

FROM: Interior, Environment, and Related Agencies Appropriations for 2007, Hearings Before A Subcommittee of the Committee on Appropriations, House of Representatives, One Hundred Ninth Congress, Second Session, Subcommittee on Interior Environment, and Related Agencies, Part 6, U.S. GPO, Washington : 2006. (Questions and Answers submitted in writing after the hearing.)

**QUESTIONS: REPRESENTATIVE MAURICE HINCHEY
ANSWERS: FOREST SERVICE CHIEF DALE BOSWORTH**

**NOTES AND COMMENTS ADDED BY
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Question 1. During the hearing before the Interior Subcommittee on March 9, we briefly discussed the fuel hazard reduction sale that was advertised on November 17, 2004 and which took place in the spring of 2005 in the Giant Sequoia National Monument, specifically in the Long Meadow Grove, along the Trail of a Hundred Giants.

I asked at the time for you to provide for the record all of the details of that sale. I also asked whether or not an EIS was performed. You assured me that in fact, an EIS or an EA was conducted and said you would get that to me. I would appreciate very much, in addition to your providing that EIS or EA for the record, if you would submit the actual documents to my office and to the committee as quickly as possible.

Answer: Attached is the Decision Notice dated August 20, 2004 for this project.

Comment [UU1]: The Decision Notice is not an EIS or an EA. Since no EIS or EA was provided can we assume that there was no EIS or EA produced that analyzed science-based alternatives? This project was Categorically Excluded from documentation in an EIS or EA.

[NOTE: The document attached is not a Decision Notice; a Decision Notice is a specific document defined by NEPA as one that is pursuant to an Environmental Assessment (EA). There were no NEPA documents on this project and no EA. The document attached was an internal Memo to file that merely stated what the acting District Ranger had decided to do. He decided to categorically exempt the project from NEPA analysis.

Certain projects, such as those to remedy an immediate threat to public safety or certain repairs or routine maintenance, are exempted from NEPA requirements by Forest Service policy and certain clauses in NEPA. Sequoia Forest determined that this project was exempt from any NEPA documentation because they said it fell into this category. Please note that, unlike hazard tree removal, fuel treatment projects do NOT fall into this category.

Regardless, Forest Service had an obligation to follow their own Hazard Tree Removal Guidelines in determining that the trees they proposed for removal were indeed hazard trees. The Hazard Tree Policy requires documentation of the size, species, risk of failure rating, potential to hit a target, and a rating of the target (i.e. is the exposure high, moderate or intermittent such as on a trail in a remote area). They did not do this. They also had an obligation to follow the Giant Sequoia National Monument Plan which requires that a 'no tree removal' alternative be studied and documented prior to determining that tree removal was the only feasible option. They did not follow their own Monument Plan.

Additionally, the Forest Service had an obligation to plan any project in this Trail, a high profile showcase for their Giant Sequoias, with sensitivity and include input from the Forest landscape architect and the public. This input was not solicited nor considered. The Forest Service closed the Trail area to the public for a year; careful planning and documentation could and should have taken place.

Lastly, the protective measures of the 1990 Mediated Settlement Agreement (MSA) should have been honored; the MSA set forth required inventories and scientific studies that were to precede any significant entry into a sequoia grove. The Forest Service has recently taken the position that the Proclamation 'set aside' or 'superseded' the MSA, however they have not provided any legal arguments to back up this position. Regardless, the studies required by the MSA are simply good planning and good land stewardship.]

Question 2. Was the cutting originally a hazard reduction cut?

Answer: Yes. The Purpose and Need identified in the Project Initiation Letter states "The purpose and need for this project is to remove trees considered hazardous or potentially hazardous along the Trail of 100 Giants. The Sequoia National Forest has responsibility and direction to minimize hazards and maintain reasonably safe conditions normally anticipated along public trails. In addition, there is a need to reduce surface fuels within the trail system."

Comment [UU2]: The public received no written scoping for the project. The public was told that there would be no written documents for this project when the public discovered this project was being initiated.

[NOTE: Mr. Bosworth has switched from discussing the Decision Memo to the Project Initiation memo. A Project Initiation memo is merely the first memo to a file that indicates what a particular manager sees as a need. It might mention many things and could lead to one project or many, to an EA or to a full scale EIS. In this case, the Initiation Memo led to a categorical exemption from any NEPA documentation.

An on-the-ground inspection discloses that at least 2 different types of projects involving tree removal took place in the area of the Trail of 100 Giants. One of these was supposed to be a hazard tree removal project. Another project that was carried out, based on an on-site inspection, was a fuels reduction project that removed hundreds, perhaps thousands of small trees from 2-12" in diameter --almost every small tree or brush in the entire area --none of which posed any hazard threat to the visiting public.

"Reducing surface fuels" does not fall under the same category as "removal of hazard trees." The former is to remove an imminent threat to public safety and the latter is an ecological restoration project that must be pursuant to careful scientific planning and compliance with Monument Management Plan. Simply mentioning in a memo that fuels should be removed is not a legal basis for removal of non hazard trees, —some of which may have been so-called 'ladder' trees-- and hundreds more small trees.]

Comment [UU3]: The public was informed that this was a hazard tree project not a fuels reduction project. A fuels reduction project requires a Forest-wide Fire and Fuels Management Plan that has been through the NEPA public review process and a grove specific inventory and EIS on how fuels would be implemented in each grove prior to implementing any fuels treatment in a grove per the Mediated Settlement Agreement which is an amendment of the Sequoia NF LRMP.

Question 3. Did Forest Service cut more than the original 138 trees?

Answer: Yes. The initial map of hazards only identified dead hazard trees. Following a review of the area by a forest pathologist and an entomologist in May 2004, and after the Sequoia National Forest Hazard Tree Procedures for Forest Plan Compliance were approved in August 2004, additional live hazard trees were identified and cut.

Comment [UU4]: The public was not provided with any written documents on the project until July 2005 after the project was completed.

[NOTE: The record shows no documentation on these additional trees consistent with the Forest's Hazard Tree Policy disclosing how those trees posed a hazard. A forest pathologist can determine diseases in trees; an entomologist can examine a forest or a tree for insect infestations: neither examination resulted in any data regarding the likelihood of failure (falling down) or hitting a target (person on a trail) of the specific trees that were removed; that was not their task and that was not evidenced in their reports.]

Comment [UU5]: The public was never informed about these additional live trees until after the project was completed.

Question 4. How many trees were cut? How many were sugar pines? How many were "commercial grade"? How old were the oldest pines cut?

Answer: In 2004, 138 dead trees and 76 live trees were cut. Six live trees were monitored for future concern. In 2005, an additional 10 trees were cut following damage from a wind storm. The species of each dead tree was not identified. Of the 76 live hazard trees, 16 were sugar pine. Of the trees removed from the Trail of 100 Giants, some of the largest pieces were removed with a helicopter. The trees removed with a helicopter contained 118 thousand board feet of timber volume. We did not determine the age of the trees cut, but the oldest trees were 200 years and older.

[NOTE: In a National Monument that requires protection of its unique objects, trees 200 years and older are of high value. According to "*Hazard Tree Procedures for Forest Plan Compliance, Sequoia National Forest and Giant Sequoia National Monument,*" a document mentioned by Mr. Bosworth as being followed, all hazard trees are supposed to be identified by species, diameter, height, fault (why the tree might fail) a rating of failure risk, the target and its value (is it a person, a structure, is the target's exposure high or low) and possible options for reducing the risk besides merely cutting down the tree.

Such options could include moving the target (for example, relocating a section of the trail or moving a bench) topping or limbing the tree, otherwise stabilizing the tree.) Then trees are prioritized for treatment. These guidelines were not followed by the Forest Service in their logging operation of these trees.

Further, while not documented, it is believed that the trees damaged in the windstorm were already down and thus could pose no falling hazard to any persons or objects.]

Question 5. What percentage of trees that were removed from the Giant Sequoia NM were hazard trees?

Answer: 100 percent. Note: A few small trees were damaged as a result of felling the hazard trees and were also removed. These small, damaged trees were not initially identified as hazards, but became hazardous and therefore were removed.

[NOTE: As Mr. Bosworth notes, they don't know much about these trees so his assurance that 100% of the logged trees were hazard trees is unsubstantiated.]

Question 6. How many people have been killed by trees falling in the Giant Sequoia National Monument?

Answer: In 1993, a tree fell on a private cabin located on private land within the monument, but before it was proclaimed a monument, killing the occupant. Otherwise, fortunately, no one has been killed by a falling tree in the monument. However, injuries, death and damage to property from falling trees are not uncommon. There has been one fatality on an adjacent national forest. A forest worker was killed by a falling tree in 2002, while sleeping in a tent in the Inyo National Forest. Also, in 2004, a forest worker was seriously injured by a falling tree within the monument.]

Comment [UU6]: Many loggers are injured and killed because of these logging projects done in the name of public safety, which is a reason to curtail them. Another reason to stop most of them is because the threat to the public is minute, and there is usually an alternative to logging, which protects the public, such as moving a bench away from a suspect tree or branch.

Question 7. How does Forest Service determine when a tree constitutes a hazard?

Answer: We follow direction in "Hazard Tree Procedures for Forest Plan Compliance, Sequoia National Forest and Giant Sequoia National Monument." Trees identified as potential hazards at Trail of 100 Giants were evaluated by a certified silviculturist using the criteria and direction contained in these procedures.

[NOTE: These Guidelines were not followed. If they had been followed, Mr. Bosworth would know the species and hazard rating and the reasons for the hazard rating of each and every tree. Also, at least some of the trees would have been left in place after consideration of all the risk factors.]

Question 8. Are the guidelines uniform across the nation or are they Forest specific?

Answer: The guidelines are forest/monument-specific.

Question 9. Given that a hazard is a hazard, why shouldn't they be uniform across the country?

Answer: Given that every national forest has unique combinations of tree species, climate, soil, insects and diseases, and public use patterns, it would not be prudent or possible to have one set of standards applicable to all National Forest System lands.

[NOTE: Actually, the guidelines for identifying hazard trees are remarkably similar for most forests: potential for failure, the lean of the tree, and the value and exposure of the 'target' are evaluated. These factors can easily take into consideration differing tree species and weather conditions. The problem seems to be to get the agency to follow their guidelines.]

Question 10. When the Monument was designated in 2000, President Clinton's Proclamation designating the Giant Sequoia National Monument said the following:

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.

However, I understand that subsequently, you informed the public that the piled up trees from the hazard and fuel reduction treatments would be advertised for sale. Isn't that a direct violation of the presidential proclamation designating the Giant Sequoia National Monument?

Answer: It is not a violation. The Proclamation goes on to say in that same paragraph: "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."

These trees were removed for public safety. The means of removal was sale as opposed to burning, which was infeasible.

[NOTE: First, the Forest Service failed to consider any alternative to tree removal as is required by Sequoia's Hazard Tree guidelines.

Second, if this project were purely for public safety, the Forest would have documented the project as required by its own Hazard Tree Policy. The Monument Plan and the Hazard Tree policy require documentation of any finding that burning to accomplish project goals is not feasible. It is not sufficient for the Forest Service to simply make a bald unsubstantiated statement. Mr. Bosworth admits that this was also a project to remove surface fuels. (Surface fuels are not so called "ladder" fuels: surface fuels are the smaller trees and fuels on the forest floor; so-called "ladder trees" are larger trees growing into the forest canopy. If this was a fuels reduction project for removal of either surface fuels or "ladder fuels", it would fall into the category of 'grove restoration and have full NEPA disclosure.

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.]

Question 11. Isn't it a requirement of the mediated settlement agreement (MSA) amendment to the National Forest Management Plan that every separate grove under consideration for fuels treatment requires an Environmental Impact Statement?

Answer: Within the boundaries of the Giant Sequoia National Monument the Presidential proclamation and its subsequent management plan (GSNMMP) replaced the interim direction of the Mediated Settlement Agreement (MSA) by force of law. Thus the MSA does not apply within the Monument. The MSA was originally interim direction pending amendment of the Sequoia's Land and Resource Management Plan (LRMP); it was not itself a plan amendment. The GSNMMP amends the LRMP in accordance with the Proclamation, not the MSA.

[NOTE: In the 8/22/2006 court ruling of People of the State of California, ex rel. BILL LOCKYER, Plaintiff, v. UNITED STATES FOREST SERVICE, etc al., Defendants, Judge Charles R. Breyer, United States District Judge ruled that the MSA does apply within the Monument, and that "the Forest Service failed to comply with NEPA". The judge pointed out that the Forest Service acknowledged in 2002 that the MSA applied to the Monument in a letter of March 8, 2002, after the Monument was established. For the Forest Service to assert in these answers, written in 2006, that the MSA does not apply was not only legally wrong, but knowingly telling falsehoods to Congress.

The Forest Service restated this falsehood to Congress after the February 13, 2007 hearing, that the MSA does not apply to the Monument in written answers, in response to written questions from members of the House Interior Appropriations Committee "The Record of Decision (ROD) for the GSNMMP recognized that the Presidential Proclamation supersedes the MSA provisions by force of law (GSNMMP ROD, p. 4)." (Quote from INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR 2008 HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS FIRST SESSION SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES PART 6, Page 520.) This statement was made AFTER Judge Breyer's ruling of 8//22/2006 quoted above that the MSA does apply to the Monument. The Forest Service never appealed Judge Breyer's ruling, therefore, his ruling has the force of law, and the Forest Service written testimony to Congress just quoted was another falsehood.

Comment [UU7]: It is a violation. The project was illegally "segmented" by the Forest Service in order to evade the Proclamation's restrictions on timber production. Had the Forest Service followed the law and first analyzed the ENTIRE project and all of its impacts in an EIS, they would not have able to cut most or any of the trees, and therefore would not have been able to sell them.

Comment [UU8]: The Forest Service created a safety hazard by piling up after cutting those trees which were not ladder fuels to begin with. The FS caused the safety problem and then sold the logs to solve the safety problem they created.

Comment [UU9]: Forest Service testimony in 2006 (and 2007 see NOTE in pink

Question 12. Was there a ruling from the 9th Circuit court on July 11, 2005?

Answer: No, but there was a decision in litigation pending in the District Court for the Northern District of California. The Judge issued an order on July 11, 2005, concerning alleged violations relating to the Fire Management Plan for the Sequoia National Forest. Please see the attached decision.

Comment [CR10]: This is not correct. The plan in place was ruled illegal on July 11, 2005.

Question 13. Did it state that the "fire plan in its current iteration is not in compliance with NEPA"?

Comment [UU11]: Yes.

Answer: Please see the attached decision for the findings of the Court.

Question 14. Did the Forest Service even have a legal fire and fuels management plan for this grove or the forest?

Answer: The Sequoia National Forest has had a Fire Plan since 2004 which will remain in effect forest-wide until replaced. The Fire Plan is currently being challenged in court in the case referenced in question #13. For further information concerning this ongoing litigation, please contact the Department of Justice.

Comment [UU12]: The plan in place was ruled illegal on July 11, 2005.

Question 15. If not, how could the public possibly comment on Forest Service's fuels management plan, as clearly required by Sequoia's Forest Management Plan?

Answer: The public had an opportunity to comment on fuels treatment issues in the LRMP for the Sequoia National Forest, the Sierra Nevada Forest Plan Amendment, and the GSNMMP.

[NOTE: Mr. Bosworth seems unaware of the facts:

The Land and Resource Management Plan (LRMP) for Sequoia National Forest was approved in 1988 and included only a few obsolete provisions for fire management: the LRMP did not include guidelines for Fire and Fuels Management because it deliberately omitted them, mandating that in the near future a Fire and Fuels Management Plan was to be written as an amendment. This document was never written.

The Sierra Nevada Framework (which Mr. Bosworth calls the Sierra Nevada Forest Plan) is a broad Regional level guideline that is not intended to be applied unmodified at the Forest/site specific level; it is general in nature and must be adjusted for local forest conditions; further, the Framework was written for application on lands where logging is the norm, where there is no stricture on tree removal, where there are no unique objectives for management prescribed by a Presidential Proclamation in a National Monument- and the Monument, not the Forest Service usual policy, is the 'dominant reservation.'

During planning of the Giant Sequoia National Monument Management Plan (GSNMMP) the public was not allowed to comment on fire and fuel issues. When the public attempted to comment on these issues, they were cut off by the Forest Service and told that the 2004 Fire Plan determined those policies. (See public Response to Public Comments, Appendix, GSNMMP) The public did not have an opportunity to comment on the 2004 Fire Management Plan because it was published with no notice, no scoping, and no NEPA analysis or public participation. The California State Attorney General filed a lawsuit against this Fire Plan. A Federal Judge recently found that the 2004 Fire Plan was not in compliance with NEPA. In response, the Forest Service has issued a new 2006 Fire Plan. It too is an in-house document, prepared with no public input whatsoever. We anticipate that the California Attorney General will be taking this new version of the Fire Plan back to the judge.

The bottom line: the public has had no opportunity to comment on Sequoia Forest and Sequoia Monument's Fire and Fuel Management policies.]

See #14 above.

Question 16. Finally, Chief Bosworth, what assurances can you give this committee that this practice is not happening in other sequoia groves on the western slopes of the Sierra Nevada?

Answer: All giant sequoia groves are managed according to their respective Forest Plans.

Question 17. Why is the Forest Service asking for more money to continuing building new logging roads when the agency cannot properly manage the existing road system?

Answer: The Forest Service's primary mission is to manage National Forests in order to move them towards the desired future conditions identified in Forest Plans.

The increase in road improvement is a shift of funds from maintenance to improvement for engineering support costs of timber sales, stewardship contracts, and hazardous fuels reduction projects. Some projects that are necessary to do this cannot be completed without constructing new roads to provide access to project areas.

Concerns about ability to maintain proposed roads should be addressed in project specific NEPA. It is common practice to design roads to be (re)stored (Forest Service maintenance level 1) after the management activity is complete at project expense thus averting the need for ongoing expenditures of appropriated road maintenance funds. When roads cannot be (re)stored, the most common form of mitigation is to construct low maintenance roads using out slope and dip design standards as opposed to maintenance intensive ditch and culvert designs which have resource consequences when not properly maintained.

Question 18. Under this budget, the backlog of road maintenance will grow larger, not smaller. How does the agency plan to address this problem?

Answer: The FY 2007 President's Budget directs agency resources toward meeting long term strategic goals and maintaining critical National Forest System infrastructure. The Forest Service uses a six step, broad scale travel analysis process to identify the minimum road system required. Maintenance plans are guided by the results of travel analyses, and direct limited funds to the highest priority roads.

Annual road maintenance plans are made for each national forest so that available funding can be optimized to best meet the objectives of the travel analyses. When practicable, less used roads are closed so that funding can be directed to higher priority roads. The level of road closures has increased over time thereby saving annual maintenance costs. Operational road standards of the national forest road system have decreased over time. Roads that can be safely operated at a lower standard are often allowed to deteriorate to a lower standard, thereby saving both short term and long term maintenance costs. One example of lowering road standards to save short and long term maintenance costs is to allow a low standard passenger car road to convert over time to a road passable only by high clearance vehicles.

Question 19. Some members of Congress are claiming there is a "reforestation crisis" in the National Forests in order to justify legislation that would expedite logging and replanting after fires. If this is true, then why is the Forest Service diverting money from the Knutson-Vandenberg reforestation trust fund (KV fund) that is currently used to pay for reforestation? Please explain exactly how much of the KV fund is diverted for uses other than what was intended in the law authorizing them.

Answer: The Forest Service does not feel that there is a "reforestation crisis" but is concerned about the increase in reforestation needs over the past several years caused by natural catastrophic events such as wildfires and insect and disease epidemics. Also adding to the reforestation needs are reforestation failures and acquisition of cutover lands. Between the start of fiscal year 2005 and 2006, reforestation needs increased by about 7 percent, primarily due to the above reasons. While sufficient K-V funds are collected to perform necessary reforestation work on timber sale areas, we rely primarily on appropriated funds to reforest areas impacted by natural disturbances. The expanded use of K-V authority in the FY 2006 Interior & Related Agencies Appropriations Act allows the agency to work outside of timber sale areas to perform much needed resource improvement work, including reforestation.

The agency does not believe that K-V funds are being diverted from reforestation to other uses. The agency is taking full advantage of the provisions of the K-V Act, as amended by the 1976 National Forest Management Act,

Comment [AM13]: This is another falsehood. The Forest Service illegally entered the Freeman Creek Giant Sequoia grove in the GSNM, in June and July 2006, bulldozed a road through the grove, and cut down several dozen trees without the grove-specific EIS required by the Mediated Settlement Agreement amendment to the Sequoia LRMP.

Comment [AM14]: The Presidential Proclamation of April 15, 2000, which created the Giant Sequoia National Monument was intended to end construction of virtually all new roads.

"No new roads or trails will be authorized within the monument except to further the purposes of the monument."

The primary purpose of the Monument is protection, not logging and construction of new roads. Yet the Forest Service has just constructed 17 miles of new roads in previously unroaded, natural areas, for the apparent purpose of removing more timber for the local mill.

Comment [UU15]: Many of the recent wildfires, insect outbreaks, and disease epidemics are not natural catastrophic events; they are caused or exacerbated by over a century of fire suppression and logging by the Forest Service.

Comment [UU16]: Why does the Forest Service continue to log lands in the Monument that are incapable and unsuitable for plantations, in the same areas where plantation failures have previously occurred?

Comment [UU17]: Why is logging required prior to replanting especially when tree seedlings are already growing in burned forest areas?

that allow us to perform a wide variety of much needed resource improvement work. While the primary purpose of the K-V Act is to facilitate reforestation of harvested areas, this is not the exclusive purpose of the Act. The K-V Act also allows the Forest Service to perform other, much needed, resource improvement work such as reforestation of areas impacted by natural disturbances, treating hazardous fuels, eliminating noxious weeds, improving wildlife and fish habitat, maintaining and improving watershed conditions, protecting communities, addressing some of our road maintenance backlog needs, and performing timber stand improvement work such as thinning and pruning. Our line officers have to make difficult decisions regarding how to best meet local resource improvement needs with the limited K-V and appropriated funding that is available.

The following table shows the combined FY 2006 K-V funded activities within sale areas and with the expanded authorities:

Activity	FY 2006 K-V Allocation
Reforestation	\$51,081,321
Hazardous fuels reduction	\$16,000,000
Noxious weed control	\$10,542,237
Road maintenance	\$8,000,000
Timber stand improvement	\$19,996,444
Maintenance and improvement of wildlife and fish habitat	\$17,358,418
Maintain and improve watershed condition	\$4,251,571
Other activities (insects & disease, range, recreation, visuals, watershed restoration)	\$47,148,970
Total	\$174,378,961

Question 20. You have identified conversion of private forestlands as one of the top challenges facing our nation's forests. The recent USFS report, *Forests on the edge*, projected that over 40 million acres of private forestlands could experience significant development by 2030, negatively impacting water and other ecological resources. Can you comment on the Administration's proposed cuts to forest conservation programs such as the Land & Water Conservation Fund in this context? Shouldn't funding levels to these programs be increased in response to the development pressures and challenges the USFS has identified?

Answer: The FY 2007 President's budget for the Forest Legacy Program, which is funded through the Land and Water Conservation Fund, is \$61,515,000, \$4,979,000 above the FY 2006 enacted. An increase in funding for the FLP reflects the importance placed on protecting private forests. Many other programs in the Departments of Agriculture and Interior help to conserve working forests, farms, and ranches. Due to the immensity of the issue and the fact that it centers on private (non-Federal) land, the issue of Loss of Open Space must be, and is being, addressed by a broad spectrum of non-federal players, including State and local governments, land trusts, and other private entities. The *Forests on the Edge* project is intended as a tool to assist all concerned in making strategic decisions about where to focus our limited resources.