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Via E-mail and U.S. Mail

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c/o Priscilla Summers, District Ranger
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RE: Comments on Notice of Intent to Prepare Environmental Impact Statement for the Tule River Reservation Protection Project

Dear Ms. Terrell:

This letter contains scoping comments of the Natural Resources Defense Council (NRDC) on the United States Forest Service's proposal to prepare an Environmental Impact Statement (EIS) for the Tule River Reservation Protection Project (Tule River Project) in the Giant Sequoia National Monument (GSNM or "Monument").

OVERVIEW

The Forest Service has requested comments on the scope of its EIS for the proposed Tule River Project, as described in the eight page Notice of Intent (NOI) and accompanying map attached to an August 25, 2008 letter from Tina J. Terrell. The project is intended to "reduce surface and ladder fuels" on approximately 1,574 acres of the Monument, largely within a prized Giant sequoia grove, the Black Mountain Grove. The NOI indicates that the key components are as follows: (1) removal of trees up to 12 inches diameter at breast height (dbh) and other vegetation (presumably with mechanical equipment) to construct shaded fuel breaks along the ridgeline with the Tule River Indian Reservation (150 feet wide), along the western boundary of the Grove (300 feet wide), surrounding all private property within the Grove (200 feet wide), and along all existing roads (200-400 feet wide); (2) thinning of brush and trees up to 14 inches in planted stands; and (3) prescribed burning in planted stands. The first and second parts of the proposal would allow mastication by heavy equipment.

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The Forest Service is interested in reducing the risk of catastrophic wildfire to the natural resources in the Black Mountain Grove, to the private property within the Grove, and to the Tule River Reservation lands. To be legal, fuels reduction work in the Monument must also comply with the management prescriptions in both the Proclamation and the Mediated Settlement Agreement (MSA). NRDC is concerned that the Tule River Project, as described, may fail to comply in some important regards. Most significantly, as set forth below, it is not evident from the description provided that the project in its current form complies with either the tree removal and restoration requirements of the Proclamation or the grove protection and regeneration requirements of the MSA. It is quite important that most if not all studied alternatives in the EIS, and any alternative selected, comply fully with these governing documents.

COMMENTS

I. Projects Proposed for the Black Mountain Grove Must Comply with the Requirements of the Proclamation.

The Presidential Proclamation establishing the Giant National Monument provides the dominant management direction applicable in the Monument. The Forest Service's eight page description of the Tule River Project, however, provides only a conclusion, without explanation or analysis, that the project is "in compliance" with the Proclamation. In order to comply with NEPA, the Forest Service must identify the applicable provisions of the Proclamation, and then thoroughly analyze the project's compliance with them. *Ecology Center, Inc. v. Austin*, 430 F.3d 1057, 1065 (9th Cir. 2005) (an EIS must do an analysis, not just "treat[] the prediction that treatment will benefit old-growth dependent species as a fact").

The Monument has one dominant purpose: to protect the unique and irreplaceable natural, scientific, and historical objects of interest contained within its boundaries. Proc. at pp. 3-4.¹ 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, and any activity in the Monument must further that purpose. *See* Proc., at p. 4 and p. 5. With respect to proposals to remove trees in the Monument, the Proclamation's directive is specific and explicit: "Removal of trees, except for personal use fuel wood, from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety." Proc. at p. 4. Thus tree removal from the Monument requires both the absence of effective alternatives and strong concrete evidence that removal is justified. Here, however, the Forest Service proposes to remove trees – including cutting firebreaks as wide as 400 feet – without any express consideration of the Proclamation's purpose or the required showing of necessity.

¹ This letter cites to the copy of the Proclamation (Proc.), released by the White House on the date of the Monument's creation along with "Background Information on Giant Sequoia National Monument. A copy of each of those documents is attached to this letter.

In the absence of a valid monument management plan, the Forest Service lacks a generalized rubric, decision tree, or other analytical or scientific methodology to evaluate this project and determine whether the tree removal satisfies the “clearly needed” criterion and the protective purposes of the Proclamation.² The absence of a plan, however, does not excuse the Forest Service from the obligation to ensure that any specific project proposing to remove trees in the Monument be subject to the required rigorous scientific justification. Until adoption of a legally sufficient management plan, in keeping with the Proclamation, this analysis must be done on a project-by-project bases in the NEPA analysis.

II. Projects Proposed for the Monument Must Comply with the Grove Protection Provisions of the MSA.

The MSA, on pages six through twenty-eight, sets out specific requirements for protection of the Giant sequoia Groves. Some of these requirements apply to the groves in general, and some are specific to the management of the Black Mountain Grove. While the Forest Service’s project description evinces an intent to comply with some of these requirements, compliance may nonetheless be lacking in several key respects. Further, the project description is silent with respect to other grove protection requirements of the MSA.

A. The MSA grove protections remain in effect.

The project description on page three indefensibly outlines “desired conditions” for the Tule River Project based on provisions of the 2001 Framework Plan. It fails to recognize that the Proclamation necessarily provides the dominant management direction for the Monument, and that the grove protection requirements of the MSA are fully applicable to the project. When the Forest Service’s first attempt at a monument management plan was held illegal, the court’s ruling made it plain that while the 2001 Framework places a floor under management protections within the Monument, the agency must abide by the surviving MSA provisions, as well as the Proclamation. *See People of the State of California v. U.S. Dept. of Agriculture, et al.*, Case No. C05-00898 CRB, Judgment of October 11 at p. 3.

The court found that the Forest Service had incorporated into the 2001 Framework some of the specific provisions of the MSA, but that the grove protection provisions on pages six through twenty-eight of the MSA were expressly *not incorporated*.³ Because none of the Giant sequoia grove protections of the MSA have been subsumed into the 2001 Framework, or amended into a valid Monument management plan, they remain fully applicable within the Monument, including in the Black Mountain Grove. *See California ex rel. Lockyer v. U.S. Forest Service, et al.*, 464 F.Supp.2d 942, 954 (only the provisions of the

² A “decision tree” was included in the invalid 2003 management plan, but it contained a number of undefined and ambiguous terms, and therefore lacked the specificity needed to assure that management discretion complies with the Proclamation. Further, the decision tree inappropriately relied on economic factors, in contravention of the Proclamation.

³ After the release of the 2001 Framework, the Forest Service acknowledged its intent to incorporate pages six through twenty eight of the MSA into the management plan for the Monument. *See* March, 2002 letter from Forest Service to MSA parties, attached, at p. 2-3.

MSA that have been addressed in subsequent amendments to the LRMP [including the 2001 Framework] that are no longer binding; all other provisions of the MSA remain part of the 1988 LRMP and constitute interim guidance that [unless superseded by the Proclamation] has not lapsed). Therefore, the 2001 Framework cannot legally supply the desired conditions for the Black Mountain Grove.

B. A grove-specific fuel reduction plan and grove-specific EIS are required.

The MSA allows mechanical and motorized uses (including road-building and logging to reduce fuel load) within a delineated grove boundary only if in accordance with (1) an approved grove-specific fuel load reduction plan and (2) a grove specific EIS. MSA, Sec. II.B.2.a.(1)(d), at pp.7-8, Sec. II.B.2.b.(3), at pp.10. The MSA specifies that:

The parties to the MSA 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 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.*

MSA, Sec. II.B.2.b.(3) at pp. 10-11 (emphasis added).

The Forest Service has prepared and made publicly available a Fuel Load Reduction Evaluation for the Black Mountain Giant Sequoia Grove (Sanders July 2008), with the stated purpose of satisfying the grove-specific fuel load reduction plan requirements of the MSA. The evaluation's identified "treatment goals" appear to be developed based upon two documents: an inventory done in 2003 (Jump 2004), and a management study done in 1999 (Piiro and Rogers 1999).⁴ The evaluation does not indicate whether these underlying documents were prepared in accordance with the grove management requirements of the MSA. And because the management study was done prior to the issuance of the Proclamation, it does not address the management goals of the Proclamation. It is essential that the Forest Service utilize a fuel reduction evaluation for this project that does not conflict with or ignore the dictates of either the MSA or the Proclamation, either directly or through reliance on non-complying documents.

In addition, in apparent conflict with the MSA, the project description does not identify the content or scope of the grove-specific EIS that is to be prepared. Because the Tule River Project is the first proposal to remove trees from the Black Mountain Grove since the adoption of the MSA, this EIS must function as the grove-specific EIS required by the MSA. It must satisfy all of the MSA's surviving requirements. And to be meaningfully grove-specific, it will need to consider the Black Mountain Grove as a whole, as an ecologically interconnected entity and object of protection under the Proclamation.

⁴ This inventory does not appear to be posted on the Forest Service's website. In addition, it is unclear what modeling was used to reach some of the conclusions of the evaluation regarding tree mortality and probability of crown fire (see page 4), or whether the data from that modeling are available for public review. Under NEPA, all documents upon which an analysis is based must be publicly available.

C. Groves must be inventoried and prioritized for fuel load reduction treatment.

The MSA requires systematic inventories of the groves. First, all Giant sequoias 3 feet diameter at breast height or larger must be inventoried in order to provide baseline data to evaluate whether protection goals are met (MSA, sec. II.B.2.b.(1) at p.9). And, second, inventories must be done for fuel load build up, and the groves prioritized for treatment *based on* those inventories (*id.*, sec.IIB.2.b(2)).

The project description references an inventory done in the fall of 2003 but, as noted above, the Forest Service provides no information as to whether this inventory complies with the MSA. Also not provided is any explanation of the underlying analysis or the assumptions of the inventory. Without this information, the public cannot determine whether the 2003 inventory on which this project is based conforms to either the purposes of the Proclamation or to the inventory requirements of the MSA.

Similarly, while the fuel load reduction plan prepared for the project references the Forest Service's conclusion that the Tule River Project is a high priority (Sanders 2008 at p. 4), it is unclear whether the prioritization conducted was done in conformance with the MSA. On the face of things, this does not appear to be the case, since the Sanders evaluation states that it did not address the "comparison of the need for treatment in the Black Mountain Grove in relation to other groves on the Forest . . ." Sanders 2008 at p. 2.

III. EIS Must Address Management of Black Mountain Roadless Area, any Inventoried Roadless Areas, and Regeneration of Cut-Over Groves

The MSA includes specific management prescriptions applicable to the Black Mountain Roadless Area. *See* MSA, Sec.II.G.3.c., at p. 7 (The "Black Mountain Roadless Area will be classified as unregulated. No road building or logging will occur. The Area will be managed for giant sequoia, watershed, wildlife (deer mitigation corridor, old-growth species), roadless recreation, and sugar pine gene resources"). The Forest Service's project description and accompanying map, however, do not describe where the roadless area is located in relation to treatments included in the proposed project, and does not mention any of the applicable MSA requirements.

Similarly, the project description does not indicate whether any of the area of the proposed project falls with an inventoried roadless area subject to the Forest Service's 2001 Roadless Rule, *see* 66 Fed. Reg. 3,244 (Jan. 12, 2001), and if so, how that rule is addressed with respect to this project. The project must comply with these requirements.

The Black Mountain Grove contains previously logged areas. With respect to those areas, the proposed project must also comply with the MSA's objective to "restore [cut over Giant sequoia groves] . . . as nearly as possible, to the former natural forest condition." MSA, Sec.II.B.f.(1), at p. 27. Fulfilling this requirement needs to be a design criterion for the EIS alternatives.

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CONCLUSION

For the reasons stated above, the EIS for the proposed Tule River Project will need to demonstrate that any project proposed for the Black Mountain Grove area of the Monument is consistent with several specific management requirements. Specifically, the EIS should clearly identify all applicable management requirements, thoroughly evaluate the project in relation to them, and propose revisions and alternatives to the project in order to ensure compliance.

NRDC appreciates the opportunity to comment on this proposal, and appreciates your considering our views.

Respectfully,

Nathaniel Lawrence
Forestry Project Director

Enclosures