

**Sequoia ForestKeeper  
Major Victories  
For the Giant Sequoia National Monument,  
Sequoia National Forest, and all Federal Lands**

**Sequoia ForestKeeper Won a Major Victory Over Grazing Damage in the Giant Sequoia National Monument and Sequoia National Forest**

In 2003, Sequoia ForestKeeper scored a major victory when the Regional Forester reversed the District Ranger's decision to allow grazing on 17,000 acres in the Monument and 36,000 acres in Sequoia National Forest for ten years, based on the arguments in our appeal.

SFK observed conditions of overgrazing and in order to insure that we properly craft the language of our appeal, SFK informed a grazing expert at the Center for Biological Diversity (CBD) of the Forest Service plan to continue grazing without a plan to stop the damage to the ecosystem. CBD helped us write an effective appeal based on the facts that SFK had uncovered. SFK applied for funding from the Sierra Club to pay CBD to write the appeal and SFK's appeal was successful.

**Sequoia ForestKeeper Won a Major Victory over Logging Damage in the Giant Sequoia National Monument and Sequoia National Forest with the Burnt Ridge Restoration Project Litigation**

On October 9, 2003, SFK, in conjunction with the John Muir Project, Heartwood, Sierra Club and the Center for Biological Diversity, filed a civil action for declaratory and injunctive relief against the U.S. Forest Service for the Sequoia National Forest's proposed Burnt Ridge Restoration Project. The documented surveys and observations in the Burnt Ridge area by SFK were necessary to inspire SFK's attorneys to file the civil action. This lawsuit combined the use of traditional theories such as the codes in the National Environmental Protection Act and National Forest Management Act, with new science-based arguments, as well as a challenge to the Bush Administration's preclusion of citizen involvement.

The project was categorically excluded from environmental review and the public was prevented from commenting on, or appealing, the project. Our lawsuit challenged the Forest Service's use of categorical exclusions for logging projects as a violation of the Appeals Reform Act; challenged the use of the categorical exclusion as applied to this project; challenged the increased fire risk of the so-called "fuels reduction" project; challenged the Forest Service's failure to consider or protect the habitat of burnt-forest dependent species; while also challenging the project's violation of the Sierra Nevada Forest Plan Amendment Framework, failure to protect old-growth dependent species such as the California spotted owl and the Pacific fisher, and failure to consider cumulative impacts of the multiple McNally fire-related projects.

SFK successfully obtained a Temporary Restraining Order on December 11, 2003 and a Preliminary Injunction (PI) on January 20, 2004 on the Burnt Ridge Restoration Project. On March 5, 2004 the Forest Service withdrew the Project.

A Burnt Ridge ruling by the court, rather than the withdrawal of the project by the Forest Service, would have been a major setback to the Bush administration's so-called "Healthy Forest Initiative," a systematic effort to restrict citizen participation and roll back environmental laws. A critical aspect of the initiative is abolishing the public's right to comment on and appeal any timber sale characterized as "fuel hazard reduction" or "salvage." The regulations also permit the Forest Service to exempt "emergency" timber sales from appeal, and to simply ignore appeals that are filed.

Had the Forest Service not withdrawn the Burnt Ridge salvage sale and had our challenges been successful, the subsequent rulings could be used to halt similar projects. For instance, if the Appeals Reform Act challenge had been successful, it would have prohibited the Forest Service's denial of citizen appeals. A successful categorical exclusion ruling would have slowed the Forest Service's use of categorical exclusions, which allows projects to move forward without environmental analysis, without public input, and based on perfunctory conclusions of no harm. The burnt-forest dependent species issue is also highly significant. To date, the Forest Service has not even considered such ecosystems. Had this Burnt Ridge lawsuit been successful on that theory alone, the Forest Service would be faced with a significant obstacle to its continued use of the salvage sale program.

SFK's Burnt Ridge suit is the first to challenge the policy of exempting "small" timber sales from environmental review. The lawsuit was argued by Rachel Fazio of the John Muir Project.

### **Sequoia ForestKeeper Won Major Victories over three Salvage Logging Projects in the Area of the McNally Fire in Sequoia National Forest**

In 2004, Sequoia ForestKeeper won major victories over the salvage logging projects in the area of the McNally Fire of 2002 with the withdrawal of two of the three logging projects, including the Burnt Ridge Restoration Project and the Roadless Area Restoration Project Salvage Timber Sale, which had the potential to salvage log 400 million board feet of trees. SFK's comment letters, appeals, and the Burnt Ridge Restoration Project lawsuit, which resulted in a court-ordered Temporary Restraining Order and a Preliminary Injunction, were responsible for the reduction in logging damage of the third project due to the retention for wildlife of twice as many of the largest trees in the habitat, a 97 percent reduction in possible damage to the habitat, overall, and the saving of three proposed wilderness areas that will survive for possible future designation.

### **Sequoia ForestKeeper Won a Major Victory when California's Attorney General filed a Lawsuit against the U.S. Forest Service for the illegal Sequoia National Forest Fire Management Plan**

In 2004, SFK discovered and disclosed to the office of the California Attorney General (AG) the fact that the Forest Service had issued an illegal Sequoia National Forest Fire Management Plan, which had not gone through the public review process required by the National Environmental Policy Act. The Monument Management Plan was tiered to and

based upon this Fire Management Plan. SFK's cause was advanced when the AG filed a complaint in District Court against the Forest Service for the illegal Fire Plan.

**Sequoia ForestKeeper Won a Major Victory over the Sawmill Fuels Reduction Project which would have been implemented in Old Growth of the Southern Sierra Fisher Conservation Area of Sequoia National Forest**

On July 19, 2005, the Regional Forester gave Sequoia ForestKeeper notice of yet another win for the environment based on SFK's successful appeal of Sequoia National Forest's Sawmill Fuels Reduction Project, which proposed to log up to 30-inch diameter trees and remove 3.9 million board feet of trees from 620 acres of old growth forests in the most southerly portion of the remaining Southern Sierra Fisher Conservation Area.

**Sequoia ForestKeeper Won a Major Victory Over Grazing Damage in the Giant Sequoia National Monument and Sequoia National Forest with the withdrawal of the for Tule River-West Grazing Project**

On December 20, 2005, Sequoia ForestKeeper scored a major victory when the District Ranger withdrew her decision for the Tule River-West Grazing Project, based on the arguments in SFK's appeal.

SFK observed conditions of overgrazing and used that data to craft the language of our appeal, which highlighted inconsistencies in the specialists report and the environmental assessment.

**Sequoia ForestKeeper Won a Major Victory over the Saddle, White River, Frog, and Ice Timber Sales in the Southern Sierra Fisher Conservation Area of the Giant Sequoia National Monument and Sequoia National Forest**

In 2005, Sequoia ForestKeeper in conjunction with the Sierra Club, John Muir Project of the Earth Island Institute, Tule River Conservancy, Sierra Nevada Forest Protection Campaign, and the Center for Biological Diversity successfully protected the Giant Sequoia National Monument from harm. The United States District Court for the Northern District of California issued two separate Preliminary Injunctions on lawsuits filed by Sequoia ForestKeeper against the harmful Saddle Fuels Reduction Project and the Ice, White River, and Frog Timber Sales because the court determined that the Forest Service failed to consider only removing up to 9-inch diameter trees as a fuel reduction method to protect the canopy cover habitat that the Forest Service is obliged to protect for the Pacific Fisher. Rachel Fazio, John Muir Project attorney who argued the case, said regarding our lawsuit against the illegal management plan for the Monument, *"If it wasn't for Ara, we wouldn't have even filed for an injunction on the specific timber sales."*

**Sequoia ForestKeeper Won a Major Victory when the Court Ruled that Forest Service Logging-related Categorical Exclusions are illegal**

On July 2, 2005, a Federal judge determined that logging-related Categorical Exclusions are no longer exempt from appeal on any National Forest; a huge victory for all of America's forests. This ruling was as a result of the 2003 lawsuit filed by SFK along with the Sierra Club, Heartwood, Center for Biological Diversity, and Earth Island Institute against the Burnt Ridge Project, which was initiated with SFK's surveys and observations in the Burnt Ridge area. John Muir Project of Earth Island Institute as well as Conservation Hydrologist, Jonathan J. Rhodes, provided expert, on-the-ground surveys of the conditions of the forest in the area of Sequoia's Burnt Ridge Restoration Project. Supporting declarations for our position were also received from Vegetation Ecologist, Dennis C. Odion and Wildlife Biologist, Monica Bond which helped win this victory.

**Sequoia ForestKeeper Won a Major Victory when the Ninth Circuit Court of Appeals Concurred with the District Court that Forest Service Logging-related Categorical Exclusions are illegal and the Court Order applies to All National Forests**

The Ninth Circuit Court of Appeals affirmed the nationwide injunction issued by the district court. The Ninth Circuit ruled that these regulations violate the ARA. (*Earth Island Inst. v. Ruthenbeck* (9th Cir 2007), *reversed on other grounds in Summers v. Earth Island Inst.*, (2009).

“The Forest Service, to comply with the ARA, must promulgate regulations that preserve administrative appeals for any decisions subject to administrative appeal before the proposed changes in 1992. Had Congress wanted to categorically eliminate the right of appeal for timber sales and other categorically excluded Forest Service actions, the ARA would not have been necessary.”

This ruling was as a result of the 2003 lawsuit filed by SFK along with the Sierra Club, Heartwood, Center for Biological Diversity, and Earth Island Institute against the Burnt Ridge Project, which was initiated with SFK's surveys and observations in the Burnt Ridge area. This affirmation provided SFK with a victory that applied nationwide, so all citizens have an opportunity to comment on and appeal decisions relating to the management of federal lands.

**Sequoia ForestKeeper Won a Major Victory when Sequoia National Forest Supervisor Withdrew the Clear Creek Fuels Reduction Project**

On November 20, 2007, Sequoia ForestKeeper filed a complaint in the Eastern District of California, naming John Muir Project of the Earth Island Institute as a second plaintiff—SFK was the lead plaintiff in this case.

The Clear Creek matter deals with fuels reduction thinning of trees up to 29.9” dbh and forest health “improvement” requiring the removal of snags of all sizes. On March 25, 2008, the Forest Supervisor withdrew the project decision. However, the Forest Service had refused to cancel or terminate the contract and the court dismissed the case because the project decision had been withdrawn.

**Sequoia ForestKeeper’s Supreme Court case over the Public’s Ability to Challenge Regulations that Remove the Public from Government Decisions about Federal Lands, while Not a Victory, was only a Loss on “Standing” Rather than on against Illegal Forest Service Regulations that Prevent Public Involvement in Managing Federal Lands**

On October 8, 2008, The U.S. Supreme Court heard an SFK case that started out as an important challenge to the Bush Administration’s weakening of the public’s ability to have input on National Forest decisions has turned into an even farther-reaching case.

A coalition of conservation groups successfully challenged regulations issued in 2003 that eliminated the public’s ability to comment on, and appeal if necessary, many forest service actions including timber sales, oil and gas development, and off-road motorized vehicle use. However, the Forest Service asked the U.S. Supreme Court to review the case—not on whether the forest participation rules were permissible, but on larger issues pertaining to whether citizens can even “facially” challenge government rules and have them set aside if found to be illegal, or whether they should be limited to challenging “site specific” applications of such rules, which would allow illegal rules to stay in place and be used for thousands of government decisions on an ongoing basis, except in limited instances where a challenger can find a lawyer willing and able to bring suit.

Matt Kenna, an attorney with the Western Environmental Law Center handled the case for Heartwood, Sierra Club, Center for Biological Diversity, Sequoia ForestKeeper, and Earth Island Institute, along with attorney Scott Nelson of Public Citizen. The case is called *Summers v. Earth Island Institute*.

On March 3, 2009, the United States Supreme Court reversed the Ninth Circuit affirmation of the Federal Court ruling on standing, allowing the challenged regulations to spring back to life after being enjoined for 3 ½ years. However, the Supreme Court did not address the Ninth Circuit’s holding on the merits that the challenged regulations violate the ARA.

The Court ruled on standing, only, with excerpts of the Majority and Minority reports cited below.

**SUMMERS v. EARTH ISLAND INSTITUTE**

Opinion of the Court

(Pages 5 and 6)

“Affidavits submitted to the District Court alleged that organization member Ara Marderosian had repeatedly visited the Burnt Ridge site, that he had imminent plans to do so again, and that his interests in viewing the flora and fauna of the area would be harmed if the Burnt Ridge Project went forward without incorporation of the ideas he would have suggested if the Forest Service had provided him an opportunity to comment. The Government concedes this was sufficient to establish Article III standing with respect to Burnt Ridge. Brief for Petitioners 28.

Marderosian’s threatened injury with regard to that project was originally one of the bases for the present suit. After the District Court had issued a preliminary injunction, however, the

parties settled their differences on that score. Marderosian’s injury in fact with regard to that project has been remedied, and it is, as the District Court pronounced, “not at issue in this case.” 376 F. Supp. 2d, at 999.”

## SUMMERS v. EARTH ISLAND INSTITUTE

BREYER, J., dissenting  
(Pages 7 and 8)

“Consider further: The affidavit of a member of Sequoia ForestKeeper, Ara Marderosian, attached to the Complaint, specifies that Marderosian had visited the Burnt Ridge Project site in the past and intended to return. The majority concedes that this is sufficient to show that Marderosian had standing to challenge the Burnt Ridge Project. The majority must therefore agree that “at least one identified member ha[s] suffered . . . harm.” *Ante*, at 9. Why then does it find insufficient the affidavit, also attached to the Complaint, of Jim Bensman, a member of Heartwood, Inc.? That affidavit states, among other things, that Bensman has visited 70 National Forests, that he has visited some of those forests “hundreds of times,” that he has often visited the Allegheny National Forest in the past, that he has “probably commented on a thousand” Forest Service projects including salvage timber sale proposals, that he intends to continue to comment on similar Forest Service proposals, and that the Forest Service plans in the future to conduct salvage timber sales on 20 parcels in the Allegheny National Forest—one of the forests he has visited in the past. ¶¶6,13, App. E to Pet. for Cert. 68a, 69a, 71a.

The Bensman affidavit does not say *which particular* sites will be affected by future Forest Service projects, but the Service itself has conceded that it will conduct thousands of exempted projects in the future. Why is more specificity needed to show a “realistic” threat that a project will impact land Bensman uses? To know, virtually for certain, that snow will fall in New England this winter is not to know the name of each particular town where it is bound to arrive. The law of standing does not require the latter kind of specificity. How could it?”

### **Sequoia ForestKeeper Won a Major Victory when the Court Ruled that Forest Service Logging-related Categorical Exclusions are illegal based on Sequoia ForestKeeper’s new Complaint against Illegal Forest Service Regulations that Prevent Public Involvement in Managing Federal Lands**

On Thursday, March 22, 2012, the California Federal Court upheld the public’s right to participate in government when a federal judge once again sided with conservation groups in a dispute over public participation and transparency in government decision-making. Under a Bush-era rule the U.S. Forest Service could exempt certain decisions from public notice, comment and appeal by citizens. The court in California issued a nationwide injunction which immediately restores the public's rights to be informed and participate in the management of all projects on the National Forests,

Sequoia ForestKeeper (CA), Conservation Congress (MT), Earth Island Institute (CA), Oregon Wild (OR), Cascadia Wildlands (OR), Ouachita Watch League (AR), Utah

Environmental Congress (UT), Western Watersheds Project (WY), and WildEarth Guardians (NM) argued that the exception violated federal statute that guarantees the public this fundamental right.

The Forest Service approved the Trail of 100 Giants Improvement Project, on the Sequoia National Forest in California on September 10, 2010, employing a categorical exclusion under its NEPA rules and exempting it from notice, comment and administrative appeal under the regulations challenged in this case. Some of Sequoia ForestKeeper's members have used the exact tracts of land where the project is occurring, with specific plans to return. They will be directly harmed by this project as approved by the Forest Service. If the Forest Service had given Sequoia ForestKeeper notice and permitted an appeal of the project's approval, it may have been able to convince the Forest Service to change the project in a manner that would reduce the adverse impact to its members.

On April 28, 2011, Sequoia ForestKeeper filed a complaint in The United States District Court Eastern District of California. *Sequoia ForestKeeper v. Thomas Tidwell and the United States Forest Service* is a challenge to two of the public notice, comment, and administrative appeal regulations that the United States Forest Service promulgated to implement the Appeals Reform Act of 1992, ("ARA"). The ARA requires that all "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans" must be subject to public notice, comment, and administrative appeal, yet the challenged regulations illegally exempt some such proposed actions from notice, comment and appeal. In fact, the Ninth Circuit has already ruled that these regulations violate the ARA. (*Earth Island Inst. v. Ruthenbeck* (9th Cir 2007), *reversed on other grounds in Summers v. Earth Island Inst.*, (2009). For these reasons, the Court should set aside the regulations.

The rules were successfully challenged in the Eastern District of California in 2003, and the Ninth Circuit later upheld the district court's judgment that the rules violated the ARA, finding: "The Forest Service, to comply with the ARA, must promulgate regulations that preserve administrative appeals for any decisions subject to administrative appeal before the proposed changes in 1992. Had Congress wanted to categorically eliminate the right of appeal for timber sales and other categorically excluded Forest Service actions, the ARA would not have been necessary." However, on March 3, 2009, the United States Supreme Court reversed the Ninth Circuit on standing, allowing the challenged regulations to spring back to life after being enjoined for 3 ½ years. However, the Supreme Court did not address the Ninth Circuit's holding on the merits that the challenged regulations violate the ARA.

The Forest Service has begun utilizing the previously-enjoined regulation again, and has approved many projects and excluded them from public notice, comment and appeal since 2009.

The Forest Service has violated ARA by exempting all decisions that are categorically excluded from NEPA analysis but which implement forest plans and are approved with "decision documents," from public notice, comment, and appeal, and by applying these regulations to exclude many projects from public notice, comment and/or appeal. By doing so, the defendant has taken final agency actions that are arbitrary, capricious, and not in accordance with law, and which should be set aside under the judicial review provision of the

Administrative Procedures Act (APA). For these reasons, plaintiffs requested and the Court: a) Declared that the Forest Service violated the ARA by issuing public notice, comment, and administrative appeal regulations that are arbitrary, capricious, and not in accordance with law; and b) Set aside the challenged regulations pursuant to the APA.

**Sequoia ForestKeeper Won a Major Victory when District Ranger Withdrew the Decision Memo for the Breckenridge Plantation Thinning Project**

On October 20, 2010, District Ranger Rick Larson withdrew the Decision Memo dated August 12, 2010, for the Breckenridge Plantation Thinning Project, which would have logged trees in 85.3 acres within the Mill Creek Inventoried Roadless Area, based on the issues presented in the appeal of the project by Sequoia ForestKeeper.

**Sequoia ForestKeeper’s argument in our comment letter on scoping for the project stopped the Forest Service from issuing a Permit for an Outfitter to use unleashed dogs**

On April 14, 2011, SFK was informed that no permit will be issued to the Larry Lowell Hunting OFG, that request has been put aside and won’t move forward.

On July 16, 2010, Sequoia National Forest proposed issuing a two-year Special Use Permit (SUP) for the Larry Lowell Hunting Outfitter Guide (OFG). This OFG is not currently under SUP, which could be extended for an additional eight years. Services provided include guiding parties of one or two hunters with the use of dogs to hunt bear, bobcat, and gray fox during the legal season from September through February. Guiding will occur as per California State Fish and Game regulations. Use will occur on the Kern River and Western Divide Ranger Districts, including the Giant Sequoia National Monument

SFK argued that we oppose the use of dogs off-leashes or not under the control of the owner for hunting, especially hunting bears, in the Sequoia NF and Giant Sequoia National Monument. Hunters should have to keep their dogs under their control per the state law, so they should have to be leashed at all times. Fish and Game Code section 3008 requires hunters to maintain physical control over dogs, which is not possible if they are off-leash and beyond the visual range of the hunter.

While some dogs may be trained to go after certain animals, including those trained to “tree” bears, it is more likely that dogs that are allowed to roam the forest in groups or “packs” will not restrict themselves to only pursuing a targeted game species.

Most concerning to SFK is that dogs could potentially chase, interact with, and “tree” Pacific fishers. This would be harmful to this species because permitting such interactions between dogs and a “candidate” species under the Endangered Species Act (ESA) would likely stress individual fishers and their kits, could cause death if a dog actually caught a fisher or its kits, or could cause eventual death by the transmission of a disease known to be transmitted by dogs that fishers are susceptible to, including canine distemper, canine parvo, and possibly toxoplasma gondii. Canine distemper is now one of the leading causes of death of Pacific



fishers in the Southern Sierra Nevada, and it is logical to assume that transmission of this disease is being caused by dogs.

For this reason, there is a potential for adverse environmental consequences, and this SUP should not be issued by categorical exclusion from analysis under the National Environmental Policy Act (NEPA). Instead, the Forest Service should develop an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that analyzes and mitigates the environmental consequences on both game, non-game, sensitive, and ESA candidate species such as the Pacific fisher.

The District Officer in charge of SUPs, Artie Colson, told SFK that ALL NEW special use permits relating to hunting will not be considered by the Forest Service anytime in the near future. While this is a victory for SFK, it may indicate that the agency will employ “secret” or “emergency” means to issue such permits, as we recently discovered had occurred for other Special Use Permits.

#### **RELATED EFFORTS TO BAN HOUNDING OF WILDLIFE**

On 27 August 2012, the bill restricting the use of dog packs to hunt bears and mountain lions passed its last legislative hurdle. It's moving to the governor's desk now. The charge was led by the Humane Society. The governor of California should be urged to sign SB 1221. More information on the bill can be found here: <http://www.leginfo.ca.gov>.

#### **Sequoia ForestKeeper Won a Precedent-setting Major Victory when a Federal Judge Invalidated Water Diversion Permit on the Sequoia National Forest for failing to ensure compliance with the Clean Water Act**

On March 15, 2011, Federal Court Judge Lawrence O’Neill struck down and set aside the U.S. Forest Service permit, which has allowed a local rancher to divert the entire flow of Fay Creek, a tributary of the South Fork Kern River, without regard for downstream resources. The court held that the Forest Service failed to comply with the Clean Water Act. Fay Creek is located just east of Lake Isabella, near Weldon, CA.

The Forest Service permit was re-issued contrary to the National Environmental Policy Act, the National Forest Management Act, and the Clean Water Act, which requires consideration of a separate “401 Certificate” or Clean Water Act Permit from the State of California before the Forest Service can allow anyone to divert any water from or discharge pollutants into Fay Creek or other water of the United States. The Forest Service has never requested a 401 Certificate prior to issuing a permit for water diversion in California.

In 2010, Sequoia ForestKeeper filed suit against the Sequoia National Forest’s re-issuance of a Special Use Permit (“SUP”) to Robert Sellers and Quarter Circle Five Ranch (“Sellers”) in 2003. The SUP authorized Sellers to operate a water diversion at a small dam on Fay Creek located within the boundaries of the Sequoia National Forest.

The Court vacated the Sellers SUP, holding that it was re-issued contrary to the National Environmental Policy Act, the National Forest Management Act, and the Clean Water Act.

At issue was whether the Forest Service could maintain a permit that allowed a rancher to take 100 percent of the flow of Fay Creek. The court found that the Forest Service erred in failing to consider Fay Creek a “water of the United States.” Because Fay Creek is a navigable water (the South Kern), it is a water of the U.S. and subject to the Clean Water Act. This triggers the requirement for a “401 Certificate” or Clean Water Act Permit from the State of California before the Forest Service can allow anyone to divert any water from or discharge pollutants into Fay Creek from the operation of a dam. The Court wrote: “Because the USFS failed to consider whether a Section 401 Certificate was required prior to re-issuing the Sellers SUP, the USFS ‘failed to consider an important aspect of the problem.’ . . . Under these circumstances, this Court finds that the USFS acted arbitrarily and capriciously when it issued the Sellers SUP without considering its obligations under the CWA and without applying for a Section 401 Certificate.”

This was the second time the Court held that the Forest Service violated the law in granting Sellers’ SUP. On December 3, 2010, Judge O’Neill ruled that the USFS violated the National Environmental Policy Act (NEPA) for “failing to consider requests to include a minimum bypass flow restriction in the SUP or to require monitoring devices to be installed.” It ordered the Forest Service to “address the requests to place certain conditions on the Sellers’ SUP, including the request: (1) to condition the SUP on a minimum flow requirement; (2) to require a monitoring and measuring device be placed on the diversion; and (3) to reduce the size of the pipes that divert water from Fay Creek.”

Sequoia ForestKeeper believes that this is the first time a Court has held that the Forest Service must condition its issuance of a Special Use Permit on a 401 Clean Water Act Certificate before it can authorize a water diversion from an existing dam and small diversion structure on the National Forests.

Sequoia ForestKeeper was represented by attorney René Voss and attorneys from the law firm of Paul, Hastings, Janofsky & Walker, LLP in San Francisco.

**POST-RULING UNDERSTANDINGS:**

“So far as I am aware, the Forest Service and BLM have never required 401 certification for a special use permit, even for activities that obviously may result in a discharge from a point source, such as resorts that include package treatment plant or projects that will include wetland fill. Similarly, I am not aware of any instance where the Fish and Wildlife Service or National Marine Fisheries Service has required a 401 certification.” (Andrew H. Sawyer, Assistant Chief Counsel California State Water Resources Control Board email March 20, 2011)

“The State Water Resources Control Board (State Water Board) water quality certification regulations are at Cal. Code Regs., tit. 23, § 3855 et seq. Where the project involves the diversion or use of water for irrigation, stockwatering, or other beneficial uses, the application for water quality certification is filed with the State Water Board. Most other applications for water quality certification are filed with the regional water quality control board for the region where the project is located.

Please note that water quality certification is required for any discharge to waters of the United States from a point source; the requirement is not limited to a discharge of a pollutant. (S.D. Warren v. Maine Board of Environmental Protection (2006) 546 U.S. 1148.) That's very important to us because it means that 401 certification is required for relicensing or permit renewal for a dam; the release of water through a spillway or tailrace is a discharge from a point source, without having to get into arguments as to whether project operations add pollutants or merely passing them through.” (Andrew H. Sawyer, Assistant Chief Counsel California State Water Resources Control Board email March 21, 2011)

**Sequoia ForestKeeper Educated Congress on Precedents for the President to Transfer Monuments which inspired Representative Sam Farr (D-CA) to write a letter to Obama**

In 2006 and 2007, Sequoia ForestKeeper Executive Director, Ara Marderosian, and Chief Executive Officer, Martin Litton educated Congress about the superior management of sequoia ecosystems by Sequoia and Kings Canyon National Parks, about the need for the transfer of the Giant Sequoia National Monument to the National Park Service, and about the precedents for such a transfer. Representative Sam Farr has authored a “Dear Colleague” letter that he is currently circulating to other members of Congress to ask President Obama to transfer the Giant Sequoia National Monument with his authority under the Antiquities Act of 1906.

The Antiquities Act gave the President the power to “combat the increasing acts of vandalism and even destruction” of important cultural and natural areas around the country by designating national monuments. One of its first uses was when President Teddy Roosevelt designated the Grand Canyon a U.S. National Monument on January 11, 1908.

In 1943 President Franklin D. Roosevelt established the Jackson Hole National Monument, turning over management of this federal land from the Forest Service to the National Park Service. On June 29, 1939, Franklin D. Roosevelt enlarged the Big Hole Battlefield National Monument with lands from the Beaverhead National Forest to the Director of the National Park Service under the direction of the Secretary of the Interior, which “shall have the supervision, management, and control of the monument” as provided in the act of Congress entitled "An act to establish a National Park Service. On September 28, 1974, Gerald Ford enlarged the existing Cabrillo National Monument and transferred the Monument by Proclamation from the jurisdiction of the Department of the Navy to the jurisdiction of the Department of the Interior.

The Congressman Farr’s “Dear Colleague” letter to Congress and the letter to the President requesting the transfer, as well as background information on the Monument can be found at: <http://www.saveamericasforests.org/Sequoias/Farr-Letter-To-President.html>

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