groups have filed various suits to challenge the 2001 or 2004 Frameworks, as well as individual projects.

As part of the recent extension of the HFQLG Act, the Forest Service is required to initiate a collaborative process by June 1, 2008, with the Quincy Library Group and the plaintiffs in *Sierra Nevada Forest Protection Campaign vs. Rey* to determine whether modifications to the Pilot Project are appropriate for the remainder of the Project. Plaintiff organizations in the court case include Sierra Forest Legacy (formerly known as Sierra Nevada Forest Protection Campaign), Sierra Club, Wilderness Society, Natural Resource Defense Council, and Center for Biological Diversity. This report is designed to assess the appropriateness of the collaborative process from the parties’ perspectives.

## **Agreement to Collaborate**

All of the parties interviewed in the assessment process expressed an interest in exploring modifications to the HFQLG Pilot Project through a collaborative or negotiated process. While that is a decidedly positive sign, the parties do not appear to be “on the same page” with regard to the substantive issues the collaborative process should address. In addition, historic tensions and animosities among the parties, particularly between QLG and Sierra Forest Legacy (SFL), present additional and perhaps insurmountable obstacles to a successful outcome.

There is, however, common ground among the parties regarding their concern for the ecological wellbeing of northern Sierra Nevada forests and there appears to be a common thread of forest science that the parties find credible, and sometimes reference to support their opposing positions. These latter findings and observations suggest the possibility of an agreement over modifications to the Pilot Project if the former, and formidable, obstacles can be overcome or at least minimized. My recommendation is therefore to move forward with the collaborative process while considering several procedures designed to address or minimize the obstacles. Recommended approaches to the

collaborative process are described below following a brief discussion of the parties' issues and perspectives, and the obstacles that may impede collaboration.

## **Issues and Perspectives**

Because of certain time constraints, I asked designated representatives from each of the groups – QLG, SFL, and the U.S. Forest Service – to provide a list of no more than 10 individuals they felt could best articulate the key issues and perspectives of their group. I was able to interview all but a couple of the representatives, either in person or over the phone, and either individually or in a small group. The interviews consisted of open-ended questions focused on the principal issues that must be addressed in the collaborative process, the parties' perspectives on those issues, their willingness and interest in the collaborative process, and their perceptions of what will occur should the collaboration not move forward or not result in an agreement. I also, at times, challenged the parties by presenting an opposing perspective on a particular issue. I did this to more fully explore the underlying arguments and tensions that inform the parties' perspectives.

In thinking about how best to present the issues and perspectives in the assessment report, I chose to follow the most obvious approach, thus presenting the issues and perspectives of each group separately. I did this in part so that I could share my comments with each of the groups before revealing them to the others. This enabled the parties to correct any misrepresentations on my part without revealing them to others, perhaps exacerbating tensions, and it allowed the parties to set the tone they wished to convey if the collaborative process moves forward. In addition, while I am presenting what amounts to each group's perspective, I did not find absolute cohesiveness within each group. I thus tried to capture some of the nuances within each group as well as the principal differences among the groups.

## **Sierra Forest Legacy**

Sierra Forest Legacy (SFL) has opposed many HFQLG projects on the grounds that the projects propose more intensive logging than necessary to reduce the risk of high severity fires and that the logging of large trees and reduction of canopy cover will adversely affect old forest habitat and wildlife. SFL recognizes that some Sierra Nevada forests are currently in a "state of unnatural forest density," particularly with respect to small trees, which has exacerbated the risk of catastrophic wildfire. However, SFL contends that forest health and fuels problems can generally be addressed consistent with the 2001 Sierra Nevada Framework without adversely affecting old forests and habitat for old forest species. The challenge for the U.S. Forest Service, according to SFL representatives and associated documents, is in striking "a careful and reasoned balance between protecting wildlife habitat and reducing the risk of stand replacing wildfire." SFL representatives contend that the 2001 Framework achieves this balance and that the HFQLG Pilot Project should adhere to the '01 Framework Standards and Guidelines.

Specifically, SFL representatives argue that the Pilot Project, as it is being implemented by the U.S. Forest Service, threatens this balance because, a) the geographic scope of the

project is too large and the proposed logging is too aggressive, b) it is unnecessarily focused on logging of larger trees and reduction of canopy cover, and over emphasizes commercial interests; c) there are too many group selection units and they are often placed within higher quality old forest habitat, rather than in thickets of small diameter white fir, d) DFPZs are overly wide for their purpose, are often located far from the wildland urban intermix, and result in forest structure that is unsuitable for old forest species, and e) canopy closure prescriptions consistent with the 2004 Sierra Nevada Framework allow canopy openings that are too sparse for sensitive species, which are known to prefer relatively dense forests.

SFL representatives contend that HFQLG projects should “limit logging to that needed to achieve specified, quantified fuels reduction objectives.” To support their position, SFL leaders point to scientists such as Scott Stephens who contends that 95% of the materials contributing to the fuels problem are surface and ladder fuels (the remaining 5% are crown fuels). SFL leaders believe that QLG and the Forest Service have reversed this ratio and, as such, have placed too much emphasis on reducing canopy cover and not enough emphasis on surface and ladder fuels.

Fuel reduction efforts, they argue, should be focused on lowering the risk of high severity wildfire for communities and residences within the wildland-urban intermix zone consistent with the 2001 Framework. This entails the removal of surface fuels and “ladder fuels” including understory trees up to 12” dbh in old forest emphasis areas (OFEAs) and California spotted owl home range core areas (HCRAs) (including logging up to 20” in some stands in these areas when necessary to achieve fuels objectives), and harvesting trees up to 20” dbh within the general forest and threat zone. Within these areas canopy cover should be reduced by not more than 10-20% and at least 50% of the canopy cover should be retained. The 2001 Framework allows the harvest of trees up to 30” dbh only in the defense zone of the wildland-urban intermix to reduce the risk of loss of life and property. The latter policy is generally supported by SFL representatives although not all of those I interviewed agreed with it.

In support of their position, SFL representatives point to scientific sources such as the comments of James Gladen, former Director of the Forest Service’s Watershed, Fish, Wildlife, Air and Rare Plants program regarding impacts of the 2004 Framework. In a 2003 memo to Interdisciplinary Team Leader Kathleen Morse, Gladen and colleagues concluded that the 2004 Framework standards and guidelines,

Collectively... provide less owl habitat conservation than the CASPO Interim Standards and Guidelines in effect since 1993. It is also over this same period that 4 demographic studies and census studies have documented owl population declines. One can only conclude that standards in [the '04 Framework] are a prescription for continued owl population declines.

In response, SFL has initiated a program designed to help forest-dependent communities develop local economies derived from the removal of small-diameter non-merchantable timber and contends that such economies are potentially viable. SFL notes that it is

experimenting with a few forest-dependent communities on specific projects and can report positive results. In addition, environmentalists believe that Congress should appropriate funds to treat hazardous fuel conditions on national forests and argue that commercial drivers are providing incentives that cause federal agencies and resource-dependent communities to target the trees most in need of protection. Congress can, they argue, stimulate economic development in the small-diameter timber market and could, if necessary, appropriate funds necessary to pay for needed fuel reduction activities.

SFL representatives are quite skeptical of the commercial dimensions of the HFQLG Pilot Project and several forest activists I interviewed stated that they believe that money is fundamentally driving the HFQLG decision-making process. As evidence, some argued that if fuel reduction goals can be accomplished without harvesting large trees, then the taking of those trees can only be attributed to the desire for money. This perception appears to come from various sources including statements by Forest Service resource managers and QLG members that they need to “pay for the project” by including large merchantable trees in timber sales.

SFL leaders have further stated that they are not opposed to the commercial removal of appropriate larger trees but argue that the 2004 Framework Standards and Guidelines give the Forest Service too much discretion to design HFQLG timber sales to suit economic needs and therefore prefer the 2001 Framework Standards and Guidelines that provide greater restrictions and limit the agency’s discretion. To achieve the protections they are seeking, SFL representatives argue that the U.S. Forest Service should return to the 2001 Framework.

As mentioned, not all of those I interviewed on behalf of SFL shared the same opinions with regard to the Pilot Project although all were generally opposed to the Pilot as it currently exists. In addition, SFL acknowledges that those interviewed represent a diversity of viewpoints among environmentalists with regard to forest management and do not necessarily represent the SFL “party line.” SFL contends that the perspectives included in this report are reflective of the broader group of individuals I interviewed and should not be attributed to SFL leaders, unless specifically stated.

SFL representatives would like the collaborative process to focus on the following issues:

1. Smaller scale projects that allow better monitoring and a focus on adaptive management.
2. Revisiting the size, location, and cumulative impacts of group selection treatments.
3. Rethinking the size and placement of DFPZs and area thin units as well as treatments within these areas and their effect on biodiversity.
4. Working towards increasing public awareness and tolerance for smoke associated with controlled burning.
5. Emphasizing more aggressive treatments in the defense zone of the wildland-urban intermix.



6. Increasing attention to community stability models based on small diameter timber.

In addition, SFL leaders expressed openness to discussing other key elements of difference between the '01 and '04 Frameworks within the context of a broader negotiation.

SFL representatives are supportive of the collaborative process but expressed a concern that any past agreements that may have been made between Quincy environmentalists and Sierra Pacific Industries (SPI) when the Community Stability Proposal was originally developed, and any present financial relationships with county government or the timber industry, might interfere with the ability of QLG members to negotiate certain aspects of the Pilot Project. A suggested condition for moving forward, therefore, is an acknowledgment by QLG that any such past agreements or present relationships will not present obstacles to the collaboration.

### **Quincy Library Group**

Representatives of the Quincy Library Group (QLG) are supportive of the HFQLG Pilot Project and would like to see it completed. QLG representatives believe that the Pilot Project will demonstrate that the economic and ecological goals contained in the QLG Community Stability Proposal are fundamentally compatible and can be achieved through national forest management pursuant to the 2004 Sierra Nevada Framework. Some QLG representatives also note that the 1986 Conservationist Alternative that provided the basis for the Community Stability Proposal was driven by a desire among the region's environmental community to reform both the timber industry and the U.S. Forest Service. The Conservationist Alternative, they contend, was an attempt to demonstrate that there was a valid role for the industry in helping restore northern Sierra Nevada forests to pre-European settlement conditions, which, if achieved, could accomplish the long-term goals of the environmental community.

While they support completion of the Pilot Project, QLG representatives would also like to consider modifications to the Pilot on the grounds that recent science supports more aggressive fuels treatment, especially in sensitive habitat. To support their argument, QLG representatives point to the 2007 Congressional testimony of forest ecologists Norm Johnson and Jerry Franklin who state that forests today,

...differ greatly from their historical condition in having much higher stand densities and basal areas, lower average stand diameters, much higher percentages of drought- and fire-intolerant species, and many fewer (or no) old-growth trees.

QLG representatives argue that the risks associated with catastrophic wildfire are increasing and reference statements by Johnson and Franklin that support this assertion:

We will lose these forests to catastrophic disturbance events unless we undertake aggressive active management programs. This is not simply an issue of fuels and

fire; because of the density of these forests, there is a high potential for drought stress and related insect outbreaks. Surviving old-growth pine trees are now at high risk of death to both fire and western pine beetle, the latter resulting from drought stress and competition.

QLG representatives also point to what they see as a shift in risk management priorities among members of the scientific community with regard to the treatment of sensitive areas. Johnson and Franklin, they contend, demonstrate this shift in their testimony:

Recognition that such areas should receive early attention is recent; there has been a tendency to think that stands with numerous old-growth trees should be left alone or, at least, be of much lower priority for treatment. The reality is the opposite! Forests that still retain substantial numbers of old-growth trees should be priorities for treatment because these are irreplaceable structures that are at great risk from uncharacteristic wildfire and bark beetle attack. Hence, *reducing the potential for accelerated loss of these old trees should be at the top of the agenda.* (emphasis in original text)

QLG representatives contend that the goals of protecting wildlife habitat and reducing the risk of stand replacing wildfire are entirely compatible and can be achieved in tandem by restoring forests to conditions approximating pre-European settlement. They further argue that the economic infrastructure provided by the timber industry and logging community is a necessary component of the equation and must be maintained. Finally, QLG representatives point out that the HFQLG Act requires projects to be “cost effective” in order to make the best use of federal appropriations.

QLG representatives view objections to the commercial component of the Pilot Project as an indication that environmentalists are opposed to commercial harvesting on national forests and point to stated goals of the Los Angeles-based foundation Environment Now, which funds SFL and other organizations that have opposed HFQLG projects. QLG representatives expressed a concern that Environment Now’s stated goal to, “Eliminate commercial logging on all public lands in California...” may prevent SFL representatives from genuinely engaging in the collaborative process. Several QLG representatives suggested that since the Pilot Project is a program that “promotes ecological and economic health” consistent with the Community Stability Proposal, commercial activity is a necessary component of that program and must be acknowledged. QLG representatives also argue that management activities specified in the HFQLG Act cannot be carried out without commercial timber harvest as a key component of the program.

QLG representatives contend that they are not opposed to further exploring economic opportunities associated with small diameter timber or of using service and stewardship contracts to accomplish forest management goals. They are concerned, however, that the Forest Service may devote too many of its limited resources to administering such programs when market-based solutions are readily available. Moreover, QLG representatives do not see small diameter timber programs as addressing the problem in forests as productive as the west-side and transition zone forests administered pursuant to

the HFQLG Act. The pace and scale of work, they argue, must effectively respond to the growth rate of the forest. Otherwise, the existing fuel problem can only get worse. The real challenge, they argue, is in determining for each situation whether the required work could be more cost-effective if done in conjunction with a timber sale, as a service contract, or as part of a stewardship contract.

QLG representatives are open to exploring modifications to the Pilot Project and expressed an interest in seeking to implement the original HFQLG objectives more effectively and cost-effectively, taking account of lessons learned from implementation of the Pilot to date, addressing trends in risk management, taking account of recent science on habitat requirements for owls and other species, and exploring science-based projections related to climate change. Modifications QLG would like to consider include:

1. More aggressive fuel reduction treatments inside spotted owl PACs and SOHAs, and old growth stands consistent with Johnson and Franklin's recommendations. Apply the owl PAC recommendations to goshawk PACs.
2. Add restoration of forest structure and species composition to the stated goals and objectives of the Pilot Project, especially restoring distribution and densities of ponderosa and sugar pine, black oak, and aspen.
3. Add goals and objectives to the Pilot Project for restoring and improving watershed function and condition. Explore legislation to assure that the values generated by improved watershed function are counted as Forest Reserve Revenues for the purpose of computing payments due to affected counties.
4. Replace SAT standards and guidelines with riparian area management guidelines better suited to restoring and improving watershed function and condition.
5. Reconsider deferred landbase designations in the HFQLG Act, especially deferred areas abutting human settlements.
6. Add carbon sequestration goals, objectives, and requirements to consider effects and mitigations of changing climates on forests and other ecosystem components in management planning and decisions.

QLG representatives are supportive of the collaborative process but, as mentioned above, expressed a concern that environmentalists' apparent opposition to the commercial components of the Pilot Project may prevent SFL representatives from genuinely engaging in the collaborative process. A suggested condition for moving forward, therefore, is an acknowledgment by SFL that a sustainable workforce and industrial infrastructure are necessary to achieve fuel reduction and other forest health goals, and therefore timber-based commercial activity must be retained as a significant component of any agreement.

## **US Forest Service**

The U.S. Forest Service is mandated to implement the Pilot Project pursuant to the HFQLG Act and 2004 Framework. In a broader legislative and policy context, the Forest Service is charged with carrying out its multiple use mandate, which, agency leaders point out, includes both the production of timber as a commodity and the protection of

wildlife. The agency is supportive of a collaborative process to consider modifications to the Pilot Project and has suggested areas where the parties might find opportunities for agreement. In general, candid conversations with Forest Service representatives revealed support for the 2004 Sierra Nevada Framework and the implementation of the Pilot Project pursuant to the 2004 Framework standards and guidelines. Agency representatives generally support the 2004 Framework because, they contend, it gives the agency greater flexibility and discretion to design forest management treatments that fit the needs of the forest.

Forest Service representatives expressed a sense of frustration with the constraints placed on them by the 2001 Framework – a “planning nightmare” according to one – and with their inability to accomplish critical goals. Forest Service representatives also expressed frustrations with the lack of clarity regarding the kinds of forest management prescriptions that some of the parties were looking for on the ground and the inability of resource managers to satisfy vaguely defined concerns and expectations. Finally, Forest Service representatives expressed concern that some disputants were focused more on the “trees than the forest” and needed to develop a long-term perspective focused on what the forest can provide in the way of watershed health and ecosystem services.

Forest Service representatives were also concerned that the parties may not fully understand the need to cut some trees up to 30" dbh. The need, they argue, is not simply a desire to produce revenue for revenues' sake. From a technical perspective, they concede, many acres could be adequately treated to reduce fire effects by cutting only trees up to 12" or 20" dbh. The real issue, they contend, is that the number of acres slated for treatment in either the '01 or '04 Frameworks could not be reached with the combination of appropriated funds and income from the sale of 12" trees. The result would be the continued loss of ground in “the race to treat acres before they burn.”

According to Forest Service representatives, the 2004 Framework is preferred because it allows for a small (in terms of ecosystem impacts) number of trees up to 30" dbh to be removed to provide enough additional funding to allow effective treatment of the larger landscape. Without this landscape-scale consideration, wildlife habitat and watershed values will not in fact be protected, but will be increasingly lost to fire. In addition, they argue, in some places, such as the west side of the Sierras, some large trees may need to be removed for silvicultural reasons (i.e. interlocking crowns, forest health etc.).

An additional problem noted by some Forest Service representatives is that agency forest managers do not have the time to “transfer their vision” of effective forest treatment projects to people doing the work. This difficulty creates a disconnect, some argue, between peoples' expectations for how treatments will be implemented and their actual implementation, which sometimes falls short of expectations. Forest Service representatives feel that stakeholders who are monitoring specific forest treatment projects are not fully aware of the challenges the agency faces in implementing successful treatments and satisfying expectations.

Forest Service representatives acknowledge that the ongoing dispute over the Pilot Project requires collaboration between QLG and environmentalists but most expressed a concern that Forest Service representatives should actively participate in the collaborative process if it is convened, primarily because of their expertise in forest management and their practical experience implementing forest treatments – “what you can and cannot do on the ground.” In addition, Forest Service representatives recognize possible modifications to the Pilot Project from their experiences implementing the Pilot and from observing the nuances of the debate between QLG and environmentalists. While not all Forest Service representatives thought the Pilot should be modified, those that did offered both substantive issues that they feel are appropriate for discussion and conditions or sideboards they believe must be part of any agreement that results from the collaborative process. The substantive issues that Forest Service representatives suggested for discussion include the following:

1. A frank discussion of diameter limits, whether they are needed, and whether there is room for movement in some size classes.
2. Building in greater flexibility and discretion for agency resource managers to design and implement forest treatments.
3. Revisiting group selections – their intended goals and effectiveness, how they are selected and placed, their size, and their distribution with regard to existing and projected road systems.
4. Adopting and following more stringent adaptive management protocols.
5. A frank discussion of the role that economic incentives can play in achieving forest management goals, now and in the future.
6. A frank discussion of the intensity of forest treatments.
7. A frank discussion of natural range of variability (NRV) and its role in Sierra Nevada forest management.

Forest Service representatives are supportive of the collaborative process but expressed concern with the ability of the parties to resolve fundamental differences in their values and perceptions. Forest Service leaders suggested four conditions that they feel must be part of any agreement to modify to the Pilot Project. Similar to those stated by SFL and QLG, the conditions must be acknowledged by the parties prior to moving forward. The conditions are:

1. That an industry infrastructure at the local level to carry out forest management goals must be in place. This requires a local economy that supports peoples’ ability to live and work in a community.
2. That forest management needs to occur at a scale that will make a difference on the broader landscape. This requires thinking in terms of forest acres treated, acres at risk, stand density control, species mix, composition, intensity of treatment, and the reintroduction of fire.
3. That the Forest Service needs the flexibility and discretion to carry out the goals of the collaborative process.
4. That the number of appeals of Forest Service actions will be reduced if an agreement is reached and implemented consistent with the agreement.

## **Obstacles to Moving Forward**

While the parties object to being defined or categorized, there do appear to be fundamental differences between them. These differences, in my opinion, are partly the result of mutual mischaracterizations that are the result of attribution errors common in conflicts (where parties attribute each others' behavior to the perceived character of the people rather than their circumstances). These errors then result in the parties' imputing each others' motives in ways that exacerbate the conflict.

Attribution error, I believe, contributes more to differences in the parties' perceptions of each other than their actual differences warrant. There are, however, real differences in the way the parties perceive the problem. These differences appear to involve, a) different perceptions of risk, b) differences in the appropriate role of economic incentives, and c) differences in scientific approaches to forest management (which appear to influence and are influenced by the other factors). With the intent of possibly correcting attribution errors and at the same time defining these differences more accurately, they are described below.

### **Risk Perceptions**

An obstacle to moving forward appears to involve the parties' perceptions of risk to the California Spotted Owl and other vulnerable species. It is inaccurate to characterize these differences as dichotomous or dualistic. Instead, it is more accurate to view them as a matter of priorities that are driven by perceptions. First, it is important to note that the parties appear to agree on the risks posed to the survival of the California Spotted Owl and owl habitat, and other sensitive species, from the dangerous accumulation of surface and ladder fuels in the understory of overstocked forests. However, it appears that the parties disagree on the risks posed to the survival of the owl, owl habitat, and other sensitive species from increased tree densities in the canopy layer of denser forests. It appears that SFL representatives perceive a greater risk from treating the canopy than from *not* treating it while QLG and the Forest Service perceive a greater risk from *not* treating the canopy than from treating it.

Further, SFL representatives argue that the removal of large trees results in less owl habitat conservation, which is in part why they oppose the 2004 Framework. Since in their view the primary risk can be addressed by the removal of surface and ladder fuels, there is little need, except in the defense zone of the wildland-urban intermix zone, to harvest larger trees. Doing so is therefore not a matter of risk but of something else, perhaps economics. By contrast, QLG representatives (and Forest Service representatives I interviewed) contend that owl habitat conservation can best be achieved by reducing the risk of stand replacing wildfire, including reducing the density of overstocked forest stands by removing some of the larger trees. This is, in part, why they support the 2004 Sierra Nevada Framework.

To restate, all of the parties interviewed recognize the significant risk posed by the buildup of understory fuels and the need for their removal in stands where they have

increased to hazardous levels. However, the parties fundamentally disagree on the prioritization of risk when it comes to the density of the canopy and canopy trees. Both are following what they believe to be the precautionary principle however it is leading them to diametrically opposed conclusions – SFL argues that forest structure should largely be maintained, with emphasis on removing smaller trees and brush, while QLG and the Forest Service recommend treating forests more aggressively to reduce the risk that forest structure will be lost to wildfire. Risk assessments in both the 2001 and 2004 Frameworks apparently do not adequately resolve this issue although more recent assessments are beginning to address the issue more fully.

### **Economic Incentives**

Different perceptions of the role that economic incentives should play in the management of national forests and the kinds of “commercial” activities that should contribute to community stability appear to be a significant obstacle to moving forward with a collaborative process. SFL representatives have stated that they are not opposed to commercial logging, but have indicated their skepticism of forest treatments that log large trees and do not believe that economics should drive the design of timber sales on national forests. SFL representatives are concerned that economic incentives, when dominant, may compromise the integrity of ecosystem restoration and fuels reduction projects. SFL leaders prefer that economic incentives be more closely aligned with the goal of reducing surface and ladder fuels that contribute to stand-replacing wildfires, hence their focus on promoting small diameter timber economies.

QLG and Forest Service representatives, on the other hand, argue that after 100 years of fire suppression, many of the trees that contribute to the overstocked and dangerous forest conditions are of merchantable size and should be removed. This situation, they contend, has created a unique opportunity to utilize the capacity and infrastructure of the timber industry to accomplish much needed forest restoration goals. QLG and Forest Service representatives agree that commercial interests should not drive decision-making if they are not compatible with forest health goals but also recognize that the production of timber as a commodity (not just for money, but for consumption) is a valid management goal in itself. For QLG and Forest Service representatives, forest health and commodity production goals are not incompatible.

Further, QLG representatives believe that the timber industry has sufficiently changed, as has its milling technologies, and that the industry recognizes its role in helping correct the forest health problem, provided that economic incentives are in place. QLG representatives also believe that the Forest Service has sufficiently changed and that the agency, which it fought over forest management priorities for almost two decades, now appears to embrace the concepts contained in the Community Stability Proposal and Pilot Project. Moreover, QLG representatives contend that community oversight by local collaborative groups, and further oversight by regional and national watchdog groups, can, if necessary, keep the timber industry and Forest Service in check and can prevent economic incentives from driving forest management decisions.

## Scientific Approaches

At the core of the debate over modifications to the Pilot Project is scientific information that the parties use to support their positions. For purposes of the debate over modifications to the Pilot Project, it appears that the “science” can be divided into, a) empirical studies of the behavior and population trends of sensitive species, b) estimated risks to sensitive species and habitat from various forest management scenarios, and c) recommendations by credible scientists and resource managers based on a and b. For example, empirical studies have shown that California Spotted Owls prefer denser old-growth forests for nesting habitat. Risk assessments have shown that such forests are vulnerable to destruction by stand-replacing wildfire. To reduce those risks, credible scientists and resource managers recommend various management scenarios that include some form of fuels reduction and the reintroduction of fire.

The fundamental disagreement over “the science” appears to occur in b and c (estimated risks and management recommendations). Unfortunately, these are harder to quantify and are therefore subject to predictive modeling and interpretation, which contains greater uncertainty and allows for the introduction of the parties’ values, assumptions, and management paradigms. The debate over science is thus driven, it appears, by the values, assumptions, and paradigms that the parties bring to the discussion and that tend to arise in environmental and natural resource conflicts. For some of the parties, for example, habitat conservation is best achieved by removing fewer large trees while for others it is best achieved by removing more large trees. These recommendations align with values, assumptions, and paradigms involving interpretations of abstract concepts such as forest health, forest restoration, community stability, sound science, and ecosystem management. As environmental activist Andy Kerr famously stated at the Northwest Forest Summit, “I hear *ecosystem* and the forester hears *management*.”

Overcoming these obstacles presents a significant challenge to the collaborative process. On a positive note, the parties sometimes reference the same science to support their arguments and to refute the other parties’ arguments. Referenced most often is Dr. Jerry Franklin, Professor of Ecosystem Analysis at the University of Washington. Dr. Franklin and colleagues have studied and written extensively about the ecology of northwestern old-growth forests, pioneered the concept of ecological forestry, and most recently co-authored the forest management plan for the Klamath Tribes’ Reservation Forest. Dr. Franklin also met with SFL, QLG, and Forest Service resource managers on separate field trips in the spring of 2008. Concurrence on at least some of the science suggests that the parties may be able to identify a common thread of science from which to engage with each other, and perhaps with scientists, in a discussion over possible modifications to the Pilot Project.

## Recommendations for Moving Forward

As mentioned above, all of the parties interviewed in the assessment expressed interest in exploring modifications to the Pilot Project through a collaborative or negotiated process. While encouraging, this common interest is not a good indicator, alone, of whether the



parties will reach agreement over the issues they have identified, especially given differences in the preferred focus of the collaboration. The process for moving forward, therefore, should be designed to maximize the likelihood that the parties can resolve their differences and reach a substantive agreement to allow the Pilot to be completed. Some of the challenges identified in designing a process for moving forward include whether the parties can:

1. Agree on the focus of the collaborative process.
2. Overcome obstacles in risk perception, economic incentives, and scientific approaches (described above).
3. Effectively check interpersonal animosities at the door.
4. Address concerns expressed over the involvement of parties that have not been part of the assessment but may have a stake in the outcome.

These challenges suggest several possible approaches to the design of a collaborative process that should be considered by the parties as they contemplate moving forward.

### **Focus of the Collaborative Process**

Most SFL representatives expressed a desire to convene the collaborative process with the purpose of reaching an acceptable compromise that essentially limits the Pilot Project in order to more closely adhere to the 2001 Framework standards and guidelines. Most QLG and Forest Service representatives expressed a desire to convene the process with the purpose of exploring opportunities for expanding the focus of the Pilot to address concerns with changing risk management priorities and watershed health. It is unclear at this point whether the parties are willing to explore the preferred focus of the other party(s). While not mutually exclusive, these distinctions suggest different approaches to the design of the collaborative process and will need to be addressed by the parties as the process moves forward.

If the parties conclude that the focus of the collaborative process must be limited to acceptable compromises to the existing Pilot, it is unlikely in my opinion that an agreement will be reached unless such compromises are minor. In my view, the parties may be able to agree to slight modifications to the Pilot without compromising the integrity of their stated positions. If this is the only course of action that is tenable, then it is my recommendation that the number of parties at the table be limited to two representatives for each group, plus a possible representative from the California Attorney General's Office and other necessary entities, and attempt to quickly negotiate the necessary compromises.

Several of the parties suggested that the collaborative process presented opportunities to, a) revisit the Pilot Project in light of reassessments by some scientists of the risks posed by wildfire, disease, and insect invasion, and b) to reposition the Pilot as a way to achieve broad based watershed restoration and the provision of ecosystem services for the people of California. This opportunity, they argue, suggests the need to expand the focus of the

Pilot Project both in its scope within the HFQLG project area and in its overall focus as it relates to watershed and ecosystem restoration.

If the parties determine that a focus on expanding the Pilot Project is tenable, then it is my recommendation that the number of parties at the table be expanded to include more individuals and, perhaps, all of those wishing to participate. This recommendation is consistent with the spirit of collaborative natural resource management (CNRM) as it has evolved in the western U.S. CNRM is generally a longer term or ongoing process where individuals make a commitment to collectively working on common goals in a specific ecological setting, ecosystem, or watershed.

Of course it is possible, and quite practicable, for the parties to agree to explore compromises on some aspects of the Pilot Project while expanding other aspects. If this approach is tenable, then it is my recommendation that the parties explore such options within the CNRM framework described above.

### **Overcoming Obstacles**

The parties may decide at the outset that it is not possible to overcome obstacles in the areas of risk perception, the role of economic incentives, and differences in scientific approaches. It is my recommendation, however, that the parties try. My recommendation is based on the thread of common science that the parties have expressed when making their respective arguments and on the important role that science plays, and should continue to play, in the Sierra Nevada Framework and the Pilot Project. It is imperative, I believe, to “vet” the science the parties are using to inform their positions and to attempt to reconcile that science, with the parties and with the scientific community if necessary.

Although the reverse is also possible, scientific approaches to forest management appear to influence the parties’ perceptions of risk and how they view the role of economic incentives. As such, a process for overcoming such obstacles should focus primarily on the scientific underpinnings of particular forest management scenarios. This suggests that the collaborative process should involve a scientific review conducted by scientists selected by the parties. Such a review could focus on a critical review of the science that informs the positions the parties have taken with regard to the Pilot Project or it could focus on a critical review of the Pilot Project by credible scientists. Or both.

The first approach would be designed to test the validity and applicability of science that is referenced by the parties in their arguments in support of or against the Pilot Project (or the ’01 and ’04 Frameworks). The second approach would be designed to allow credible scientists to review the Pilot Project and make specific recommendations regarding modifications concurrent with recent scientific thinking. These approaches are both designed to bring the parties closer together in their understanding of the most current science and to begin to overcome obstacles dealing with risk priorities and the role that economic incentives should play in managing risk. As mentioned, it is imperative, in my opinion, that a science review process be part of any collaboration that emerges, with the possible exception of a process to minimally limit the scope of the Pilot.

## **Checking Interpersonal Animosities**

There is a history of animosity among some of the parties that may limit their ability to reach an agreement. Unless the parties can effectively check their animosities at the door, it is my recommendation that the parties consider selecting representatives that do not have a history of animosity with each other. There are generally two approaches to the selection of representatives. One is for the group to select its representatives based on criteria relevant to the situation, including input from the convener or facilitator. The other is for a third-party to select or recommend the appropriate representatives based on relevant criteria, including input from the parties. The principal difference in these approaches is that the former tends to be driven by strategic considerations in the best interest of the group (primarily competitive) while the latter tends to be driven by strategic considerations in the best interest of all of the parties (primarily cooperative).

The former strategy often leads to the selection of the group's leaders and/or its most vocal members – often the ones that evoke the strongest negative emotions from the opposing group. The latter approach is designed to reduce this risk by selecting representatives who do not evoke the same level of emotions from their adversaries. It is also helpful if representatives are “collaborators” who share a common approach to the overall problem and who will explore common ground with their adversaries. Selecting representatives is a challenging but important prospect when limiting the size of the negotiating table is necessary or when building working relationships is important.

## **Involvement of Other Parties**

Several of the parties have cautioned that there are interested stakeholders who thus far have not been involved in the assessment but have a stake in the outcome. In particular the parties are referring to environmental organizations and activists, other than SFL, that have objected to HFQLG projects. The principal concern expressed by the parties is that these stakeholders could still object to HFQLG projects even though there is an agreement over acceptable modifications to the Pilot Project between QLG, SFL, and the Forest Service. This concern raises an issue with regard to recent changes in the HFQLG Act and language calling for the Forest Service to,

...initiate a collaborative process with the Plaintiffs in *Sierra Nevada Forest Protection Campaign v. Rey...* and the Quincy Library Group to determine whether modifications to the Pilot Project are appropriate....

The plaintiffs in the suit include Sierra Nevada Forest Protection Campaign (now SFL), Center for Biological Diversity, Sierra Club, The Wilderness Society, and Natural Resources Defense Council. SFL leaders have stated that they are representing the plaintiffs in the assessment process but have no stated agreement with the plaintiffs beyond the assessment. Presumably, each of the plaintiffs will review the assessment report once it is completed and make their own decisions as to whether and how they will participate in the collaborative process.

Issues of representation in the collaborative process and whether the plaintiffs and other groups and individuals will abide by any agreements that emerge from the collaborative process will need to be addressed, to the extent that they can. Unfortunately, there are few assurances that stakeholders who are not parties to the collaborative process will not oppose projects they find objectionable. The obvious but challenging solution to the problem is to either carefully represent their interests at the bargaining table or involve them directly in the collaborative process by inviting them to the table. Either option presents challenges, not the least of which is whether other parties are interested in trying to negotiate an agreement that would allow the Pilot Project to be completed.

### **Other Options for Moving Forward**

A final consideration for negotiating possible modifications to the Pilot Project, that should be mentioned, is the potential for other options for moving forward including shuttle diplomacy, arbitration, med/arb, or the appointment of a Special Master. These options must be considered when extenuating circumstances prevent the parties from constructively negotiating with each other to reach an amicable agreement. Such options should also be considered when third-party assistance in the form of a neutral facilitator or mediator is not working, yet an agreement among the parties seems tenable.

Shuttle diplomacy is recommended when the parties cannot communicate constructively with each other without further damaging their working relationship. Shuttle diplomacy requires a neutral facilitator or mediator to essentially shuttle between or among the parties, who do not meet in the same room, and “broker” an agreement that all of the parties can accept. The facilitator meets separately with each of the parties and explores options that may be amenable to all of the parties. When an agreement is reached, the parties get together to sign and ratify it.

Arbitration requires the parties to present their cases to a neutral third-party who will then render either a binding or non-binding decision or action based on the evidence presented. Arbitration is recommended when the parties do not want to negotiate or mediate the dispute, when it does not appear that there is enough common ground among the parties to negotiate, or when the parties agree that a neutral party could render the fairest decision. Arbitrators generally have a broad understanding of the scientific and technical dimensions of a particular dispute and can usually make sense of the complexities. Arbitration is a voluntary process although, at the parties’ discretion, may be binding.

Med/Arb is a hybrid process wherein a neutral third party plays the role of a mediator and can, with the acceptance of the parties, switch to an arbitrator role when the parties reach an impasse. Med/Arb is recommended when the parties want to achieve a facilitated or mediated agreement but recognize the challenges in doing so and are willing to allow the med/arbitrator to break narrowly defined impasses that may be preventing the parties from moving forward. Med/Arb has the advantages of both processes.

The options described above can reasonably qualify as collaborative processes if they are recommended by the parties as an effective way to achieve acceptable modifications to

the Pilot Project. The final option considered here – the appointment of a Special Master – may also qualify as a collaborative process if it is acceptable to the parties. A Special Master, however, is appointed by the court or Congress to act on its behalf. Special masters are generally employed in complex civil actions where their expertise can assist the court with resolving technical issues. A Special Master may also be established by Congress to assist in the administration of claims against the government. Complex environmental disputes, such as the restoration of the Everglades, have benefitted significantly by the use of a Special Master. Consideration of a Special Master should be a last resort in attempting to complete the Pilot Project.

## **Conclusion and Next Steps**

This assessment report is an attempt to, a) determine whether there is interest in a collaborative process to explore modifications to the HFQLG Pilot Project, b) identify the principal issues that must be addressed if a collaborative process moves forward, c) summarize the challenges the parties are likely to face in the collaborative process, and d) recommend constructive ways for moving forward. In addition, the assessment report is an attempt to capture the essence of the situation or conflict the parties are facing. Hopefully this report sufficiently achieves these objectives. In writing the report, I attempted to describe the principal differences as well as the nuances among the parties so that both I and the reader could better understand the inherent forest management conflict in the northern Sierras. This required the assessment report to employ on a longer narrative rather than a short bulleted summary. The risk with this approach is that the assessment process may be lengthened as the parties carefully word-smith the document to improve its accuracy, to more clearly explain their actions, and to portray themselves in the best possible light. The back-and-forth of this activity has helped me better understand the nuances and subtleties embedded in the conflict and will hopefully benefit the parties and the collaborative process as it moves forward.

Finally, since the parties have differing views regarding the preferred approach to the collaborative process, it will be necessary to convene the parties for the purpose of arriving at a common approach. The scope of work for Phase 2 of the collaborative process, therefore, cannot be fully determined until such a dialogue occurs. It is recommended that this dialogue take place as soon as possible and that the dialogue constitute the beginning of Phase 2 of the collaborative process to consider modifications to the HFQLG Pilot Project. In addition, it is recommended that The Keystone Center, if selected to facilitate Phase 2 of the collaborative process, present a proposed scope of work for moving forward.