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October 14, 2008

Tina J. Terrell, Forest Supervisor
c/o Priscilla Summers, District Ranger
Western Divide Ranger District
32588 Hwy 190
Springville, CA 93265

Via E-mail and U.S. Mail

RE: Comments on Notice of Intent to Prepare Environmental Impact Statement for the Tule River Reservation Protection Project

Dear Ms. Terrell:

This letter contains the comments of the Attorney General of the State of California regarding the United States Forest Service's Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Tule River Reservation Protection Project (Tule River Project) in the Giant Sequoia National Monument.

The Attorney General submits these comments pursuant to his independent authority under the California Constitution, common law, and statutes to represent the public interest. Along with other State agencies, the Attorney General has the power to protect the natural resources of the State from pollution, impairment, or destruction *See* Cal. Const. Art. V, sec. 13; Cal. Gov. Code secs. 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974). These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

Background

Because the Giant Sequoias are among the most precious of resources to the people of California, the Attorney General's Office has been involved in Sequoia National Forest land management planning issues since we commented on the first comprehensive management plan proposed for the forest in 1986. One of our most pressing concerns over the last twenty years has been ensuring that the forest's Giant sequoia groves are fully protected.

We actively participated in the extensive mediation process over the 1988 Land and Resource Management Plan (LRMP), and were a party to the 1990 Mediated Settlement Agreement (MSA) that rewrote LRMP. One of the most significant accomplishments of the MSA was to set specific protections for the Giant sequoia groves within the boundaries of the

national forest, protections that set the stage for President Clinton's issuance of the Antiquities Act Proclamation that established the Giant Sequoia National Monument.^{1/} We helped to successfully defend the creation of the Monument when that the legality of the Proclamation was challenged.

In 2003, we filed extensive comments on the Forest Service's proposed management plan for the Monument, and ultimately filed suit challenging that plan when our comments were not addressed. In October of 2006, the U.S. District Court agreed with us that the plan was adopted in violation of the National Environmental Policy Act (NEPA), and failed to comply with the requirements of the Proclamation or the MSA. The court permanently enjoined the Forest Service from implementing the plan, and ordered that "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." October 11, 2006 *Judgment in People of the State of California v. U.S. Dept. of Agriculture, et al.*, Case No. C05-00898 CRB, at p. 3.

Because a revised Monument management plan has not yet been released, the Forest Service remains under the court's interim management order. The Tule River Project now has been proposed in the absence of an approved plan, and the Attorney General's Office submits these comments in the interest of ensuring that the project complies with the court's order.

Comments

The Attorney General understands and fully supports the Forest Service's interest in reducing the risk of catastrophic wildfire in one of the Monument's most prized Giant Sequoia Groves, and in the surrounding private lands and Tule River Reservation lands. Any fuels reduction work in the Monument, however, must comply with the court's order and therefore must follow the management prescriptions in both the Proclamation and the MSA.

We are concerned that the Tule River Project, in its current form, may not comply with the tree removal and restoration requirements of the Proclamation or the grove protection and regeneration requirements of the MSA. Accordingly, the Forest Service must ensure that the EIS for this project clearly identifies all of the applicable interim management requirements, thoroughly evaluates the project in relation to these requirements, and revises or proposes alternatives to the project as necessary to ensure compliance.

The Attorney General agrees with the legal analysis contained in the scoping comments filed by the Natural Resources Defense Council (NRDC) in response to the Forest Services'

1. The Monument Proclamation was preceded by the Giant Sequoia Proclamation issued by President George H.W. Bush in 1992 that protected the Giant sequoia groves as defined in the MSA and precluded commercial logging and mining in the groves.

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NOI, and therefore incorporates NRDC's September 25, 2008 letter by reference. Specifically, in its comment letter, the NRDC sets forth the management prescriptions in the Proclamation that apply to the Tule River Project, including the requirements that apply when tree removal is proposed.^{2/} We agree with NRDC that the Tule River Project EIS must analyze the project in relation to all applicable requirements of the Proclamation, and not just state a conclusion that the project is "in compliance." *Ecology Center v. Austin*, 430 F.3d 1057, 1065 (an EIS must do an analysis, not just "treat[] the prediction that treatment will benefit old-growth dependent species as a fact").

In addition, we concur in NRDC's analysis regarding the continued applicability of the grove protection requirements set forth on pages six through twenty-eight of the MSA. Further, we agree with NRDC that the Forest Service's project description fails to demonstrate an intent to fully comply with all of the applicable MSA requirements, and that the EIS must identify the correct "desired conditions" and fully analyze the project's compliance with all applicable provisions of the MSA.

Similarly, we concur in the comments of NRDC regarding the need for the project to comply with the specific management prescriptions applicable to the Black Mountain Roadless Area, the 2001 Roadless Rule, and the MSA requirements to restore cut over groves.

Given our long standing interest in the long term protection of the Giant Sequoia Groves, and given our interest in ensuring compliance with the court's order governing management of the Monument, we appreciate your consideration of our comments.

Respectfully Submitted,

/s/ Sally Magnani

SALLY MAGNANI
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

2. It is without dispute that the Presidential Proclamation establishing the Giant Sequoia National Monument provides the dominant management direction applicable in the Monument.