

# GIANT SEQUOIA NATIONAL MONUMENT

## Logging in Trail of 100 Giants (2004-2005)

### Analysis of Answers by Forest Service re: FY 2008 Budget Hearing To Written Questions by Representatives Moran, Hinchey, Olver, Members of the Interior Appropriations Sub-Committee

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#### FOREST SERVICE VIOLATIONS OF LAW

##### 1. NFMA – No Adequate Public Notice

The Forest Service failed to provide adequate public notice. When the Forest Service announced the “Trail of 100 Giants Hazard Tree Fuel Reductions Project” April 29, 2004, the Forest Service did so verbally, not in writing with proper documentation as required by NFMA.

##### 2. NFMA and NEPA – No Adequate Comment Period

The Forest Service failed to provide adequate public comment period as required by NFMA. The Forest Service announced the project on a public field trip, but did not provide the required 30 day public comment period

##### 3. NEPA – No EA or EIS

The Forest Service failed to provide an EA or EIS. Forest Service Chief Bosworth testified in the Committee Hearing in 2006 that he would provide the EA or EIS to the Committee, but the failure of the Forest Service to provide the Committee with either an EA or an EIS indicates that the Forest Service did not prepare a NEPA required EA or EIS for this project.

##### 4. NEPA and APA – Illegal Categorical Exclusion

- a. The Forest Service illegally elected to categorically exclude this project from documentation in an environmental impacts statement or environmental assessment even though the decision document titled “Project File for Monument Proclamation Hazard Tree Felling” indicates that this project is more than a hazard tree project; the “Need for Action” statement says, “*there is a need to reduce existing surface fuels.*” Case law shows that **fuels reduction projects are prohibited from being categorically excluded.**
- b. The Forest Service illegally elected to categorically exclude the project when Jim Whitfield, Acting District Ranger says in the decision document, “*I have determined that there are no extraordinary circumstances.*” He ignored the statements in the 5/12/2004 Memorandum from Robin Galloway District Wildlife Biologist, that indicate extraordinary circumstances due to this project being implemented in a California Spotted Owl and Northern Goshawk Protected Activity Center (PAC).
  - i. “*The trail of 100 Giants encompasses a portion of both a spotted owl and a northern Goshawk PAC*”
  - ii. “*Review of the wildlife records indicate sustained occupancy by spotted owl since 1973*”

##### 5. NEPA and NFMA – Arbitrarily Segmented the Project

The Forest Service arbitrarily segmented the project into a timber sale following the hazard tree and fuels reduction project. The November 8, 2004, letter signed by Acting District Ranger, Nancy C. Ruthenbeck, Subject: “100 Giants Hazard Tree Felling Project – Log Deck Treatment,” says, “*The file stated that the felled trees which were removed from the trail area by helicopter would be taken to a landing and piled. The resulting log deck constitutes an attractive nuisance, thereby creating a safety hazard for the public. The log deck needs to be removed. The treatments in the project area are consistent with the Giant Sequoia National Monument management plan.*” No memo in the Forest Service file indicates that the cut trees were to be sold as a “means of removal.” Indeed, the Decision memo to the internal file states that the wood would be used for

camp fires and/or chipped and mulched. Yet, on Wednesday, November 17, 2004, the log deck was offered for sale, thus confirming that the logging project had been arbitrarily segmented into two parts.

6. **NFMA – Failed to Conform to Best Management Practices provided for in the Sequoia LRMP<sup>1</sup>**

The Forest Service failed to conform to the Best Management Practices (BMPs) for protecting watersheds, which was described in a specialists report dated 7/7/2005 signed by Terry Henry for Joshua Courter Hydrology Trainee, which says,

- a. “The project record failed to address water quality concerns . . . ‘
- b. ‘Stream-side management and meadow protection zones were not identified.’” But trees were felled within meadows and across streams and logging slash was left in streams contrary to the BMPs.

7. **NFMA and APA – Failed to Follow Its Own Hazard Tree Guidelines for Defect Assessment**

The Forest Service failed to follow the requirements of Sequoia’s Hazard Tree Guidelines to **describe and assess** the severity of **each defect** for each tree. The documents submitted indicate that they did not follow Sequoia’s Guidelines because – the pages from the Cruise book and the R5 Hazard Tree Inspection Forms provide wildly conflicting data.

- a. Cruise book used to document the hazard trees in the Trail of 100 Giants **does not discuss the defect type** –
- b. 8/23/04 R5 Hazard Tree Inspection Form – **data is inconsistent** with the data in the cruise book used to document the hazard trees in the Trail of 100 Giants – Total number of trees, DBH, and tree species conflict with data presented in the Cruise book – **indicating that they are not the same data set.**

8. **NFMA and APA – Failed to Follow Sequoia’s Hazard Tree Guidelines for Alternatives**

The Forest Service did not conduct an independent management analysis for each “hazard tree” as required by Sequoia’s regulations

- a. All of the trees deemed a hazard by the Forest Service were removed whether or not removal was necessary.
- b. The Hazard Tree Guidelines present four management alternatives, in addition to removal, which were not considered - Target Removal, Topping, Pruning, and Specialized actions (such as retention by cables)

**FOREST SERVICE FAILURE TO PROVIDE INFORMATION REQUESTED BY THE COMMITTEE**

1. The Forest Service **failed to provide the requested set of maps** with transparent overlays and digital images of GIS layers of **past and planned tree-cutting projects**, including but not limited to logging, thinning, SPLATs and hazard trees. The Forest Service provided a list of tree removal projects sequentially numbered, and two .pdf file maps, in digital format only (one of the northern and one of the southern section of the GSNM), which showed, for each past tree removal project, a number (a Key field link) on the map that corresponded to the number in the list of projects, rather than the actual GIS outline of the location of all the units in the project.
2. The Forest Service **failed to provide a map, as requested, to illustrate the “tree falling distance”** selected by the Forest Service immediately surrounding all roads, trails, parking areas, and campgrounds.

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<sup>1</sup> *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372 (9th Cir. 1998) at 1377, citing 16 U.S.C. sec. 1604(i); 36 C.F.R. Sec. 219.10(e): “A site-specific decision, such as one to sell timber, must be consistent with the LRMP for the larger area. See *Inland Empire*, 88 F.3d at 757; 16 U.S.C. § 1604(i)”, and “Pursuant to the NFMA, the Forest Service must demonstrate that a site-specific project would be consistent with the land resource management plan of the entire forest. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e) (“[T]he Forest Supervisor shall ensure that ... all outstanding and future permits, contracts, cooperative agreements, and other instruments ... are consistent with the [land management] plan.”)”

## BACKGROUND ON THE PROJECT

The GSNM was created by Presidential Proclamation in 2000 for the express purposes of restricting new roadbuilding and logging projects in order to protect the sequoia forests. However, in 2004 and 2005, a large logging project was conducted in the premiere tourist destination in the GSNM, the Trail of 100 Giants, the very spot where President Clinton proclaimed the Monument.

The Giant Sequoia National Monument contains 50% of the world's remaining sequoias, which are the largest trees on earth and are found naturally nowhere else on earth. If the ecological well being of these groves of sequoias were diminished, and if any laws were violated in this process, it would be a serious violation of the trust of the people of the United States. The GSNM is one of our greatest national treasures, and is the heritage of future generations of Americans and of all peoples of the earth. If the Forest Service, in its testimony about the logging in the GSNM, was not conveying all the facts accurately, we need to learn why.

In written testimony to the Committee in the spring of 2006, the Forest Service contended that it was not bound by the MSA, a cornerstone of the operating procedures for managing the GSNM. The Forest Service contended that the proclamation creating the GSNM in 2000 superseded the MSA, and declared the MSA to be no longer in effect. But, in a federal court decision Case 3:05-cv-00397-CRB Document 207 Filed 08/22/2006, Judge Charles R. Breyer declared that the MSA was and still is in effect. Further, he wrote that the Forest Service knew the MSA was in effect in 2002 when it wrote to the parties to the MSA acknowledging that it still was in effect. Yet, in 2007, in written answers to the Committee, the Forest Service again stated that the MSA did not apply, even after the 2006 ruling that the MSA is in effect. Additionally, had the Forest Service followed the MSA all along, as the Judge ruled that they were required to do, there would probably have been little or no logging in the Trail of Giants.

## RECOMMENDATIONS FOR THE IG TO INVESTIGATE ALL ASPECTS OF THIS PROJECT

We recommend that the IG prepare a comprehensive report on the Trail of 100 Giants logging project, including a detailed list of any and all instances of violations of laws and rules, including answers/responses to the following:

1. Investigate the logging project in the Giant Sequoia National Monument (GSNM) conducted in the Trail of 100 Giants 2004-2005 that we conclude failed to follow laws and harmed the natural ecology of the sequoia forest ecosystems and resulted in a number of centuries-old trees being logged as hazard trees and sent to the local timber mill as prime sawtimber.
2. Assess the accuracy of verbal testimony of the Agriculture Department and the Forest Service to the House Interior Appropriations Committee in hearings in 2006 and 2007 in which this GSNM logging project was discussed, and post-hearing written answers, to committee members' questions about the GSNM logging project.
3. Did the Forest Service commit any of the violations listed above, either of laws, or of rules or regulations, which according to the Supreme Court<sup>2</sup> would be a violation of law?
4. Investigate which Forest Service employees participated in permitting this logging operation. These employees may include the hazard tree specialist, the fire specialist, and any other employees who participated in the decision process to proceed with the logging operation.
5. What was their decision process, and were laws and rules governing decision making followed, because there was not a required study of and record made of each tree that was felled as a so-called "hazard tree?"
6. Were any Forest Service employees directed to violate or disregard the laws by their superiors in the Forest Service or Department of Agriculture Department in Washington D.C. or elsewhere?
7. Are any criminal penalties such as theft of government property applicable to those actions?
8. Were there any employees who opposed the decision to log in the Trail of 100 Giants, and if so, why were they ignored?
9. What are the identities of the timber workers involved with the logging operation and were they legally hired?
10. How much did it cost the Forest Service to log the trees, haul and store them, and what was the cost of administering this logging operation?
11. How much did the Forest Service receive from the timber sold from this logging operation, and/or how much did the Forest Service pay the mill or logging company to remove the logs?
12. Was there any illegal collusion between Forest Service employees and employees of the logging company and/or timber mill which received the timber in designing or carrying out this project?

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<sup>2</sup> *Steenholdt v. FAA*, 314 F.3d 633, 639 (D.C.Cir.2003): "Accardi has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others", citing *Accardi v. Shaughnessy* 347 U.S. 260 (1954).