

Sequoia ForestKeeper
P.O. Box 2134
Kernville, CA 93238
(760) 376-4434
www.sequoiaforestkeeper.org

24 September 2008

Tina Terrell, Forest Supervisor and
Priscilla R. Summers District Ranger
Attn Teresa Sue, Interdisciplinary Team Leader (559-539-2607, extension 270)
Western Divide Ranger District
32588 Highway 190
Springville, CA 93265
comments-pacificsouthwest-sequoia-tule-river-hotspings@fs.fed.us

tterrell@fs.fed.us
psummers@fs.fed.us
tsue@fs.fed.us

Tule River Reservation Protection Project NOI and Scoping Comment

Dear Ms. Terrell, Ms. Summers, and Ms. Sue;

Thanks you for giving us the opportunity to comment on the Tule River Reservation Project NOI. On August 25 2008, Supervisor Tina Terrell sent the scoping for and advised the public of the Tule River Reservation Protection Project with the publication of a Notice of Intent (NOI) to prepare an environmental impact statement, which contained the project description, including the background, existing condition, purpose and need, and proposed action.

The NOI scoping document says *“In July 2004, Congress passed the Tribal Forest Protection Act (Act). The Act was in response to devastating wildfires that started on Federal lands and crossed onto adjacent Tribal lands. The Act provides a tool for tribes to propose work on adjacent federal lands that would reduce the threat of fires starting on those lands from spreading onto trust lands for Indian tribes. Under the Act, tribes can propose projects to address fire, disease or other threats on Tribal lands or to address lands that are in need of restoration activities, The Act allows tribes to enter into contracts and agreements with the U.S. Forest Service or Bureau of Land Management to accomplish the work.*

In October 2005, the Tule River Tribal Council submitted a project proposal to the Forest Supervisor of the Sequoia National Forest under the authority of the Tribal Forest Protection Act of 2004. The proposal included a series of fuel reduction actions on National Forest System lands, along the north boundary of the Tule River Reservation to reduce the threat of wildfire entering the reservation from the forest. The Pacific Southwest Regional Forester granted authority to work with the Tule River Tribal Council on their proposal. This project is the first under this authority and would address

the threat of fire onto Tribal lands only. Subsequent projects will be analyzed in the future separately.”

The Act does not supersede or negate the requirements of the Presidential Proclamation of April 15, 2000 or the requirements of the court ruling by Judge Breyer when he ruled that, *“In the interim, and until the Forest Service issues a new Management Plan, the Monument shall be managed consistent with the Monument Proclamation of April 15, 2000, and in accordance with direction from the 1988 Sequoia National Forest Land and Resource Management Plan, as amended by the 1990 Mediated Settlement Agreement and the 2001 Sierra Nevada Forest Plan Amendment.”* Also, the Regional Forester may have granted authority for the Supervisor to work with the Tule River Tribal Council, but the authority does not does not authorize implementation of the project.

Some of the most relevant portions of the Mediated Settlement Agreement (MSA), which are important to the discussion of any proposed actions in the Monument, are the following:

APPLICABLE MANAGEMENT PRESCRIPTIONS
FOR THE BLACK MOUNTAIN GROVE
IN THE 1990 MSA

1. “[T]he following mechanical/motorized uses only will be permitted inside a[] . . . final Grove boundary line: . . . Management in accordance with approved fuel load reduction plans . . . Section II.B.2.a.(1) and (1)(d).
2. “[I]t is desirable that the Sequoia National Forest shall inventory all giant sequoias (3 feet or larger dbh) in each Grove by size and approximate locations in order to provide a suitable data base for future protection of the sequoias. . . .” Section II.B.2.b.(1).
3. “[T]he Sequoia National Forest shall begin to inventory and evaluate each Grove for its fuel load build-up. Based on this inventory and evaluation, Groves, or parts of Groves, with risks of catastrophic fire and/or exclusion of new giant sequoia regeneration because of unnatural fuel load build-up will be identified and prioritized for fuel load reduction treatment.” Section II.B.2.b.(2).
4. “Except as set forth in section II.B.2.a.(1) [relevant parts excerpted in No. 1 above], there shall be no new road-building, logging or mechanical/motorized entry . . . within the final administrative boundary of any Grove during the period of time in which the Sequoia National Forest activities are covered by the 1988 Land and Resource Management Plan (LRMP).¹ For purposes of this Agreement, prohibited logging shall mean any logging activity except logging conducted for the limited and specific purpose of reducing the fuel load in the Groves pursuant to a Grove specific fuel load reduction plan and Grove specific EIS. . . . It is agreed that the methods to be used to remove specific trees from the Groves, as part of an adopted fuel reduction plan, shall be the most environmentally sensitive available. The objective of fuel load reduction plans shall be to preserve, protect,

¹ Presumably, the 1988 LRMP still covers, since the 1988 LRMP was never amended to incorporate the MSA, and since the amendments in the 2001 Framework did not fully replace the LRMP.

- restore and regenerate the Giant Sequoia Groves, without unnecessary damage to any old-growth trees in the Grove. . . .Any tree identified for removal under this paragraph shall be so identified in the field in consultation with a forester from either the Save-the-Redwoods League or the Sierra Club. Section II.B.2.b.(3).
5. “The narrow corridor of general forest between the Black Mountain Roadless Area and the Black Mountain Grove in Sections 1 and 12 will be a no logging, restricted mechanical entry area. The extension of road 21S12, beyond its intersection with road 21#25 in Section 1, shall be closed to the public. The balance of the Black Mountain Grove shall receive a 500 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line around the outermost giant sequoias in the Grove within its final Grove boundary line and an added 500 foot Grove Influence Zone.” Section II.B.2.c.(2)(j).
 6. “Black Mountain Roadless Area will be classified as unregulated. No road building or logging will occur. The Area will be managed for giant sequoias, watershed, wildlife (deer mitigation corridor, old-growth species), roadless recreation, and sugar pine gene resources. Section II.G.3.c.

PROCLAMATION REQUIREMENTS FOR SEQUOIA MONUMENT

THE MONUMENT’S PURPOSE

Giant Sequoia National Monument has one dominant purpose: protection of the objects found within the Monument that the Presidential Proclamation creating it identifies as justifying its creation. The Proclamation states unequivocally that the monument is created “for the purpose of protecting the objects identified in the above preceding paragraphs” (Proc., pp. 3-4).² The Antiquities Act that authorizes monuments requires that the objects be “of historic or scientific interest” and prohibits injury to them. 16 U.S.C. 431, 433. The Proclamation “set[s] apart and reserve[s]” (Proc. p. 3) the federal lands within the Monument’s borders, distinct from federal holdings that are not subject to this purpose. Management of the reserved land, by the Secretary of Agriculture, must implement the protective purpose (Proc. p. 4). To the extent that management addresses other issues, it is explicitly “subject to the overriding purpose of protecting the scientific and historic objects described in the Proclamation” (Backgr. p. 8). Limited exceptions are allowed for “public safety” (Proc. p. 4) and “emergency” (Proc. p. 5).

The Proclamation describes a very broad set of objects to be protected, including “plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest” (Proc. p. 2). Among the many other objects listed are “lithic scatters, food-processing” and other archaeological sites (Proc. p. 3), “remnants of early Euro-american settlement” (Proc. p. 1), limestone caves (Proc. p. 3), meadow sediments (Proc. p. 3), wildlife from the Pacific fisher to the California condor (Proc. p. 2), the Kern

² This analysis cites to the copy of the Proclamation (“Proc.”) and the “Background Information on Giant Sequoia National Monument” (“Backgr.”) released by the White House Press Secretary and the Chair of the White House Council on Environmental Quality on the date of the monument’s creation; pages cited here for the Proclamation refer to those in the lower left corner. A scan of those documents is attached.

Canyon (Proc. p. 2), granitic domes and spires (Proc. p. 1), and “fungi and insects” (Proc. p. 2).

Presumably because of these manifold objects, the Proclamation refers in some places to having “purposes” in the plural. For instance, it limits motorized access “[f]or the purposes of protecting the objects included in the monument” (Proc. p. 5). However, protection of the objects within the monument is the only thing described as a “purpose” or set of “purposes” anywhere in the Proclamation.

Where other activities are mentioned in the Proclamation as appropriate for the Monument, they are made explicitly subordinate to protection of the monument’s objects. The management plan is to “encourage public and recreational access and use consistent with the purposes of the monument” (Proc. p. 4). A transportation plan is mandated “that provides for visitor enjoyment and understanding about the scientific and historic objects in the monument, consistent with their protection” (Proc. p. 5). Similarly, as noted above, “for the purposes of protecting the objects included in the monument, motorized vehicle use will be permitted only on designated roads” (Proc. p. 5).

Concern about the Lack of a Grove Management Plan

The Forest Service should not conduct fuel reduction within the Black Mountain Grove, or any other grove, without first preparing a Monument Management Plan. The Mediated Settlement Agreement (MSA) contains strong language regarding preparation of a grove specific management plan and fuel load reduction plan. These plans must employ the most environmentally sensitive methods available to preserve, protect, restore and regenerate the Giant Sequoia Groves, without damage to trees in the Grove. The Forest Service must disclose, in detail, existing and future conditions of the Black Mountain Grove in light of the proposed action. This analysis should address the cumulative impacts of the proposed action as well as all past, present, and foreseeable future actions on all other groves in the monument.

The NOI scoping document says “The proposed project area is approximately 1,574 acres on National Forest lands and is located along the northern boundary between the Sequoia National Forest, Giant Sequoia National Monument, and the Tule River Indian Reservation. The project is bounded by Forest Service Roads (FS) 21S12 on the west and north, FS 21S94 on the east, and the boundary between the Sequoia National Forest and the Tule River Indian Reservation on the south (see enclosed map). The legal description for the project area is T215, R30E, Sections 1, 12, 13, 14,15, 16; andT21S, R31E, Sections 3,4,6,7,8,9,10, 15, 16, 17 and 18. Elevations in the area range from 4,800 to 7,000 feet, The project area encompasses portions of the Black Mountain Giant Sequoia Grove, planted conifer stands, mixed conifer forest, Montane chaparral, and private lands.” This statement fails to disclose that implementation of the project would extend beyond 21S12 to the west and north.

No where in the NOI does the Forest Service provide the required Grove specific Environmental Impact Statement (EIS) required by the Mediated Settlement Agreement (MSA) (pages 10 and 11).

“EXCEPT AS SET FORTH IN SECTION IIB.2A(1), THERE SHALL BE NO NEW ROADBUILDING, LOGGING OR MECHANICAL/MOTORIZED ENTRY (EXCEPT FOR ENTRY ON EXISTING ROADS) WITHIN THE FINAL ADMINISTRATIVE BOUNDARY OF ANY GROVE DURING THE PERIOD OF TIME IN WHICH THE SEQUOIA NATIONAL FOREST ACTIVITIES ARE COVERED BY THE 1988 LAND AND RESOURCE MANAGEMENT PLAN. FOR PURPOSES OF THIS AGREEMENT, PROHIBITED LOGGING SHALL MEAN ANY LOGGING ACTIVITY EXCEPT LOGGING CONDUCTED FOR THE LIMITED AND SPECIFIC PURPOSE OF REDUCING THE FUEL LOAD IN THE GROVES PURSUANT TO GROVE SPECIFIC FUEL LOAD REDUCTION PLAN AND GROVE SPECIFIC EIS.” (1990 MSA pages 10 and 11)

Page 147 of the MSA says:

*“5 The agenda for the Liaison Committee shall include consideration of the following work outputs as they are prepared pursuant to this agreement
B The **Giant Sequoia Grove boundaries and management plan proposals**”*

We interpreted these sections of the MSA to mean that there shall be a grove management plan EIS for each grove and for the entire grove – not just and EIS on the fuel load reduction plan. We interpret these sections of the MSA to mean that **the grove specific management plan EIS must be approved prior to any project in that grove.**

The MSA (pages 10 and 11) goes on to say, *“THE ONLY SALVAGE LOGGING PERMITTED IN THE GROVES WILL BE THAT LOGGING PERMITTED AND DESCRIBED IN THE PREVIOUS SENTENCE. IT IS AGREED THAT THE METHODS TO BE USED TO REMOVE SPECIFIC TREES FROM THE GROVES, AS PART OF AN ADOPTED FUEL REDUCTION PLAN, SHALL BE THE MOST ENVIRONMENTALLY SENSITIVE AVAILABLE. THE OBJECTIVE OF FUEL LOAD REDUCTION PLANS SHALL BE TO PRESERVE, PROTECT, RESTORE, AND REGENERATE THE GIANT SEQUOIA GROVES WITHOUT UNNECESSARY DAMAGE TO ANY OLDGROWTH TREES IN THE GROVE. ANY LOGGING COMPONENT OF FUEL REDUCTION PROGRAM IN GROVE SHALL PROTECT THE OLDGROWTH PINE, FIR, INCENSE CEDAR, AND BLACK OAK COMPONENTS OF THE STAND. ANY TREE IDENTIFIED FOR REMOVAL UNDER THIS PARAGRAPH SHALL BE SO IDENTIFIED IN THE FIELD IN CONSULTATION WITH FORESTER FROM EITHER THE SAVE THE REDWOODS LEAGUE OR THE SIERRA CLUB.”* (1990 MSA Pages 10 and 11)

No where in the NOI are we presented with documentation that any consultation has taken place with the inventory that is alluded to in the NOI. No where in the NOI document does the Forest Service provide the required Grove management plan.

Comments on the Fuel Load Reduction Evaluation for the Black Mountain Giant Sequoia Grove

We recognize the need to change the fuel loading and arrangement in the Black Mountain area. We also recognize that this can be done in a way that restores ecosystem structure and function.

We believe the Evaluation should undergo major revisions, to prevent problems with subsequent planning documents based on the Evaluation, for the reasons elucidated below.

Responsibility

The passive voice used in this paper is at the core of the problem with this Fuel Load Reduction Evaluation. In this Evaluation the agency assumes no responsibility for the condition of this Forest. The Forest Service has managed these forests for roughly a century. The agency needs to take responsibility for the fuel loading and fuel arrangement in these groves.

For example, on page 3 the authors state that

“Planted stands within the grove have had no management activities since the last planting in 1989. The lack of management activities resulted in an overstocked stand.”

First, the planted stands have had major management activity in the form of aggressive suppression of all fires in the vicinity and prevention of any surface fire that might have begun the task of reducing fuels in these groves. Second, the “lack of management activity” is not what caused the overstocking. The planting of too many trees caused the overstocking.

Credibility

Also on page 3 the paper cites ‘Jump 2004’, apparently an inventory of the groves. This paper is not peer reviewed and is not available on the web. It is not appropriate to repeatedly cite this paper as the basis for decisions when the public cannot access this inventory.

On page 4 the author states that fire would be bad because

“.....the potential tree mortality from a fire under extreme conditions would likely be high.”

The first order fire effects model (FOFEM) does a reasonable job of quantifying the potential for tree mortality. This model should be used to demonstrate the effects described.

Also on page 4, the author states that ‘once a fire is established, a crown fire would likely initiate and spread.’ Several models predict propagation from a surface fire to a crown fire. They should be cited and the run files made available.

The paper uses fire regime condition class (FRCC) at the stand scale. I have spoken with members of the Joint Fire Science Program about the appropriate use of Condition Class. They told me that the concept was developed for use at national and regional scales and that using it at the stand level is inappropriate. Please do use the replicable Fire Regime, but not Condition Class at this scale.

Peer Pressure

On page 8 the agency states that use of fire alone

“is currently limited due to large amounts of existing surface ladder and crown fuel.”

And that

“therefore, a series of (presumably mechanical) treatments would best preserve, protect, restore and regenerate giant Sequoias.”

Sequoia Kings Canyon National Park and Yosemite National Park have been burning in Giant Sequoia groves successfully, for the most part under the same conditions as the monument. The Sequoia groves exist in a forest type broadly known as the mixed conifer zone. Land managers have been using low severity fire to manage this forest type from Oregon to Baja. It is time to develop ways to reintroduce fire in these forests, before the Sequoia National Monument is the only unit left claiming it is not feasible.

On page 9 the author states that “The current restrictive smoke management policies that are in effect due to air quality of the San Joaquin Valley are a consideration for planning fuel projects in the grove.”

This is potentially a taxpayer’s nightmare. Are we going to see a government agency using another government agency as a reason not to get their work done? We know that fire must be restored to mixed conifer forests. We know that logging is no longer the answer to fuel loading issues, at least not in the monument. We would hope the agency would work with the Air Board to get the job done.

Concern about the Failure to properly Inventory the Objects to be protected

The Jump 2004 inventory fails to document the objects to be protected by the Proclamation of 2000. How can the Forest Service protect the objects to be protected by the Proclamation, if the inventory of the project area fails to document the objects and only documents the trees in the project area? How can the existing conditions not include the objects to be protected?

The NOI scoping document says “*Existing Conditions:*
The project area is at the higher elevations of the Middle Fork Tule River watershed with

the river tributaries on the north side of the river pointing toward the Reservation, particularly Long Canyon, Coffee Canyon, and the communities of Camp Nelson and Roger's Camp. In the last 15 years, the Tule River Canyon along the Middle Fork has been the location of many wildfires that have thus far traveled on the north side of the river rather than south toward the reservation. The risk of fires spreading up Long Canyon and Coffee Canyon is high. Risk of fire spreading from the private lands to Tribal lands is also a threat. In 2007, a home caught on fire and burned to the ground in the Roger's Camp area."

Concern about the Failure to use Community Protection Science

The NOI scoping document fails to discuss or include the US Forest Service fire science on structure protection by Jack Cohen. This project instead falsely claims that treating forests miles from the reservation will protect the reservation. Treating forested public lands miles from structures will only cause resource damage to public lands.

The NOI fails to use the science and research of Jack Cohen (Cohen, 1995, 1998, and 2000), available from <http://www.firelab.org> and the available publications at <http://www.firelab.org/fbp/fbresearch/wui/pubs.htm> including "*Preventing Disaster: Home Ignitability in the Wildland-Urban Interface*", Research Physical Scientist Forest Service Fire Sciences Laboratory, Missoula, MT, in order to justify the use of the thinning around communities to supposedly protect communities. (see <http://www.johnmuirproject.org/pdf/Cohen-Fire-Threat-to-Homes.pdf> and <http://www.johnmuirproject.org/pdf/Cohen-Fire-Threat-to-Homes-PSW-GTR-173.pdf>) This failure to use the fire science which actually only requires 200-foot wide treatment areas, is a fundamentally arbitrary and capricious use of the Forest Service research and a failure of the NOI to provide a truthful analysis of the available science. The possible effects from the proposed treatment on the human environment does not involve unique or unknown risks; the risks of resource damage from this type of treatment are clear, they are real, and they have been documented in the research of Jack Cohen, which contains a massive amount of evidence showing that the environmental effects of similar activities would cause public land resource damage and would not protect the community. Jack Cohen stated in a personal communication dated March 17, 2003,

"You are correct in stating that my research indicates that modifying the home ignition zone (the home and its immediate surroundings within 200 ft) can perform the necessary and sufficient changes that effectively reduce home ignitability during extreme wildfire conditions. My research does address firebrands and spot ignitions. Putting a fuel break around communities without modifying the community will not be sufficient to significantly reduce the home ignition potential during extreme conditions. We know that fuel breaks don't stop spotting--that is why I suggest making the community the fuel break. This produces far less landscape disturbance for the purpose of community protection and reduces the community threat from any kind of wildland fire. That should provide increased opportunities for prescribed burning." (emphasis added).

Concern about the Failure to disclose the Inventory Methodology and to rely on papers without a NEPA Public Review Process

The NOI scoping document says “*Black Mountain Grove was inventoried in fall 2003, and was identified as having stands that “are now overstocked from decades of wildfire exclusion” (Jump 2004). The inventory was completed to measure and document the existing condition of the live and dead vegetation. The inventory revealed that the grove has an excessive number of snags and down logs which indicates an accumulation of stand density-related mortality over the last 30 to 40 years. Based on the Black Mountain Grove Inventory, there is an average of 459 conifers per acre of which 239 are seedlings. Hardwood tree species in the grove are at average of 105 trees per acre, 86 of which are seedlings. There is also an average of 35 standing dead trees per acre outside of planted stands. About three-fourths of these are less than 12 inches in diameter. Most of the intermediate understory trees are being killed by competition for light, water, and nutrients.*”

The NOI fails to disclose the methodology used for the 2003 inventory (Jump 2004), fails to disclose that Jump 2004 has not been peer reviewed, fails to disclose that the Piirto and Rogers 1999 ‘desired future condition,’ upon which Jump 2004 is based, has not been peer reviewed and has not been through the NEPA public review process.

Piirto and Rogers is the basis for the Jump 2004 conclusions, 'restoration of original stand conditions,' another word for mechanical creation of an image - not a functioning ecosystem with all the natural processes in place. There is NO NEPA document that adopts that Piirto and Rogers document as the 'desired future condition' for the Monument!

This is the same as the Monument management plan being tiered to the illegal Sequoia Fire Plan. Judge Breyer ruled that the Fire Plan had not gone through NEPA, therefore the Monument management plan was illegal because it was tiered to the illegal Fire Plan .

“tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA.” Kern v. United States Bureau of Land Mgmt., 284 F.3d 1062, 1073 (9th Cir. 2002).

In particular, because the dispute is about whether the Forest Service relied on the Fire Plan, the fact that it is referenced in its documents is sufficient to satisfy the second exception to the record review restriction. See Inland Empire Pub. Lands Council v. Glickman, 88 F.3d 697, 703-04 (9th Cir. 1996) (noting that the second of four exceptions is “when the agency has relied on documents not in the record”).

Because the FEIS relies on this guidance from the Fire Plan, which itself is in violation of NEPA, the Court therefore concludes that the FEIS improperly tiers to the Fire Plan under Kern. (Court Order filed August 22, 2006, Judge Charles R. Breyer, PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL

LOCKYER, Plaintiff, v. UNITED STATES FOREST SERVICE, et al.,
Defendants)

Here, Sequoia is implementing a project that is tiered to Piiro and Rogers which has never gone through NEPA.

The MSA goes on to say that the 'methods to be used to remove specific trees from the Groves, as part of an adopted **fuel reduction plan**, shall be the most environmentally sensitive available.... and goes on to say on page 11 "Any tree identified for removal under this paragraph shall be so identified in the field in consultation from either the Save the Redwoods League or the Sierra Club." Removal of trees does not necessarily mean trees hauled to the timber mill. Trees 12 inches dbh and under are TREES, not brush or saplings that a fire would get or act as kindling, and any tree marked for removal must follow this stricture.

We know that burning is BY FAR the most environmentally sensitive, WHERE POSSIBLE, and the least expensive, and burning has to be the Alternative of choice particularly given the language of the Proclamation regarding restoration from fire suppression.

The NOI fails to disclose that the basis for Jump 2004, (*Piiro and Rogers, 1999*), was the basis for the old Monument management plan that the court ruled illegal in all its parts, including the basis for its 'desired future conditions,' which was Piiro and Rogers 1999. "*Chapter I provides a broad discussion of the general desired conditions. More specific and quantifiable measures (indicators) are helpful in order to compare the alternative management approaches to ecological restoration. This section describes these indicators and the existing conditions. These indicators are based on advice received from the Scientific Advisory Board (Appendix C), the document "An Ecological Foundation for Management of National Forest Giant Sequoia Ecosystems" (Piiro and Rogers, 1999), and a review of current scientific literature. Indicators are used where there is general scientific agreement and information regarding these indicators.*" (Monument Plan FEIS Chapter III)

This Forest Service-funded paper, (*Piiro and Rogers, 1999*), which was the basis of the illegal Monument Management Plan, is now being used as the basis for the inventory created by Lewis Jump. Jump used the R-5 timber cruising methods to 'inventory,' which cannot be counted or used as the MSA requirement for a fuel inventory. Jump 2004 doesn't look at integrated objects protected by Proclamation and Jump 2004 does not consider, as an alternative, a burn project with a little preparatory work... when the proposed project specifies trees 'no larger than 12 inch dbh (and actually specifies 14 inch dbh in plantations) at 25 foot spacing from 100-400 feet along roads and the boundary, generally favoring sequoia, oak, etc as residual trees. What does that prescription mean? Also the prescription calls for thinning of all the plantations, but the plantations are not a part of the inventory. Will you please explain these inconsistencies and failures?

Concern about proposing to Restore from the fire danger caused by past Logging with more Logging

The NOI scoping document says “The lack of management activities resulted in an overstocked stand.” This statement ignores the fact that the Forest Service logged units of the grove, planned, planted, and created the overstocked density in the plantations in the grove and ignores the fact that the unlogged portions of the grove are not as heavily stocked or as flammable as the logged portions of the grove.

The NOI scoping document says “Studies and records also show the majority of this stand has had no known fire occurrence since fire records have been maintained. This area has now missed many fire return intervals. The last fire ten acres or greater in size occurred 59 years ago. The combination of a lack of fires, lack of treatment to the planted stands and high fuel loading has created a high risk of unwanted fire spreading to Tribal lands, Black Mountain Giant Sequoia Grove, and the private lands.” These statements ignore the fact that the majority of the stand – the grove is untouched – has not been logged and is natural closed canopy – not plantation – and where natural closed canopy exists, there is little ground cover through which fire can be carried and there are no roads for people to enter and start fires, which has prevented canopy fires.

The NOI ignores the instruction manual for Forest Service fire personnel, FIRE WEATHER . . . A Guide For Application Of Meteorological Information To Forest Fire Control Operations, by Mark J. Schroeder, Weather Bureau, Environmental Sciences Administration, U.S. Commerce Department and Charles C. Buck, Forest Service, U.S. Department of Agriculture - U.S. Government Printing Office : 0-244 :923, first printed in May 1970 - Reviewed and approved for reprinting August 1977 - Stock No. 001-000-0193-0 / Catalog No. A 1.76:360. The EIS for this project must consider the science in the Forest Service Handbook 360, titled “Fire Weather,” that describes the fire weather conditions that provide the natural fire preventions characteristics of the closed canopy forest. You can download all 229 pages from:
[http://www.johnmuirproject.org/fireweather/Fire_Weather_Handbook_\(USFS_1970\).pdf](http://www.johnmuirproject.org/fireweather/Fire_Weather_Handbook_(USFS_1970).pdf) (20MB).

The NOI scoping document says “The short term goal as stated in the evaluation “is to reduce the risk of unwanted fire in the Black Mountain Grove, private land, and the Tule River Indian Reservation” (Sanders, 2008).” The document fails to disclose that there is a mountain ridge line between the grove and the reservation that would most likely prevent fire from burning ‘down’ into the reservation.

The NOI scoping document says “***Desired Conditions:*** *The majority of the project is located within “Old Forest Emphasis Areas” as described in the 2001 Amendment Record of Decision (ROD). Old Forest Emphasis Areas “provide a network of large, relatively contiguous landscapes distributed throughout the Sierra Nevada where old forest conditions and associated ecological processes predominate”. Populations of old forest associated species are maintained by providing a substantial contribution of ecological conditions required for these species. Fuel treatments in these*

areas are intended to promote a natural range of conditions to develop over time (2001 Amendment ROD, pg. 8).

The area around the private land is located within the Urban Wildland Intermix Zone (Intermix Zone) as described in the 2001 Amendment ROD. The Intermix Zones are treated to move toward or maintain the following conditions with regard to fuels:

- 1. Wildland fire would burn with average flame lengths' of six feet or less;*
- 2. The rate of fire spread would be less than 50% of the pre-treatment rate of spread; and*
- 3. Fireline production rates² would be doubled.*

These outcomes are to be achieved by reducing surface and ladder fuels and adjacent crown fuels such that the treatment would be effective for more than five years (2001 Amendment ROD, pg. A-2 and A-25)."

The 2001 Framework was a logging plan that defined treatments for WUI that were not in line with the Forest Service's community protection science by Jack Cohen (see above) for protecting communities, which specified 200 feet from structures, while this project proposes treatments miles from the reservation community and along the ridgeline between the structures.

Concern about attempting to Protect Illegally installed Logging Roads in a Grove

The NOI scoping document says of the proposed treatment -

- "j) A width of 300 feet would apply along the ridgeline on the eastern boundary and*
- k) A width of 150 feet would apply along the northern boundary of the Reservation from Black Mountain to the northeast corner of the Reservation boundary."*

This designation and the proposed project are not a regeneration plan for the logged areas of the grove or for the areas of the grove through which roads were built to implement the logging of the grove. Page 27 of the MSA requires a regeneration plan. The MSA says, *"f. Regeneration of Cut-Over Giant Sequoia Groves: (1) The objectives of regenerating cutover Giant Sequoia Groves will be to restore these areas, as nearly as possible to the former natural forest condition (2) The forest shall implement the regeneration plans required by the Stipulation for Entry of Judgment dated 12/27/89, to Sierra Club v US Forest Service Case No CVF-87-263 EDP."*

Shouldn't restoration from logging require restoring the roads to natural? The project instead looks like a project to protect roads not to protect or restore the grove and that the communities were miles away and that the communities supposedly at risk were down slope... that any fire that started would likely start downslope and come uphill, not the other way around.

This project is protecting logging roads that were illegal bulldozed inside of a grove. The only reason to want to thin all 12" and under trees from all those roads in the Black Mountain Road is to protect the road itself. The roads go nowhere; do not go through to safety, or to evacuate anything or anyone. They were put in to access trees and later were used for Martin Litton and all of us to document the destruction. Now the Forest Service says it has to thin 100 feet on both sides of all roads inside the grove. Not just where needed: EVERY TREE 12 inches and under. AND, along the main road that goes to Solo Peak, 400 feet! And along the boundary between the Monument and the Reservation boundary line 3-400 feet. I guess we are protecting one forest from the other. Just in case there is a fire coming UP the canyon - from either side. This is a ridgetop firebreak. But the District Ranger says that she has to do this to protect the firefighters and the forest and to meet her responsibility to the tribe.

So what is driving this project? Orders from above and the dedication that whatever human beings have messed up with logging, allows that they can mess up even more with more logging.

Will you please consider some roads for recontouring and restoration, not protecting? A Monument plan is supposed to address roads, transportation, and that for the Forest Service to thin along them would cause even more damage to the natural ecosystem than had originally been done when the road was put in. It was 12 feet wide or so. Now it will be thinned out to, what, 200 feet on the narrowest roads? Thinning will allow more sun to shine on the forest and cause the forest to become more dry and hotter. Will you please evaluate these particular impacts to the forest from this proposed treatment in a full scale EIS, grove management Plan?

The project proposes mastication- yet masticating is NOT benign EXCEPT around communities where a bunch of garden mulch is apparently what folks want.

Concerns about the so-called Inventory

The Black Mountain Giant Sequoia Grove Inventory, Sequoia National Forest. Prepared by Lewis H. Jump, Inventory Specialist, February 2004

This documents states "A comprehensive, integrated resource inventory was completed in Black Mountain grove during the fall of 2003. The process described in "Forest Inventory and Analysis User's Guide" (FIA), USDA – Forest Service, Pacific Southwest Region, was used as the basis for the inventory design and data collection standards. The inventory design was slightly modified for use in giant sequoia groves mainly to accommodate very large tree sizes and stand densities associated with the groves. These design modifications are described in "*Integrated Resource Inventory Design for Giant Sequoia Groves on the Sequoia National Forest*," May 1998 by Lewis H. Jump.

A total of 17 3-point cluster plots (51 plots total) were installed and measured in Black Mountain grove. No plots were made in any of the acres of plantations even though the "Inventory" notes that 1/ "most of the specimen sequoia trees are located in groups in the

plantations” **and 2/** there are relatively few mature giant sequoia trees are found in the inventoried portion of the grove.” The explanation given is, “plantation records are kept individually and are on file at the Tule River Ranger District in Springville CA.” The “Inventory” notes that ‘regeneration harvesting (even-aged management – clearcutting) created 11 plantations on about 258 acres during the 1980’s.’ It further states that the Solo Sale harvested 7.7 Million Board feet from 190 acres and the Gauntlet Sale harvested 7.5 million board feet from 245 acres; these figures add up to 435 acres. It is unclear if ANY former logged areas were included in the inventory. Many of these plantations would be without snags and with many young trees, **the opposite of many areas inventoried. So, there is no real GROVE inventory.**

The Inventory says there is a broad variation in the grove. BUT, results were averaged regardless of the elevation, aspect, slope, or vegetation of the plot and the averaged findings were compared to a “Recommended Management Variability” (RMV) which the “inventory” states comes from the Piirto and Rogers paper. According to the “Inventory,” “RMV is a range of forest conditions that are believed to allow sustained function and balance of natural processes (fire, hydrology, nutrient cycling, tree growth, plant succession, etc.) that will maintain a healthy and vigorous forest ecosystem.”

Without noticing that the areas (plantations!) containing the most sequoias were NOT inventoried, the “Inventory” states that “Giant sequoia trees are significantly below the desired numbers,” and states, “No elements of existing grove structure were found to be within RMV ranges, indicating that this grove should have a high priority for structural restoration.” The authors deliberately left out the areas that had ‘the most specimen trees’ (namely in the plantations) and then found that sequoia are not as numerous as optimum. AND, if the writer had looked at the plantations, THOUSANDS of sequoia trees would have been found because the Forest Service planted them there themselves from UNKNOWN seedstock, and the sequoias are now clogged in a thicket and mixed up with planted pine, fir, and the predictable BRUSH.

“Structural restoration” (the premise behind Piirto and Rogers) has nothing to do with fire, flammability, fuels, or fuels reduction. It is based on a highly controversial and widely unaccepted theory of forest management wherein mechanical manipulation of species including the removal of large trees of many species to make the forest in some hypothetical condition that Piirto and Roger’s supposedly hypothesizes would have existed had fire suppression not occurred. Piirto and Rogers is based largely on the work of Thomas Bonnicksen who did some surveying in the Converse Basin Grove. "He's always introduced as the leading expert on forest recovery, and he's just not. There's nothing in his record other than just talking and hand-waving," said UCLA ecology professor Philip Rundel, one of several academics who issued an open letter to the media this week questioning Bonnicksen's credentials. (LA Times Article **“Logging Proponent's Credentials Questioned”** by Bettina Boxall, Times Staff Writer, October 21, 2006)

Concern about Mastication in Stands

We believe the fuels should be piled and burned unless that is not feasible. Mastication should only be used where fire is not safe. Observation indicates that when wildfire burned through the fuels produced by mastication machines on the Moonlight fire (near Quincy) lethal effects occurred to the trees. Some of the science (See attached Exhibit A) that corroborates this observation indicates that those large splinters are apparently perfect kindling for heating the soil and subsequently cooking the base of the trees should a wildfire occur after mastication.

“The potential for soil damage during burning of masticated fuels is substantial.

Recent evidence suggests that temperatures between 100 and 300 °C in the upper soil horizon may result if masticated fuel beds are ignited (Busse et al. 2005). Of immediate concern is the survival of roots and soil organisms. The lethal threshold for roots is approximately 60 °C while that of many soil organisms is between 50 and 200 °C (Neary et al. 1999).

Whether soil temperatures will unavoidably exceed these thresholds when masticated fuels are burned is not clear. Heat transfer in soils is a complex process regulated by numerous soil physical properties (moisture, texture, porosity, pore continuity) and fuel characteristics (mass, size class, moisture, surface area, structural arrangement). Our previous study examined only a limited set of these conditions, leaving doubt as to the true potential for soil heat transfer during burning (Busse et al. 2005). Here we expand the previous findings by assessing soil moisture and soil texture as regulators of heat transfer. Our overall objective was to provide managers with a comprehensive predictive model of soil heating that encompasses most soil and fuel conditions.

Results are presented from a replicated experiment testing the effects of soil moisture (from maximum water availability to dry summer conditions) and texture on temperatures in the upper soil profile during burning of masticated fuels. In addition, validation results from several field burns of masticated fuel beds are summarized.” (Busse, M., C. Shestak, E. Knapp, G. Fiddler, and K. Hubbert. 2006. Lethal soil heating during burning of masticated fuels: effects of soil moisture and texture.

Proceedings of the Third International Fire Ecology and Management Congress, Nov. 13-17, San Diego , CA)

On a field trip to visit some of the previously masticated units, Carla Cloer and Joe Fontaine raised the issue of the impacts of mastication, not only on its probably role in inhibiting natural germination of plants and interfere in the restoration of the plantation back to natural, the impacts on already germinating red-fir seedlings that were supposed to be favored since the stand was originally red-fir, but also the ability and impacts of using fire after mastication: could fire be used after mastication, how would it behave, how hot would it burn, and was the mastication planned as step one preparing for fire.

These issues must be addressed; they were raised and the agency is well aware of the problems that can occur with mastication, particularly in areas away from communities where fire, natural fire, and prescribed, are likely.

Will you please define what is meant by 'remove' (Pile and burn, personal use fire wood, or other) for each instance of its use throughout the NOI?

Since we don't see how removing 3 inch larger trees (9 inch versus 12 inch) raises the canopy base height along the road, the EIS should provide this rational and detailed analysis. The stated goal was not to prevent fire or to prevent a crown fire from crossing the road. The objective supposedly is to keep a ground fire from crossing the road... which it won't do anyway since the highway is wide. A crown fire is going across no matter how much they thin.

Concern about failing to consider the project's impacts on Global Climate Change

The EIS for this project must consider the impacts of this project on global climate change considering that logging (tree removal) will be adding extreme amounts of carbon to the atmosphere and forcing mammals to higher elevations in the Sierra Nevada (N Stephenson).

Scott Stephens said that using mechanical AND fire would increase invasive species and create the greatest alterations. He said that old skid trails are still having effects. He said surface fuels are the greatest hazard.

Malcolm North said he supports more prescribed fire, surface fuel is more important than ladder fuel and that crown bulk density is the least important (70% of the fire danger comes from ground fuels, 20% from ladder fuels, and only 5% from close crown closure), and there was no "precedent" for the uniform spacing, Fisher and owls need proper cover, and retain defect trees especially in riparian and cold air corridors. He also said that historically more carbon dioxide was sequestered in clumped large tree trunks than in all the smaller trunks.

Concern about Forest Carnivores

Although the NOI claims that Tule River Project maintains large trees, snags, and logs throughout the project area, it is essential that the Forest Service take a detailed and careful look at the likely impacts on the fisher, marten and their habitats, since these carnivores require more in their habitat than these characteristics.

The status of the Pacific fisher in the Sierra Nevada is highly imperiled. The U.S. Fish and Wildlife Service recently concluded that the west coast population of the fisher, including the isolated population in the southern Sierra Nevada, warrants listing under the Endangered Species Act. (USDI Fish and Wildlife Service 2004). A report co-authored by leading Forest Service researchers concluded that the southern Sierra fisher population "has a very high likelihood of extinction given reasonable assumptions with respect to demographic parameters." (USDI Fish and Wildlife Service 2004, pp. 18790-91; Lamberson *et al.* 2000).

Fisher require old forest stands with a dense, structurally complex multilayered canopy (Ruggerio et al. 1994, p. 53). Pacific fisher rest sites are associated with high shrub cover as well as forest cover (Zielinski et al. 2004, p.482). We ask that the Forest Service minimize project impacts to fisher by considering impacts of surface and ladder fuel reduction on nearby resting and denning sites. The EIS should map the location of multi-story forest stands and map the locations with high shrub cover in the project area (identifying which are plantations). In key areas such as old forest emphasis areas within the project area, we ask that the Forest Service maintain multi-story stands where high suitability habitat for fisher exists.

The Forest Service should identify and disclose the number of fisher and marten home ranges that are proposed to be treated, the current amount of suitable habitat within each home range, and the amount of such habitat that are proposed to be treated. Information on many fisher home ranges is available from Forest Service telemetry research in the southern Sierra Nevada and should be disclosed and analyzed in the environmental documentation.

The Forest Service must comply with the Proclamation direction protect the Monument and prevent old forest habitat fragmentation, to assess fragmentation issues in the biological evaluation, to assess potential impacts on habitat connectivity, and to retain forested linkages as part of project-level analysis. The impacts of proposed fuelbreaks and road construction on habitat connectivity and fragmentation within the project area would not be in keeping with the protective intent of the Proclamation.

Description of the Project

“Snags are a critical component of forest ecosystems” and “as many snags as possible” must be retained to comply with the protective intent of the Proclamation. Fire fighters do not have to be stationed in the forest miles from communities to protect communities.

The Forest Service should assess road conditions for the project area and specify decommissioning of specific roads..

Inconsistency with Roadless Area Requirements

Fuel break treatments are proposed in Sections 1 and 12 of the Grove. Road building and logging are prohibited in this area and in the roadless area according to the MSA, Section II. Again, the Forest Service has proposed treatments in environmentally sensitive areas of the Monument and therefore must do a more detailed and careful analysis of existing conditions and cumulative impacts to the Grove from this and other past, present and future projects and comply with the protective intent of the Proclamation.

Other Concerns

What is the Potential Natural Vegetation (PNV) within the analysis area?(Ecological Guide to Mixed Conifer Plant Associations: Fites 1992 and The Landscape Analysis for

the Sequoia National Forest: Fites, Bingham and Durham 10/29/93; Fites, Lipton, Durham, and Foster 11/8/93; Fites, Bingham, Lipton, and Durham 1/21/94; Addendum to Landscape Analysis, Fites 10/31/94; Second Addendum to Landscape Analysis, Miller & Fites, 3/20/1995.)

Are the minimum management requirements being met for all fish & wildlife species, sensitive plant species, sensitive soils, watersheds, archaeological resources? (36 CFR, sec. 219.27.) How does this project fit into the landscape level strategy for the management and protection of biological diversity as per the National Forest Management Act? (36 CFR, sec 219.27 (g).) What are the biological diversity maintenance concerns related to past, present, and future projects planned for this analysis area?

What is the previous harvest history, by prescription, (both public and private land) within the analysis area of this proposed project? What is the breakdown, by seral stage and timber type, of the vegetation within the analysis area of this project? Please display in map form, in your analysis, the seral stage and timber type polygons with the unit boundaries overlain. How many entries have there been into the analysis area for salvage logging since 1988? How much volume was removed?

What are the snag densities (15"-24" dbh, 25"-30" dbh., and greater than 30" dbh.) and large down log densities within the analysis area? (SNF LRMP, Forest-wide S&G and monitoring) Is there sufficient recruitment of these components within the analysis area?

Funding: What is the source of funding for this project? Is funding assured for all aspects and components of this project and all the suggested and required mitigation measures?

What is the canopy structure in the units proposed for entry? Describe the canopy structure post-project.

Are the snag and large down log levels meeting the needs of the diverse species that directly or indirectly depend upon them, within the analysis area?

What changes do you anticipate to microclimate, vegetation, wildlife movement, and soils from this project?

What criteria were used to determine the scope and size of the project analysis area?

In summary, given all the questions about the specifics of the project and the failures of the NOI, we believe that because of the lack of a legal, up-to-date, and complete Land Management Plan, it is premature to begin planning this project.

Conclusions

We recommend leaving in place all snags, even ones that occur in clumps from past prescribed burns in the project area. The Forest Service must first prepare a grove

management plan according to the mediated settlement agreement. Our comments demonstrate the inadequacy of the information provided; demonstrate the need for an EIS that addresses our concerns, and help to define many of the issues that still need to be addressed before this project can proceed.

We remind you, again, that it is the duty of the Forest Service to ensure compliance with all the applicable federal laws including, but not limited to, the Mediated Settlement Agreement an amendment to the Sequoia National Forest LRMP, The Presidential Proclamation (2000) that designated the Giant Sequoia National Monument, the Administrative Procedures Act, The Appeals Reform Act, The Endangered Species Act, the Clean Water Act, the Clean Air Act, The National Forest Management Act, the National Environmental Policy Act, the National Historic Preservation Act, and the Migratory Bird Treaty. The Forest Service is also required to base projects on the latest scientific evidence.

Thank you for considering these issues of great concern which are discussed in this comment letter. Please keep me and the following organizations and persons, by and for whom this comment letter is written, listed below, on the contact list for all stages of this project and for all actions in your district. Each of the following organizations and persons listed below would also like a copy of all further documents on this project. Please schedule a public field trip for the public to view the proposed project area. Thank you for your time in this regard.

Respectfully Submitted,

Ara Marderosian,
Executive Director
ara@sequoiaforestkeeper.org

And for and by the following organizations and individuals:

Carla Cloer, President
TULE RIVER CONSERVANCY
P. O. Box 723
Porterville, CA 93258
(559) 781-8445

Charlene Little,
Appeals Chairperson
SEQUOIA FOREST ALLIANCE
1141 Cima Linda Lane
Santa Barbara, CA 93108
(805) 969-2956

Terri Middlemiss, Conservation Chairperson
KERNCREST AUDUBON SOCIETY
8016 Lorene
Inyokern, CA 93527
(760) 377-6192

Paul Hughes, Executive Director
FORESTS FOREVER
50 First St. #401
San Francisco, CA 94105
415/974-3636 phone

Carla Cloer, Chairman
SEQUOIA TASK FORCE, SIERRA CLUB
182 East Reid Avenue
Porterville, CA 93257
(559) 781-8445

Ronald J. Wermuth and
Carol Holmes Wermuth
P.O. Box 168
Kernville, CA 93238
(760) 376-4240

References

Ruggiero, Leonard F., Keith B. Aubry, Steven W. Buskirk, L. Jack Lyon, and William J. Zielinski. 1994. The Scientific Basis for Conserving Forest Carnivores American Marten, Fisher, Lynx, and Wolverine in the Western United State. General Technical Report RM-254.

Lamberson, R.H., Truex, R.L., Zielinski, W.J., and Macfarlane, D. 2000. Preliminary analysis of fisher population viability in the southern Sierra Nevada. Unpublished report. USDA Forest Service, Pacific Southwest Region.

USDI Fish and Wildlife Service 2004. Endangered and threatened wildlife and plants; 12-month finding for a petition to list the west coast distinct population segment of the fisher (*Martes pennanti*). 69 Fed. Reg. 18769 (April 8, 2004).

Zielinski, William J., Richard L. Truex, Gregory A. Schmidt, Fredrick V. Schlexer, Kristin N. Schmidt, and Reginald H. Barrett. 2004. Resting habitat selection by fishers in California. Journal of Wildlife Management 68(3):475-492.

Attachments:

Exhibit A - Busse, M., C. Shestak, E. Knapp, G. Fiddler, and K. Hubbert. 2006. Lethal soil heating during burning of masticated fuels: effects of soil moisture and texture. Proceedings of the Third International Fire Ecology and Management Congress, Nov. 13-17, San Diego , CA

Exhibit B – citations from FIRE WEATHER . . . A Guide For Application Of Meteorological Information To Forest Fire Control Operations, by Mark J. Schroeder, Weather Bureau, Environmental Sciences Administration, U.S. Commerce Department and Charles C. Buck, Forest Service, U.S. Department of Agriculture - U.S. Government Printing Office: 0-244 :923, first printed in May 1970 - Reviewed and approved for reprinting August 1977 - Stock No. 001-000-0193-0 / Catalog No. A 1.76:360

Exhibit C - “Background Information on Giant Sequoia National Monument” (“Backgr.”) released by the White House Press Secretary and the Chair of the White House Council on Environmental Quality on the date of the monument’s creation.