

# THE FUTURE OF LOGGING IN THE GIANT SEQUOIA NATIONAL MONUMENT

## I. INTRODUCTION

The allure of Sierra Nevada natural resources has compelled many to formulate ingenious devices in order to capture the dynamic forces that exist within the region.<sup>1</sup> The motives are often mixed. While some seek to enjoy the beauty of these resources through artwork and recreation, others wish to harvest and utilize those same resources for commercial benefit.<sup>2</sup> Hydroelectric facilities, residential developments and federal concessions are all examples where the Sierra Nevada landscape has been impacted by modern civilization.<sup>3</sup> This Comment will examine a situation involving the most notorious field of Sierra Nevada commercial utilization, logging. Specifically, discussion will emphasize a recent development arising within the Giant Sequoia National Monument in the southern Sierra Nevada.

California's timber industry is currently a multi-billion dollar industry<sup>4</sup> that employs thousands throughout the state in technical, harvest and clerical vocations.<sup>5</sup> For most of the past century the southern Sierra Nevada witnessed a continuing struggle between timber harvests and forest stewardship.<sup>6</sup> It was intended in designating giant sequoia groves as a national monument, strict preservation could reconcile generations of logging.<sup>7</sup>

On April 15, 2000, by presidential proclamation, 377,679 acres of the Sequoia National Forest were set aside as a national monument to re-

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<sup>1</sup> LARY M. DILSAVER & WILLIAM C. TWEED, CHALLENGE OF THE BIG TREES, (1990), available at [http://www.cr.nps.gov/history/online\\_books/dilsaver-tweed/chap7](http://www.cr.nps.gov/history/online_books/dilsaver-tweed/chap7) [hereinafter Big Trees].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> TODD A. MORGAN, ET AL., CALIFORNIA'S FOREST PRODUCTS INDUSTRY: A DESCRIPTIVE ANALYSIS, United States Department of Agriculture Forest Service Pacific Northwest Research Station General Technical Report PNW-GTR-615, July 2004, at 42. [hereinafter California's Forest Product Industry].

<sup>5</sup> *Id.* at 45.

<sup>6</sup> Big Trees, *supra*.

<sup>7</sup> Proclamation No. 7295, 65 Fed. Reg. 24095, (Apr. 15, 2000).

move Giant Sequoia groves from any threat of commercial logging or residential development.<sup>8</sup> As home to some of the world's oldest and tallest living things, this proclamation further sought to preserve these groves for countless future generations to appreciate and study. Administrative authority for the Giant Sequoia National Monument was delegated to the United States Department of Agriculture Forest Service ("Forest Service"). Contrary to the establishing proclamation, the Forest Service permitted sustained yield timber harvests in the monument through the implementation of its management plan.<sup>9</sup> Though appearing somewhat contradictory, the Forest Service sought to curtail wildfire threat and further foster timber health through the affects of commercial logging. In August 2006, this management plan was halted by a judicial proclamation of the United States District Court for the Northern District of California.<sup>10</sup>

In managing the Giant Sequoia National Monument, the Forest Service has the burden of managing a natural shrine of our collective devotion to forest stewardship as well as continually confronting a subtle and persistent tension between preservation and resource utilization. The dismissed management plan was indicative of the modern manifestation of this struggle. This Comment will discuss and analyze how this situation developed, its current status and feasible options to further facilitate both forest commercial benefit and natural resource stewardship.

## II. HISTORICAL SURVEY OF LOGGING AND NATURAL RESOURCE USE IN THE SOUTHERN SIERRA NEVADA

### A. *Timber Harvests to Supply the Demands of an Expanding Population*

Whether it was grazing, mining, recreation or logging, the southern Sierra Nevada forests, waterways, and pastures provided San Joaquin Valley ("Valley") settlers with the necessary resources to ensure sustained prosperity.<sup>11</sup> Of these, it was logging that endured from the initial settlement to the present day. It began as modest, mere handmade solo operated mills, and eventually supplied the construction of not only the Valley but much of the San Francisco Bay Area and the Los Angeles

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Sierra Club v. Dale Bosworth, and Sierra Forest Products, Defendant-Intervenor*, No. C 05-00397, 2006 U.S. Dist. LEXIS 67086, at 25-26. [hereafter, *Sierra Club*].

<sup>11</sup> CHARLES W. CLOUGH, *FRESNO COUNTY IN THE 20TH CENTURY FROM 1900 TO THE 1980'S*, at 139, *Bobbye Sisk Temple, Panorama West Books, 1986*. [hereinafter *Fresno County History*].

area as well.<sup>12</sup> This process should not be overlooked when commenting on modern legal skirmishes and decisions, for it is through the scrupulous discussion of the past that the context of our present analysis is properly contemplated.

As most early California settlers sought ranch or mining sites, there initially was little interest in southern Sierra Nevada timber.<sup>13</sup> Predicting an inevitable western United States (“U.S.”) construction boom upon the conclusion of the Civil War and the completion of the transcontinental railroad, lumber companies saw the available timber as a lucrative business venture.<sup>14</sup> To encourage settlement in the west after the Civil War, Congress had passed a number of land acquisition acts.<sup>15</sup> Notably, it was the Timber and Stone Act and the Homestead Act that allowed both settlers and corporations to acquire public land at nominal or no costs and develop that land in any desired manner.<sup>16</sup> Under these congressional acts, lumber corporations acquired thousands of acres of prime southern Sierra Nevada timber, including numerous groves of giant sequoias.<sup>17</sup>

Due to their water and fire resistant qualities, redwood sequoias had been a prized commodity as a building material since the substantial influx of people after the California Gold Rush of 1849.<sup>18</sup> Southern Sierra Nevada logging enterprises evolved differently than others in California due to the rugged terrain and remote locations of the logging operations.<sup>19</sup> These hindrances were mitigated through an elaborate network of roads, flumes and rail lines.<sup>20</sup> This was a system so vast and dynamic that sleepy villages were transformed into hubs of operational activity within months.<sup>21</sup>

The central California community of Sanger, for example, witnessed a population explosion that was typical of this phenomenon.<sup>22</sup> Sanger was miles from the logging operation itself, however, its location on the Valley floor allowed many residents to have a consistent source for em-

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<sup>12</sup> ROBERT V. HINE & JOHN MACK FARAGHER, *THE AMERICAN WEST A NEW INTERPRETIVE HISTORY*, at 445, Yale University Press, 2000. [hereinafter, *American West*].

<sup>13</sup> HANK JOHNSTON, *THEY FELLED THE REDWOODS*, 23, Stauffer Publishing, 1996. [hereinafter, *Redwoods*].

<sup>14</sup> *Id.* at 23.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 17.

<sup>19</sup> *American West*, *supra* note 12, at 445.

<sup>20</sup> *Id.*

<sup>21</sup> *Redwoods*, *supra* note 13, at 27.

<sup>22</sup> *Id.*

ployment.<sup>23</sup> The logging industry has always demanded multiple sources of supplies for often ingenious and laborious operational support.<sup>24</sup> Consequently, timber harvests would be confined to small enterprises with little commercial applicability without the services and assistance of locomotives, steam donkeys and the labor of many employees.

As the Valley developed into a thriving economy during the 1920s, the timber industry met the demand of such prosperity by providing an ample source of employment and a diverse network of investment opportunities.<sup>25</sup> Employment was available beyond the logging camps. Indeed, the lumber yards and mills on the Valley floor where the timber was ultimately refined were the source of hundreds of jobs.<sup>26</sup>

The timber industry also captured the attention of a substantial number of investors.<sup>27</sup> Making California lumber a truly national commodity, it was often Eastern businessmen financing these operations.<sup>28</sup> The combined economic effects of World War I, organized labor intimidation, and the Great Depression substantially undermined the success of the Central California timber industry.<sup>29</sup> Many lumber companies sold their holdings in both land and equipment, in order to repel bankruptcy for a few more fleeting years.<sup>30</sup>

The Great Depression ushered in a subtle and often overlooked change in forest management.<sup>31</sup> The Civilian Conservation Corps ("CCC") provided young men with an opportunity both to sustain employment and socially benefit the U.S. public by assisting in a variety of public use projects within Federal forest lands.<sup>32</sup> To this day from the roads and structures of the Sequoia National Park, one can see the enduring remains of these efforts.<sup>33</sup> It should be understood that this was a marked departure from strict preservation. The federal government, as steward of our nation's forests, began utilizing those same natural resources to secure a national demand for consistent employment.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 11-12.

<sup>25</sup> *Id.* at 44, 46.

<sup>26</sup> *Id.* at 39.

<sup>27</sup> *Id.* at 81.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 125.

<sup>30</sup> *Id.* at 136.

<sup>31</sup> A. BERLE CLEMENSON, SEQUOIA-KINGS CANYON NATIONAL PARK: HISTORY OF THE PARKS, 8, Denver Service Center Historic Preservation Team National Park Service, United States Department of the Interior, Denver, Colorado. (Sept. 1975). [hereafter, History of the Park].

<sup>32</sup> 73 Cong. Ch. 17; 48 Stat.22.

<sup>33</sup> History of the Park, *supra* note 31, at 8.

After the Great Depression and subsequent war years, central San Joaquin Valley communities began to grow at a significant rate.<sup>34</sup> This was the era of urban sprawl and although it was modest compared to other sections of California, the Central Valley could only embrace the suburban growth boom of the late 20th century.<sup>35</sup>

### *B. The Emergence of Giant Sequoia Stewardship*

Typically the logging practices of the 19th century and the majority of the 20th century resembled a broad sword rather than that of a scalpel. Like sugar pine, Douglas fir, and cedar, giant sequoias too vanished at an alarming rate.<sup>36</sup> Perhaps this was simply indicative of how many residents viewed natural resource use. From washing away layers of earth in the search for gold to the polluting oil spills from lucrative “gushers,” it seemed that stewardship took an inferior position to commercial gain.<sup>37</sup> As the effects of this mentality began to manifest in the late 19th century, legislators hoped to alter existing policy by establishing executive restraints on forest use.<sup>38</sup>

Aware of the aggressive timber removal tactics used in California logging operations, Congress began to impose legislation that sought to curtail such practices by setting aside forest land in reservations:

That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and limits thereof.<sup>39</sup>

Late 19th and early 20th century presidential administrations asserted their authority and set aside forty-seven million acres of forested land.<sup>40</sup> In 1897, however, Congress instructed that the reserves should “furnish a continuous supply of timber for the use and necessities of citizens of the United States.”<sup>41</sup> Subsequently, these “forest reserves” became “national forests” in 1907.<sup>42</sup> This marked the beginning of the tension between utilization and preservation that comprises the present discussion.

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<sup>34</sup> *Fresno County History*, *supra* 11, at 14.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *American West*, *supra* note 12, at 445.

<sup>37</sup> *Id.* at 437.

<sup>38</sup> *Id.* at 445.

<sup>39</sup> Act March 3, 1891. 26 Stat. 1103. Ch. 561, 24.

<sup>40</sup> *American West*, *supra* note 12, 446.

<sup>41</sup> 16 USCS § 475 (1897.)

<sup>42</sup> Act, March 4, 1907, ch 2907, 34 Stat. 1269.

The intention of the Forest Service in this era was to satisfy the needs of the various valley lumber demands while contemporaneously managing forest land.<sup>43</sup> The execution of these measures often had a bewildering, if not frustrating, effect. This is not a result of ill-planning or misconceived notions of natural resource management. Rather, it is merely the effect of the trial and error method pursued on the administrative level. Forest management agencies have the daunting task of administering management plans that attempt to compromise extreme interpretations of how natural resources are best utilized and maintained.<sup>44</sup> For example, clear-cuts, where everything in a timber unit is felled, do factor in forest health; however, such practices are easily prone to the devastating abuse many long to condemn.<sup>45</sup>

The Forest Service principle direction was land use, not land conservation. This is blatantly apparent, after-all, as the phrase "land of many uses" is boldly printed on Forest Service welcome signs.<sup>46</sup> From its inception, the Forest Service has struggled over land utilization versus strict conservation.<sup>47</sup> Initial policies and early influential administrators contributed to the ambiguous development of forest management theories by giving equal merit to often contradictory views.<sup>48</sup> Essentially, what one faction views as a proper use is easily interpreted by another as an unacceptable abuse.

Soon, whether industrial or recreation, public reaction would represent a significant component of determining environmental policy and resolution of environmental litigation.<sup>49</sup> Indeed, in the 1960s, a proposed ski resort in the Sequoia National Forest drew this trend into public and judicial scrutiny.<sup>50</sup> The Forest Service had opened up several hundred acres in the Mineral King portion of the Sequoia National Forest to be developed into a major ski resort.<sup>51</sup> The Walt Disney Company accepted the bid and submitted plans for a \$35,000,000 facility including theme hotels and parking garages.<sup>52</sup> What drew alarm, primarily, was that the planned facility called for roads and power lines to traverse portions of the Se-

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<sup>43</sup> Telephone Interview: Carol Cloer, President Giant Sequoia Task Force. Thursday October 12, 2006.

<sup>44</sup> American West, *supra* note 12, at 446-447.

<sup>45</sup> Telephone Interview with Carol Cloer, *supra*, note 43.

<sup>46</sup> Forest Service Sign, Sequoia National Forest, Hwy. Mountain Home Rd. (2006).

<sup>47</sup> American West, *supra* note 12, at 448.

<sup>48</sup> *Id.* at 446-447.

<sup>49</sup> Telephone Interview with Carol Cloer, *supra* note 43.

<sup>50</sup> Bigtrees, *supra* note 1.

<sup>51</sup> *Sierra Club v. Morton*, Secretary of the Interior, et al., No. 70-34, 1972 U.S. LEXIS 118, at 729 (405 U.S. 727).

<sup>52</sup> *Id.*

quoia National Park.<sup>53</sup> The Sierra Club<sup>54</sup> hoped to combat this industrial encroachment through an injunctive lawsuit.<sup>55</sup> The U.S. Supreme Court ultimately ruled that because the individual Sierra Club members lacked the appropriate measure of standing, there were insufficient grounds for an injunction.<sup>56</sup>

Though the merits of the case were not actually discussed, the Sierra Club had proven to be a significant counterbalance to Forest Service proposals.<sup>57</sup> By taking the case to the U.S. Supreme Court, the Sierra Club captured the attention of the nation as well.<sup>58</sup> This expansive and critical audience demanded that natural resource utilization comply with emerging concepts of conservation and stewardship. Without such alignment, natural resource utilization appears inconsistent with appropriate stewardship and exposes management plans to abuse, conflict, and litigation.

### III. IMMEDIATE PRECURSORY EVENTS INFLUENCING THE RECENT JUDICIAL DECISION

In the 1980s, the Forest Service drastically cut the available land for timber harvest because of a possible negative impact on an indigenous species, specifically the Spotted Owl.<sup>59</sup> The spotted owl makes its habitat in regions similar to that of the Giant Sequoia National Monument. "Both subspecies [of the Spotted Owl] are believed to occur most frequently in large areas of mature or old growth coniferous forests."<sup>60</sup> In 1992, The California Spotted Owl Technical Report produced by the Forest Service Research Station documented threats to the Spotted Owl habitat by losses attributed to "timber harvest activities."<sup>61</sup> To counteract this, the Forest Service introduced the California Spotted Owl Interim Guidelines and Environmental Assessment ("CASPO").<sup>62</sup> The CASPO guidelines continued to allow logging. However, it sought to protect

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<sup>53</sup> *Id.*

<sup>54</sup> American West, *supra* note 12, at 444. The non-profit organization 'Sierra Club' was founded by John Muir in the early 1900's and sought to advance Sierra Nevada stewardship.

<sup>55</sup> Sierra Club, at 728.

<sup>56</sup> *Id.* at 741.

<sup>57</sup> Big Trees, *supra* note 1, Chpt. 9 "Mineral King Enters the Park." Pg. 1.

<sup>58</sup> *Id.* Mineral Kings's inclusion into Sequoia National Park was the ultimate resolution.

<sup>59</sup> E-mail from Carol Cloer, President Giant Sequoia Task Force, to Matt Schmidt, author, (October 13, 2006.)

<sup>60</sup> USDA Forest Service Gen. Tech. Rep. PSW-124, (1990) at 1.

<sup>61</sup> *Id.* at 1.

<sup>62</sup> E-mail from Carol Cloer, *supra*, note 59.

Spotted Owl habitat by conserving trees greater than thirty inches diameter at breast height ("DBH") and protecting the 300 acres surrounding nests.<sup>63</sup> It was thought that conserving the larger trees, which provided greater canopy cover, would offer protection by covering more volatile forest fuels.<sup>64</sup> The Forest Service operated under these guidelines between 1993 and 2001.<sup>65</sup>

During that period (1993-2001), there were several attempts to either amend the CASPO guidelines, or in the alternative, to abolish those procedures in favor of a more appropriate plan.<sup>66</sup> The result was an inconsistent myriad of procedures that contradicted field research. It was hoped the Giant Sequoia National Monument would at least curtail administrative confusion and exist in a protected state.<sup>67</sup> However, the preserve was not free of logging.<sup>68</sup> Indeed, certain plots were offered to harvesters in order to assist them transition out of the area.<sup>69</sup> These plots created a confounding circumstance as most logging operations had substantial post-fire harvests farther south in the forests of southern California.<sup>70</sup> As a result of this workload, these plots were not harvested before the deadline.<sup>71</sup> Harvesting proceeded, however, when the deadline was extended due to this circumstance.<sup>72</sup> It is important to note that in the central San Joaquin Valley there are few logging companies.<sup>73</sup> In 2002, mills in Johnsondale, Dinuba, and Sanger merged with Sierra Forest Products of Terra Bella to become the sole operating sawmill in the region.<sup>74</sup>

Using the authority given him by the Antiquities Act of 1906,<sup>75</sup> President Bill Clinton created the Giant Sequoia National Monument.<sup>76</sup> The Sequoia Proclamation set aside groves of Sequoias for future generations to study and appreciate. "Outstanding opportunities exist for studying forest resilience to large-scale logging and the consequences of different

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 65 Fed. Reg. 24095, (2000).

<sup>68</sup> *Id.*

<sup>69</sup> Telephone interview with Carol Cloer, *supra* note 43.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> California Forest Products Industry, *supra* note 4, at 30.

<sup>74</sup> Telephone interview with Carol Cloer, *supra* note 43.

<sup>75</sup> 16 USCS § 431 (LexisNexis 2006).

<sup>76</sup> 65 Fed.Reg 24095.

approaches to forest restoration.”<sup>77</sup> Regarding timber rights the Proclamation held:

No portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber from the Sequoia National Forest. 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.<sup>78</sup>

The Giant Sequoia National Monument has been attacked before on the grounds that the “Monument is physically over-inclusive.”<sup>79</sup> The issue there was that the Giant Sequoia groves only made up six percent of the Monument.<sup>80</sup> The court ruled the proclamation thoroughly contemplated the breadth of such an expanded location and concluded that “the Proclamation addresses the reason for the size of the Monument, the risk of wildfire, and the need to protect the objects of historic and scientific interest.”<sup>81</sup> Wildfire is the pivotal term in the above judicial reasoning. For it is under the “wildfire” veil that the Forest Service has implemented mechanical thinning as a means to curb the threat from wildfires and further promote forest health.

#### IV. PROCEDURAL AND SUBSTANTIVE ASPECTS OF THE RECENT JUDICIAL DECISION

With the U.S. District Court case *Sierra Club v. Dale Bosworth*, the Sierra Club used its legal might to formulate a valid complaint against the Forest Service management of the Giant Sequoia National Monument.<sup>82</sup> The court coupled its decision in *Sierra Club* with the companion Memorandum and Order *California v. United States Forest Service*.<sup>83</sup> Both complaints essentially alleged the same issue that the Forest Service violated established legislative standards in the management of the Giant Sequoia National Monument.<sup>84</sup> In *California*, the court broadly dismissed the Giant Sequoia management plan because, in the very least, it

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Tulare County v. George Bush et al., Defendants*, 2001 U.S. Dist. LEXIS 23856, at 23 (185 F.Supp. 2d).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 25.

<sup>82</sup> *Sierra Club, supra* note 10, at 22.

<sup>83</sup> *California v. United States Forest Service*, No. C 05-00898 (Northern District for Ca. filed Aug. 22, 2006.) available at G:\CRBALL\2005\0898\order re sj.wpd. [hereinafter, *California*].

<sup>84</sup> *Id.* at 1.

was “decidedly incomprehensible.”<sup>85</sup> *Sierra Club* specifically discussed four logging contracts within the monument and held that the Forest Service had “failed to conduct an adequate and sufficient ‘hard look’ at significant new information pertaining to the Pacific fisher.”<sup>86</sup> In effect, the court held in order for logging operations to commence or continue, all statutory requirements must be fulfilled.<sup>87</sup> The existing management plan did not strive for the appropriate balance between commercial and environmental interests. Through recent legislation, forest management must adhere to a cognizant, reliable, and public set of standards. As such, the procedural development of this judicial decision is crucial to explain.

A recent trend throughout California and the West Coast is the growing number of residents in areas that are still considered wildland.<sup>88</sup> Owning property amidst native timber is appealing to many who have lived within the concrete scenery of urban regions for most of their lives.<sup>89</sup> Consequently, in many locations, it is common for a residential development to be literally carved out of the side of a mountain.<sup>90</sup> This often has a devastating effect as wildfires destroy these homes and threaten the lives of their occupants.<sup>91</sup> The federal government sought to remedy such situations by introducing policies that attempt to encourage a harmonious union between forest economics and health.<sup>92</sup> This was more the product of fire prevention than timber harvests, though the two are frequently handled in the same manner.<sup>93</sup>

Fire management has a similarly checkered past. Originally, wildfires were suppressed immediately, or at least as immediately as the surrounding landscape would allow.<sup>94</sup> Wildfires in the Midwest during the 1800s caused many to believe it was an unnatural evil that should be suppressed as soon as possible.<sup>95</sup> This notion was further exacerbated by widespread acceptance in the 20th century film industry as well. Films such as

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<sup>85</sup> *Id.* at 12.

<sup>86</sup> *Sierra Club*, *supra* note 10, at 25.

<sup>87</sup> *Id.*

<sup>88</sup> Jonathon Thompson, *TREES, HOUSES, AND HABITAT: PRIVATE FORESTS AT THE WILDLAND-URBAN INTERFACE*, SCIENCE FINDINGS, NOV. 2004, at 1.

<sup>89</sup> *Id.*

<sup>90</sup> FIRE WARS, (Nova 2002.)

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> E-mail from Dave Smith, Sivilculturist, Sierra National Forest, Bass Lake Ranger District, to Matt Schmidt author (Oct. 26, 2006).

<sup>94</sup> FIRE WARS, *supra* note 90.

<sup>95</sup> *Id.*

*Bambi*<sup>96</sup> and *Red Skies Over Montana*<sup>97</sup> found little resistance to portraying wildfire as an indiscriminate villain of the forest. Decades of this practice led to overgrown forests, which, when encountered by fire, would create explosive wild fires that demanded much effort to suppress.<sup>98</sup> The Forest Service thus believes a healthy forest is in fact a thinned forest.<sup>99</sup> And consequently, strategic timber sales could diminish fire-spread and facilitate in the necessary logistics involved with wildfire suppression.<sup>100</sup>

In contrast, the Sierra Club maintains mechanical thinning does not curtail fire behavior but actually contributes to fire spread and intensity.<sup>101</sup> As trees are thinned, the crown cover is diminished exposing larger portions of the forest floor.<sup>102</sup> This leads to accumulations of light, flashy fuels which easily allow fires to spread and elevate to tree level.<sup>103</sup> The Sierra Club also asserts thinned forests allow wind to be funneled through the standing timber which then acts like a fan to further spread flames.<sup>104</sup> This is not to say the Sierra Club does not recognize any threat from fire. Rather, the Sierra Club maintains it would be sufficient for residents to thin 200 feet around the perimeter of their homes.<sup>105</sup>

The Forest Service does not have absolute authority in the implementation of any forest use activity.<sup>106</sup> Any Forest Service timber harvest plan must operate in accord with The National Forest Management Act.<sup>107</sup> This legislation recognized a need for Federal supervision with regard to the nations natural resources; “the public interest is served by the Forest Service, Department of Agriculture, in cooperation with other agencies, assessing the Nation’s renewable resources, and developing and preparing a national renewable program, which is periodically reviewed and updated.”<sup>108</sup> This legislation sets the requirements and goals for such management plans.<sup>109</sup> Essentially, the Act calls for the Forest Service to implement procedures consistent with their scholarship; “pro-

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<sup>96</sup> *BAMBI*, (Walt Disney Co. 1942.)

<sup>97</sup> *RED SKIES OVER MONTANA*, (20th Century Fox, 1952.)

<sup>98</sup> *FIRE WARS*, *supra* note 90.

<sup>99</sup> E-mail from Dave Smith, *supra* note 93.

<sup>100</sup> *Id.*

<sup>101</sup> Telephone Interview: Carol Cloer, *supra* note 43.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> E-mail from Dave Smith, *supra* note 93.

<sup>107</sup> 16 USCS § 1600 (LexisNexis 2006).

<sup>108</sup> *Id.*

<sup>109</sup> 16 USCS § 1604 (LexisNexis 2006).

vide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 USCS 528], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness."<sup>110</sup>

Through its management plans, it is apparent the Forest Service strives to balance these often contradicting interests. Since the mechanisms by which this balance is attempted often lead to conflicts, it is necessary to discuss the myriad of policies, legislative acts, and agency restrictions that must be considered before any timber harvest is ultimately approved.

Administrative decisions for each National Forest begin with the Forest Management Plan. For example, the Sierra National Forest operates under a management plan that allows for timber harvests and prescribed fire to curtail wildfire in traditionally fire prone areas.<sup>111</sup> After a fire sensitive location is selected, it must meet National Environmental Procedures Act ("NEPA") and Environmental Impact Studies ("EIS") requirements.<sup>112</sup> Once these studies are complete, the remainder of logistical procedures reside with the individual forests management staff.<sup>113</sup> Then, with plans drafted and approved by the appropriate officials, contracts are drawn up and offered to franchises registered with the Forest Service.<sup>114</sup>

In 1970, President Nixon signed into service the Natural Environmental Procedures Act.<sup>115</sup> Its purpose was to ensure measures were taken to consider any environmental impact that a proposed operation might have.<sup>116</sup> "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; promote efforts which will prevent or eliminate damage to the environment . . . and to enrich the understanding of the ecological systems and natural resources important to the nation."<sup>117</sup> Logging enterprises are not its only target.<sup>118</sup> Indeed, the Forest Service uses a variety of means to implement forest health strategies and goals.<sup>119</sup> Whether it is spraying herbicide,

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<sup>110</sup> *Id.*

<sup>111</sup> E-mail from Dave Smith, *supra* note 93.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Forest and Rangeland Renewable Resources Planning. 16 USCS § 1611. (Aug. 17, 1974).

<sup>115</sup> National Environmental Policy Act, 42 USCS § 4321. (Jan. 1, 1970.)

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Interview with Dave Smith, Sivilculturist, Sierra National Forest, Bass Lake Ranger District North Fork, Ca. July 2006.

prescribed fire, or mechanical thinning, NEPA reports must be filed.<sup>120</sup> Essentially, the NEPA report offers a procedural framework of environmental regulations which are modified to the specific activity requested by the Forest Service.<sup>121</sup> The “hard look” that is referred to in *Sierra Club* has been defined in the past to be a consideration “of all foreseeable direct and indirect impacts.”<sup>122</sup> While “foreseeing the unforeseeable” is not required, an agency must use its best efforts to contemplate all reasonable consequences:

It must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects are fully known. Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as “crystal ball inquiry.”<sup>123</sup>

The final NEPA requirement is the EIS.<sup>124</sup> The agency preparing the location for timber harvest can conclude that an EIS is not necessary.<sup>125</sup> This would be the result of a Finding Of No Significant Impact (“FONSI.”)<sup>126</sup> There has to be substantial evidence supporting a FONSI. In fact, a United States District Court held the “The Forest Service violated NEPA by failing to prepare a full EIS despite substantial questions regarding whether the project will significantly affect the environment.”<sup>127</sup>

In *Sierra Club*<sup>128</sup> and *California*,<sup>129</sup> the need for a comprehensible and concise management plan, consistent with established legislation, is crucial when proposing a combination of logging and ecological preservation.<sup>130</sup> Logging does have a place within our nation’s forest lands.<sup>131</sup> Multiple agencies and organizations involved with forest management

<sup>120</sup> *Id.*

<sup>121</sup> *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208,1212.

<sup>122</sup> *Marsh, Secretary of the Army, et al. v. Oregon Natural Resources Council et al.*, 1989 U.S. LEXIS 2150; 490 U.S. 360; 104 L.ED. 377, 392.

<sup>123</sup> *Scientists' Institute for Public Information v. A.E.C.*, D.C. Cir., 1973, 156 U.S. App. D.C. 395, 481 F.2d 1079, 1092

<sup>124</sup> 42 USCS § 4321(LexisNexis 2006.)

<sup>125</sup> *Clinch Coalition v. Damon*, 316 F Supp 2d 364, 374 (2004, WD Va).

<sup>126</sup> *Id.* at 371.

<sup>127</sup> *Klamath-Siskiyou Wildlands Center, Environmental Protection And Information Center, and Klamath, Forest Alliance, Plaintiffs, v. United States Forest Service*, defendant, 373 F.Supp. 2d 1069, 1094.

<sup>128</sup> *Sierra Club v. Bosworth*, *supra* note 10, at 1.

<sup>129</sup> *California v. United States Forest Service*, *supra* note 83, at 1.

<sup>130</sup> *Id.* at 12.

<sup>131</sup> E-mail from Brian Rueger, Forester, Tule Indian Reservation to Matt Schmidt, (Oct. 24, 2006.)

admit that timber harvests can have a similar effect as a naturally occurring fire.<sup>132</sup> Such a plan also decreases the need for prescribed fires, which contribute to pollution and pose the threat of escape.<sup>133</sup> The Sierra Club wishes to compel the Forest Service to adhere to the established legislation and procedures.<sup>134</sup> “If I had to put our [Sierra Club or Tule River Conservancy] or my stance in a single sentence it would be that I support the management of these lands in accordance with the laws that govern them and in accordance with the latest scientific information based on valid studies and experience.”<sup>135</sup>

#### V. VIABLE ALTERNATIVES FOR FUTURE GIANT SEQUOIA TIMBER HARVEST ADMINISTRATION

Since October 2006, the Sequoia National Monument does not have an operational management plan.<sup>136</sup> With miles of roads, tribal land trusts, non-contiguous perimeters, and valuable natural resources, this remains a tumultuous situation. It is possible that guidance for a renewed forest policy may be found from a variety of otherwise uninvolved parties. Perhaps simply clarity is all that is necessary. This was the assertion from the 2005 lawsuit by the California Attorney General: “Under the guise of preserving ‘flexibility’ for land managers, the [Forest] Service’s ‘plan’ contains standards so nebulous and confusing that it fails to qualify as a discernable ‘management plan’ at all.”<sup>137</sup> Devising a management plan which would strive for clarity rather than ambiguity should be a substantial component of monument administration. In effect, it allows others to anticipate policy and alter behavior to meet those consistent administrative actions.

There are groves of Giant Sequoias throughout the southern Sierra Nevada.<sup>138</sup> Some are managed through Federal agencies such as the National Park Service and the Forest Service, while others fall under private and tribal authority.<sup>139</sup> These entities provide examples of a variety of management policies to accomplish essentially the same thing.

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> E-mail from Carla Cloer, *supra* note 59.

<sup>135</sup> *Id.*

<sup>136</sup> Telephone Interview with Carol Cloer, *supra* note 43.

<sup>137</sup> California, *supra* note 83, at 2.

<sup>138</sup> Redwoods, *supra* note 13, at 17.

<sup>139</sup> Telephone Interview with Carol Cloer, *supra* note 43.

The National Park Service is vested with the conservation of our national natural resources.<sup>140</sup> It is feasible that the Park Service, through the Sequoia National Park, could either assist in the administration of the Giant Sequoia National Monument, or alternatively, at least provide an appropriate model of sequoia management. Essentially, tree removal would continue if the tree was considered hazardous and all other options had been exhausted.<sup>141</sup> The Park Service places preservation at the pinnacle of their mission. "Natural and cultural resources and associated values are protected, restored, maintained in good condition and managed within their broader ecosystem and cultural context."<sup>142</sup> Further, to specifically effectuate giant sequoia health: "The giant sequoia groves – particularly Giant Forest – and the ecosystems they occupy are restored, maintained and preserved."<sup>143</sup> This does not mean timber removal does not and will not exist within these parameters. It is only after all other options have been exhausted that consideration will be given to a timber sale. This closely parallels the intention behind the Giant Sequoia National Monument. The Sequoia Proclamation in fact asserts the monument lands are set apart "for the purpose of protecting the objects identified in the above preceding paragraphs, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described. . . ."<sup>144</sup> These are viable options because both locations attempt to accomplish the same goal: preservation.

Commercial timber harvests are also allowed in the Giant Sequoia groves of the Tule Indian Reservation.<sup>145</sup> "We try to mix commercial timber harvests and prescribed fire to achieve a number of forest management objectives, including wildfire hazard reduction, insect and disease control, forest health and protection, and giant sequoia management."<sup>146</sup> The Tule Reservation also follows NEPA guidelines for these harvests.<sup>147</sup> So it is possible that through existing legislation, surgical timber removal can compliment forest stewardship goals.<sup>148</sup> Perhaps in the development of a carefully researched management plan, and main-

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<sup>140</sup> National Parks, Military Parks, Monuments, and Seashores. 16 USCS 1, (LexisNexis 2006).

<sup>141</sup> Telephone Interview with Carol Cloer, *supra*, note 43.

<sup>142</sup> Natural and Cultural Resource Plan. Kings Canyon and Sequoia National Parks, at 17, (Dec. 1999).

<sup>143</sup> *Id.*

<sup>144</sup> Proclamation No. 7295, 65 Fed.Reg. 24095 (Apr. 15, 2000).

<sup>145</sup> E-mail from Brian Rueger, *supra* note 131.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

taining strict adherence to those established parameters, Giant Sequoias and logging could exist in accord with each other.

Without a current management plan, the opportunity exists to establish a consistent policy that may follow similar situations. Introducing the preceding options is not a suggestion that authority be transferred to another administrative agency. If adequately implemented, those options, if anything, provide satisfactory examples of future giant sequoia management.

## VI. CONCLUSION

Our nation's forest land can benefit many through art, recreation, and commerce. It is not necessary to halt all human activity in these forests to ensure they remain healthy and vibrant. There must be a balance. However, it is unreasonable to manage all forests with a uniform policy. Forest lands that surround urban centers demand thinning, while groves of biologically unique species should be protected for generations to appreciate and study. *We* are the stewards of our national resources. Human activity can have a drastic impact upon the very soil that we have a duty as stewards to preserve. Progress, necessity, even appreciation, will have at least some impact. That was the purpose behind the creation of Giant Sequoia National Monument; where a sacred location was set aside to be a vestige of our stewardship to our natural resources.

Our trust is vested in forest management agencies to appropriately administer this monument to the best of their ability. Following guidelines and consistently adhering to established policy is critical to avoid future confusion and litigation. The opportunity now exists to implement a Giant Sequoia management plan that contemplates similar situations, applies learned strategies, and adequately maintains our nation's forest goals. Essentially, if this monument is protected, it must remain protected. Otherwise, preservation is simply in name only and not the symbol of stewardship we should strive to uphold.

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