



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL



Washington D.C. 20250

AUG - 7 2008

The Honorable Maurice D. Hinchey  
U.S. House of Representatives  
2431 Rayburn House Office Building  
Washington, D.C. 20515-3222

Dear Congressman Hinchey:

We have completed our audit review in response to your letter of October 10, 2007, requesting that the Office of Inspector General (OIG) review concerns about alleged logging projects in the Giant Sequoia National Monument. The allegations specifically concerned a Forest Service (FS) tree removal project that was conducted within the Giant Sequoia National Monument along the Trail of 100 Giants in 2004 and 2005.

Our review did not substantiate the six allegations presented and related concerns pertaining to FS' actions at the Giant Sequoia National Monument. FS' actions were taken to improve public safety by felling hazardous trees. During our review, we were informed that none of the felled trees were Giant Sequoias. Accordingly, OIG concluded that FS generally complied with all applicable laws, regulations, policies, and agreements that were in effect at the time actions were implemented.

In order to provide a broader context for the related issues, we note that subsequent to the FS actions that are the subject of this audit review, Federal court decisions invalidated certain FS regulations and the FS Management Plan for the Giant Sequoia National Monument that were in effect at the time of such actions. The U.S. Court of Appeals for the Ninth Circuit has affirmed a district court decision invalidating FS regulations exempting actions that are categorically excluded from documentation in an environmental assessment or an environmental impact statement from public notice, public comment, and appeal requirements. The Court of Appeals also affirmed the district court's nationwide injunction barring the application of these regulations.<sup>1</sup> The Government has appealed the Court of Appeals' decision to the U.S. Supreme Court, and the Supreme Court has agreed to consider the case.<sup>2</sup> In addition, in 2006, the District Court for the Northern District of California issued a decision invalidating the 2003 Giant

<sup>1</sup> See *Earth Island Institute v. Ruthenbeck*, 490 F. 3d 687 (9th Cir. 2007); *Earth Island Institute v. Pengilly*, 376 F. Supp. 2d 994 (E.D. Cal. 2005).

<sup>2</sup> See *Summers v. Earth Island Institute*, 2008 U.S. LEXIS 1097 (U.S., Jan. 18, 2008).

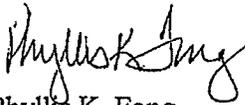
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Sequoia National Monument Management Plan.<sup>3</sup> Due to the district court's ruling, FS is in the process of developing a new plan.

Specific details of our audit review concerning the allegations are summarized in the enclosure.

We appreciate your contacting OIG on this matter. Should you have any questions, please contact me at (202) 720-8001, or have a member of your staff contact Mr. Robert W. Young, Assistant Inspector General for Audit, at (202) 720-6945. Similar letters are being sent to Congressmen James P. Moran and John W. Olver.

Sincerely,



Phyllis K. Fong  
Inspector General

Enclosure

<sup>3</sup> See California ex. rel. Lockyer v. United States Forest Service, 465 F. Supp. 2d 942 (N.D. Cal. 2006).

## **Giant Sequoia National Monument - Trail of 100 Giants**

**Summary:** Our review did not substantiate the six allegations presented and related concerns pertaining to the Forest Service's (FS) actions at the Giant Sequoia National Monument (GSNM). We concluded that FS complied with applicable regulations, policies, laws, and agreements that were in effect at the time decisions and actions were implemented. We twice visited and directly observed the entire project area. On one visit, we were accompanied by FS personnel, and on the other, we were accompanied by members of Sequoia ForestKeeper, a private (non-profit) environmental group. We reviewed project documentation and applicable laws, regulations, and agreements. We also interviewed both FS personnel and members of the environmental community. We consulted with the Office of the General Counsel to obtain advice regarding the legality of FS' actions. We found no evidence that FS was not in compliance with laws and regulations.

**Objective:** To determine the validity of six allegations and additional concerns relating to the FS hazard tree project at the GSNM Trail of 100 Giants as noted in the congressional letter dated October 10, 2007.

**Scope and Methodology:** We reviewed the allegations and concerns noted in an October 10, 2007, congressional request to the Inspector General that pertained to a FS hazard tree project conducted during 2004 and 2005. To accomplish our objective, we:

- Researched pertinent Federal laws, regulations, FS procedures, and agreements.
- Interviewed representatives from FS' Pacific Southwest regional office and key staff members at the Sequoia National Forest and Tule River/Hot Springs Ranger Districts.
- Reviewed supporting documents provided by FS.
- Interviewed representatives of Sequoia ForestKeeper.
- Visited the Trail of 100 Giants twice: first with FS personnel and second with representatives of Sequoia ForestKeeper.
- Consulted with the Office of the General Counsel to obtain advice regarding the legality of FS' actions.

### **Results of OIG's Review:**

#### **Allegations 1 and 2: FS Did Not Provide an Adequate Public Notice and Comment Period**

Conservation groups contend that FS did not provide the public with an adequate notice and

comment period before removing trees from the Trail of 100 Giants. On August 20, 2004, FS concluded that approximately 130 dead or dying trees should be categorically excluded from documentation in an environmental assessment (EA) or an environmental impact statement (EIS) and that no extraordinary circumstances existed that would prevent the project from moving forward.<sup>1</sup> During felling<sup>2</sup>, which began on August 23, 2004, a FS silviculturist (a forest specialist) identified an additional 74 live hazard trees to be removed.

**OIG Conclusion:**

As summarized in the “Other Concerns” section below, FS concluded that this project was excluded from the requirement to prepare an EA or an EIS prior to removing any trees. The usual requirements for public notice and comment, therefore, did not apply to this situation. FS decided, however, to provide some level of notice and comment. FS documents indicated that the public was informed of the proposed project to remove the dead or dying trees and provided an opportunity to comment. As early as 4 months before and up to the date of felling, FS informed the public through a meeting and telephone calls with interested parties along with advertisements in local papers. On April 29, 2004, an article was published in the newspaper of record that informed the public of FS’ intent to remove dead or dying trees. We found nothing to indicate that the public was informed of the intent to remove live hazard trees. FS personnel concluded, however, that felling the live hazard trees would neither significantly impact the environment nor change the original decision to categorically exclude the project.

On May 8, 2008, we discussed this issue with the Office of the General Counsel, which advised us that no laws or regulations required additional public notice or comment.

**Allegation 3: FS Did Not Perform Adequate Environmental Reviews**

Conservation groups contend that FS did not perform an EA or an EIS before removing hazardous trees from the Trail of 100 Giants.

In a March 9, 2006, hearing before the House Interior Appropriations Subcommittee, former FS Chief Bosworth stated that an EA or an EIS was prepared prior to removing trees along the Trail of 100 Giants.

**OIG Conclusion:**

We confirmed that neither an EA nor an EIS were prepared; but since FS categorically excluded the project, these documents were not required to be prepared. On May 8, 2008, the Office of the General Counsel advised us that FS appropriately applied categorical exclusion to this project.

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<sup>1</sup> FS documentation indicated that in April 2004 there were 140 dead or dying trees. In May 2004, the ranger categorically excluded and removed 12 of the 140.

<sup>2</sup> FS documentation indicated that no giant sequoias were felled.

**Allegation 4: FS Did Not Conform to Best Management Practices (BMPs) Provided for in the Sequoia Land and Resources Management Plan (LRMP)**

Under an agreement between the California State Water Resources Control Board and FS' Pacific Southwest Region, FS agreed to implement BMPs for water control management on National Forest System lands in California. FS' regional guidance (BMP guide) describes the BMPs applicable to FS activities, such as timber management, site construction, and recreation.<sup>3</sup>

**OIG Conclusion:**

To conform to BMPs, FS must perform administrative evaluations of its activities by conducting post project assessments. On July 7, 2005, at the request of the Tule River/Hot Springs district ranger, a FS hydrologist conducted an assessment of the impact of the Trail of 100 Giants hazard tree project on nearby rivers and lakes (i.e., riparian areas). The hydrologist concluded that (1) "the stream banks had disturbance less than or equal to 5 percent of the channel's length and there is no evidence of sediment movement," (2) "there was no disturbance to the meadow as a result of the project," (3) "there was little or no evidence of rutting," and (4) "the objective to meet groundcover requirements was met."

The hydrologist recommended removing erosion-causing woody material left over from the felling, and stumps and logs from the streams. FS' response to the hydrologist's report stated that "some of the situations documented as not meeting BMPs were not generated from the Trail of 100 Giants project." The hydrologist informed us that "departures [from BMPs] had little to no negative effect on the surrounding environment."

Based on our review of available documents, nothing material came to our attention to indicate that FS was not in general conformance with BMPs detailed in the Sequoia LRMP.

**Allegation 5: FS Did Not Conform to the Sequoia LRMP's Mediated Settlement Agreement (MSA)**

Conservation groups contend that FS' removal of hazardous trees along the Trail of 100 Giants constituted a logging project that was prohibited under the terms of the 1990 MSA.

**OIG Conclusion:**

The MSA states, "there shall be no ... logging ... 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 [LRMP]." The April 15, 2000, Presidential Proclamation states, "[r]emoval of trees ... from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety." FS' 2003 Giant Sequoia National Monument Management Plan states, "[w]ithin the [Sequoia] Monument, the Presidential Proclamation supersedes the provisions of the MSA by force of law."

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<sup>3</sup> Water Quality Management for Forest System Lands in California – Best Management Practices (Sep. 2000).

On May 8, 2008, we discussed this issue with the Office of the General Counsel, which advised us that the MSA was not in effect when the 2003 Management Plan was issued and the Proclamation and Management Plan allowed for cutting trees for public safety.

#### **Allegation 6: FS Did Not Follow Hazard Tree Guidelines**

Conservation groups contend that FS violated provisions of its guidelines<sup>4</sup> for analyzing and documenting the need to fell hazard trees because (1) the type of defect for each of the 140 dead or dying hazard trees was not documented, (2) information recorded about the trees was inconsistent, and (3) four management alternatives to tree removal were not considered.

#### **OIG Conclusion:**

On April 22, 2004, a FS silviculturist identified 140 dead or dying hazard trees along the Trail of 100 Giants.<sup>5</sup> The information included the species and diameter of each tree but not the type of defect. However, guidelines that require that defects be described were not in force. This did not become a requirement until the guidance was approved on August 5, 2004 — nearly 4 months after the initial 140 trees were identified for removal.

On August 23 and 24, 2004, another FS silviculturist and an incident commander identified an additional 80 live hazard trees, of which 6 were to be monitored and 74 to be felled.<sup>6</sup> Since the two silviculturists described two separate sets of trees (140 dead or dying vs. 80 live hazards), the data they recorded differed.

The FS ranger responsible for deciding to remove the hazardous trees said that he considered such alternative actions as (1) target removal, (2) topping, (3) pruning, and (4) specialized actions [which can include cabling or bracing], but determined that tree removal was the only feasible action. The ranger did not document the analyses supporting his decision, but based on our review of FS guidance, he was not required to do so. Nothing came to our attention to indicate that the FS ranger did not properly exercise professional judgment in deciding to remove the hazardous trees.

#### **Other Concerns Noted in the Congressional Letter:**

##### **FS Inappropriately Applied Categorical Exclusion to the Project**

Conservation groups contend that FS inappropriately categorically excluded the project from documentation in an EA or an EIS.

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<sup>4</sup> Hazard Tree Procedures for Forest Plan Compliance (Aug. 5, 2004).

<sup>5</sup> FS used a "Cruise Book" to document the first 140 trees that were identified as dead or dying hazards. Specific details included species, diameter, and the percentage of defect.

<sup>6</sup> The initial FS silviculturist that identified the 140 dead or dying trees retired. Live hazard trees were identified by his successor.

### **OIG Conclusion:**

We interviewed FS officials and reviewed documents that indicated that the project's primary purpose was to remove hazardous trees from the Trail of 100 Giants to ensure the public's safety. (See Allegations 1 and 2, above)

On May 8, 2008, we discussed this issue with the Office of the General Counsel, which advised us that FS appropriately applied the categorical exclusion.

### **FS Arbitrarily Segmented the Project**

Conservation groups contend that FS arbitrarily segmented the Trail of 100 Giants Hazard Tree Project into two parts: (1) a hazard tree removal and fuels reduction project, and (2) a timber sale. The allegation claimed that FS always intended to sell the timber resulting from this project.

### **OIG Conclusion:**

We found nothing to indicate that FS arbitrarily segmented the project. After the hazard trees were felled (during a 2-week period beginning August 23, 2004), FS hired a private contractor to transport some of the larger felled logs to a landing known as Parker Deck. After the logs were moved, the acting FS district ranger realized the stacked logs were not safe for people to be around. Accordingly, the district ranger blocked vehicle access to the area with a locked gate. Since the gate would not prevent the public from entering the area, the district ranger issued a memorandum to the forest supervisor, which declared Parker Deck an attractive nuisance that created a public safety hazard.<sup>7</sup> The district ranger stated that if visitors were to climb onto the log deck and get injured (e.g., due to shifting logs), FS would be liable. FS viewed this as an unacceptable risk.

On November 17, 2004, FS placed a "Preliminary Advertisement" in a local newspaper announcing the possible sale of the logs. The purpose of this announcement was to (1) afford interested parties an opportunity to examine the logs at Parker Deck and (2) determine if there was sufficient interest in the logs to advertise a salvage sale.

In June 2005, the current district ranger attempted to contact 10 interested parties to determine if they were against selling the logs.<sup>8</sup> Eight people responded: four approved of the sale, two opposed the sale, and two were ambivalent. Based on these responses, the district ranger sold the logs. On July 16, 2005, FS issued a public notice of sale in a local newspaper — approximately 10 months after the trees were felled. On July 25, 2005, FS received two bids and awarded the contract to the higher bidder for \$19,514.

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<sup>7</sup> FS defines the term "attractive nuisance" as a potentially hazardous area that will attract members of the public.

<sup>8</sup> These 10 interested parties included representatives of the following groups: Tule River Indian Tribe (1); environmental advocacy groups (5); timber industry/business advocates (3); and local county government (1).