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Background Materials on the Giant Sequoia National Monument

THE ANTIQUITIES ACT

Section 2 of the Antiquities Act, 16 U.S.C.431, authorizes the President of the United States to establish as national monuments "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States..." The Act further states that boundaries shall be "... confined to the smallest area compatible with the proper care and management of the objects to be protected."

Objects of Historic or Scientific Interest

The Giant Sequoia National Monument is located within the Sequoia National Forest in south-central California. The map appended to the Proclamation sets out the boundaries of the land reserved for the monument. The outer boundaries of the area encompass 355,000 acres of federal land managed by the United States Department of Agriculture Forest Service "Forest Service". The draft Proclamation describes objects in the area that warrant protection as a national monument.

The proposed monument is located in two parcels bisected by Sequoia National Park. The northern parcel is in Fresno and Tulare Counties. The northern boundary is the Kings River Wild and Scenic River. The southern parcel is entirely in Tulare County. The uppermost boundary of the southern parcel is formed by Sequoia National Park. The eastern boundary is the North Fork Kern Wild and Scenic River. Establishment of the

Giant Sequoia National Monument brings permanent protection and recognition to nearly all the remaining federally owned giant sequoia groves south of the Kings River.

The rich and varied landscape of the Giant Sequoia National Monument holds a diverse array of scientific and historic resources. Magnificent groves of towering giant sequoias, the world's largest trees, are nested within a great belt of coniferous forest, jeweled with mountain meadows. Bold granitic domes, spires, and plunging gorges texture the landscape. Elevation climbs from around 2,500 to 9,700 feet over a distance of only a few miles, capturing an extraordinary array of habitats within a relatively small area. The spectrum of ecosystems is home to a diverse array of plants and animals, many endemic to the southern Sierra Nevada. The monument embraces limestone caverns and paleontological resources, documenting tens of thousands of years of ecosystem change. The monument is also peppered with archaeological sites recording Native American occupation and adaptations to this complex landscape, and historic remnants of early Euroamerican settlement as well as the early commercial exploitation of the giant sequoias. The monument provides exemplary opportunities for biologists, geologists, paleontologists, archaeologists and historians.

Ancestral forms of giant sequoias were a part of the western North American landscape for millions of years. Today's giant sequoias are among the world's longest lived trees with a confirmed maximum age of at least 3266 years or more. Besides being of interest in its own right, the great longevity of giant sequoias means that they hold within their tree rings multi-millennial records of past environmental changes, such as changing climate, fire regimes, and consequent forest response. Only one other North American

tree species, the high elevation bristlecone pine of the desert mountain ranges east of the Sierra Nevada, holds such lengthy and detailed chronologies past changes and events.

Sequoias and their surrounding ecosystems can provide a context for understanding ongoing environmental changes. For example, a century of fire suppression has led to an unprecedented failure in sequoia reproduction in otherwise undisturbed groves; their present highly disjunct distribution is due in part to generally higher summertime temperatures and prolonged summer droughts in California from about 10,000 to 4,500 years ago. During this period, sequoias were much rarer than they are today. Only following a slight cooling and shortening of summer droughts about 4,500 years ago has sequoia been able to spread out and create today's groves, over a period of only two or three sequoia life spans.

Sequoia forests and the surrounding forest have great value associated with understanding the consequences of different approaches to forest restoration. These forests are in need of restoration to counteract the effects of a century of fire suppression and logging. Fire suppression has caused forests to become denser in many areas, with increased dominance of shade-tolerant species. Dead material has accumulated, causing an unprecedented buildup of surface fuels. One of the most immediate consequences of these changes is an increased hazard of wildfires of a severity that was rarely encountered in pre-Euroamerican times. Outstanding opportunities exist for determining the consequences of different approaches to mitigating these conditions and restoring natural forest resilience.

The great elevational range of the monument embraces a number of climatic zones, providing habitats for an extraordinary diversity of plant species and communities. The monument is rich in rare plants and is home to more than 200 plant species endemic to the southern Sierra Nevada, arrayed in plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest. Numerous meadows and streams provide an interconnected web of habitats for moisture loving species.

This spectrum of interconnected vegetation types provide important habitat for wildlife, ranging from large mammals and birds to less visible and less familiar forms of life such as fungi, bacteria and insects. For example, the mid-elevation forests are dominated by massive conifers arrayed in a complex landscape mosaic, providing one of the last refugia for the Pacific Fisher in California. The forests of the monument are also home to great gray owl, American marten, northern goshawk, peregrine falcon, spotted owl, and a number of rare amphibians. The giant sequoias themselves are the only known trees large enough to have provided nesting cavities for the California Condors, which must otherwise nest on cliff faces. In fact, the last breeding pair of condors in the wild was discovered nesting in a giant sequoia that is part of the new monument. The monument's giant sequoia ecosystem remains available for the return and study of condors.

The physiography and geology of the monument have been shaped by millions of years by uplift, erosion, volcanism and glaciation. The monument is dominated by granitic rocks, most noticeable as prominent domes and spires in areas such as Buck Rock and the

Needles. The eastern boundary of the monument is formed by the magnificent Kern Canyon. The canyon follows an ancient fault, forming the only major north-south river drainage in the Sierra Nevada. Remnants of volcanism are expressed as hot springs and soda springs in some drainages.

Particularly in the northern unit of the monument, limestone outcrops, remnants of an ancient sea bed, are noted for their caves. Subfossil vegetation found within ancient woodrat middens in these caves have provided the only direct evidence of where giant sequoias grew during the Pleistocene, and document substantial vegetation changes over the last 50,000 years or more. Other paleontological resources are found in meadow sediments, which hold detailed records of the last ten millennia of changing vegetation, fire regimes, and volcanism in the Sierra Nevada. The multi-millennial, annual and seasonal-resolution records of past fire regimes held in giant sequoia tree-rings are unique worldwide.

During the last 8,000 years Native American peoples and their ancestors in the Sierra Nevada have lived by hunting and fishing, gathering, and trading with other people throughout the region. Archaeological and ethnological studies indicate that Native Americans shaped the landscape and its resources to some extent through the use of fire, weeding, irrigation, and tilling. Archaeological sites including lithic scatters, food-processing sites, rock shelters, a few ethnographically documented village sites and petroglyphs/pictographs are in the monument area. These sites have the potential to shed

light on the role prehistoric people played in shaping the ecosystems on which they depended and vice versa.

The earliest reference to giant sequoias is found in the notes of the Walker Expedition of 1833, which described "trees of the redwood species, incredibly large...." The world became aware of giant sequoia when sections of the massive trees were transported east and displayed as curiosities for eastern audiences. Logging of giant sequoias began in 1856 and has continued intermittently to this day on nonfederal lands. Early entrepreneurs, seeing profit in the gigantic trees, began acquiring lands within the present monument under the Timber and Stone Act in the 1880's. Today our understanding of the history of Hume Lake and Converse Basin areas of the monument is supported by a treasure trove of historical photographs and other documentation. These records provide a unique and unusually clear picture of more than half a century of logging that resulted in the virtual removal of most forest in that area. Outstanding opportunities exist for studying forest resilience to massive disturbance and the consequences of different approaches to forest restoration.

Interest in the protection of Giant Sequoia began as early as 1864, when the federal government deeded the Mariposa Grove to the State of California. By 1890, public reaction to the extensive logging of giant sequoia elsewhere, was a major factor in the establishment of the Sequoia, General Grant and Yosemite National Parks. Shortly thereafter, President Theodore Roosevelt established the Sierra Forest Reserve, which was later divided into the Sequoia and Sierra National Forests. In 1938, the Forest

Service purchased the private lands owned by the Hume-Bennett logging company. This purchase returned several groves to public ownership including Converse Basin, which had been one of the largest pure stands of Giant Sequoia in the world until the landowners logged it in the late 19th century. At about the same time, Congress created the Kings Canyon National Park, which added the Redwood Mountain Grove to the National Park System in 1940.

Consultation with Interested Parties

In his February 14, 2000 letter, the President asked the Secretary was to consult with appropriate federal, state, and local officials and agencies. The Secretary, through the Forest Service, responded to this request by holding several meetings with interested state, federal, local and tribal officials. The Forest Service also held two public meetings in Visalia and Fresno, California, to provide the public an opportunity to express views regarding the creation of a national monument in Sequoia National Forest. Additionally, the Forest Service encouraged written comments at the public meetings, through individual contacts, newspaper articles and through a website designed for the purpose.

Primary concerns regarding the proposed monument centered on access to the forest for recreational and special use permit opportunities, and that creation of a monument may be the first step in an eventual transfer of the area to National Park Service. Concern was also expressed about the need for a scientific basis to determine the proper management for the giant sequoia groves and about the appropriate size for any monument.

Proponents of the proposal pointed out that national monument status would provide

permanent protection to the groves and their ecosystem. Written responses from the USGS-BRD, BLM, NPS, and state agencies indicated that they support management flexibility within the monument area to provide opportunities to explore the ecology of giant sequoias and the variety of management options for restoration, protection, and maintenance of giant sequoias. The draft proclamation responds to these concerns by preventing further commercial logging within the area of the proposed monument, establishing a science advisory board to assist in the development of a management plan, directing that monument status could not form the basis for the denial of renewal of existing special use permits, and providing for continued access into the area.

Current Management

The monument area contains several roads and trails, including state highways and county maintained roads, which provide access to the area. There are also many private property inholdings within the monument area, some containing residential developments. A few of these properties are adjacent to, or within groves. Currently, the federal lands in the area are managed for a large number of values including recreation, forest health, fire and fuels management, livestock grazing, hydropower development, and special uses. Management is limited in Giant Sequoia Groves, which are withdrawn from the timber base and from mineral entry. Congressionally designated areas including Wild and Scenic River corridors, a portion of the Kings River Special Management Area, and Wilderness are managed as required by their enabling legislation. There are also other substantially unroaded areas within the monument that are managed according to requirements of the existing Forest Plan.

Congressionally designated areas within the proposed monument area include Jenny Lakes, Monarch and a small portion of the Golden Trout Wilderness areas, the Kings River Special Management Area and the Kings and Kern Wild and Scenic Rivers. The Forest Service has also established botanical areas known as Baker Point, Slate Mountain, and Freeman Botanical areas. Also within the area of the proposed monument are the Moses Mountain and South Mountaineer (candidate) Research Natural Areas, critical habitat for the Little Kern Golden Trout, the Starvation Grove Condor Nest Area, and several roadless areas including Chico, Moses, Dennison Peak, Agnew, Black Mountain and Lion Ridge. The portions of the Monarch and Golden Trout Wilderness included in the proposed monument area contain watersheds that directly influence Giant Sequoia Groves.

The monument is adjacent to the Tule River Indian Reservation, but does not contain any reservation lands. The reservation has some inholdings within the forest administrative boundary, but these lands are not included within the monument designation. Also, while there are other state or private inholdings within the proposed monument boundary, these lands will not be included within the monument designation.

Currently there are 10 timber sales under contract in the monument area. These contracts will be completed within three years. The contracts represent about 22 million board feet (MBF) at a value of 1.8 million dollars. Also, two timber sales, totally approximately 8 million board feet, are ready to be offered for sale. These two sales received final approval prior to January 1, 2000, and were designed in compliance with the current

forest plan, including the Mediated Settlement Agreement that governs timber harvest in the area of the giant sequoia groves. The sales were also subject to public review and comment required by both the National Environmental Policy Act and the National Forest Management Act. The administrative appeals process for these sales has been completed.

The monument area contains about 24,000 acres of plantations ranging in age from 1 to 50 years old. These plantations are the result of wildfire rehabilitation, timber removal, and replanting of openings created by insect and disease. Other habitat protection and improvement projects include an estimated 5000 acres of prescribed burning per year, watershed, and riparian improvement projects.

There are a number of special use permits for various activities under existing authorities in the monument area. These include, but are not limited to, personal use fuel wood collection totaling nearly 1600 cords annually, other miscellaneous forest products, including cone collection, commercial river rafting, campground concessions, four recreation residence tracts within grove boundaries, outfitter guide pack stations, organization camps, apiary sites, electronic sites, municipal water supplies, and other permitted activities

The monument area contains 32 grazing allotments for 23,000 head months. The majority are annual grass allotments that, in some cases, include grazing on mountain meadows as well.

There is one hydropower development licensed within the monument area. This development is not within the watershed area of the sequoia groves and is currently in the re-licensing process.

Organization camps located within the monument area include Hume Lake Christian Camp, Pyle's Boys Camp, Quaker Meadow Camp, and Camp Keep, among others. The purpose of these camps is primarily educational or religious in nature. Some camps, such as the Hume Lake Christian Camp, are located on privately owned land within the boundaries of the Sequoia National Forest. Others, such as Pyle's Boys Camp, depend on a Forest Service special use permit for continued operation.

There are two lode claims for gold and one claim for rose quartz within the monument area. None of the claims are patented. There are also numerous abandoned claims within the area.

The monument area receives extensive recreational use. The forest, as a whole, experiences around four million visitors per year. Recreation use in the monument area includes 16 developed campgrounds and associated facilities. Four of these campgrounds are within grove boundaries. There are also several trailheads; five are within grove boundaries. There are an estimated 550 miles of recreational trails within the monument boundary that provide both summer and winter activities. Hikers, horsemen, mountain bikes, OHVs, cross-country skiers and snowmobilers use these trails.

Land Area Reserved for the Proper Care and Management of the Objects to be Preserved

The Antiquities Act authorizes the President, as part of his proclamation of a national monument, to reserve land, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." (16 U. S. C. section 431). The area reserved has been carefully delineated, based on a thorough review of available information, to meet the goals of effectively caring for and managing the objects in perpetuity.

Preservation of such objects requires, among other things, protection of enough land surrounding them to restore or maintain the conditions that have made their continued existence possible. The scientific value of many of the objects within the monument requires the reservation of areas large enough to maintain the objects and their interactions. Many plant and animal species rely upon the entire area to maintain viable populations and their role in the ecosystem. Thus proper care and management of the aggregate area is necessary for proper care of the objects. Even if it were possible to disaggregate the area, management of a patchwork of reserved lands would be impractical, as it would make it more difficult to care for the objects, reduce options for proper management, and lead to inconsistent resource management standards for overlapping resources. Such a fragmentation of the monument would undermine the purposes of the monument itself, and create substantial impediments to effective

management of the monument. In short, reservation of a smaller area would undermine proper care and management of the monument.

LEGAL EFFECTS OF THE PROCLAMATION

There are several significant aspects of the draft Proclamation. First, it reserves only the federal lands in the area, because the Antiquities Act applies only to objects of historic or scientific interest "that area situated upon the lands owned or controlled by the Government of the United States." (16 U.S.C. section 431)

Second, the draft Proclamation is subject to valid existing rights. Thus, to the extent a person or entity has valid existing rights in the federal lands or resources within the area, the Proclamation respects their rights. The exercise of such rights could, however, be regulated in order to protect the purposes of the monument.

Third, the Proclamation appropriates and withdraws the federal lands and interest in lands within the boundaries of the monument from entry, location, sale, leasing, or other disposition under the public lands laws, including but not limited to withdrawal from location, entry, and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. This withdrawal prevents the location of new mining claims under the 1872 Mining Law, and prevents the Secretary of the Interior

from exercising discretion under the mineral leasing acts and related laws to lease or sell federal minerals within the boundaries of the monument.

Fourth, no portion of the monument shall be within the timber base or used in a calculation or basis of a sustained yield of timber. Removal of living trees from within the monument may only take place for purposes of ecological restoration and maintenance, or public safety.

Fifth, the draft proclamation, subject to valid existing rights, reserves, as of the date of the proclamation, a quantity of water sufficient to fulfill the purposes for which the monument is established. The priority of such reserved water rights will be the date of the proclamation. Nothing in the reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of the proclamation.

ADMINISTRATION OF THE MONUMENT

The federal lands in the area described in the draft Proclamation are currently under the jurisdiction of the Department of Agriculture United States Forest "Forest Service". The Forest Service manages the land pursuant to its basic organic authorities, the primary one being the Organic Administration Act of 1897 (16 U.S.C. 473-475, 477-482, 551)

The monument area will continue under Forest Service management. Management of the monument will continue to be subject to the Forest Service's existing authorities, but subject to the overriding purpose of protecting the scientific and historic objects described in the Proclamation. The establishment of the monument thus constitutes an overlay on the management regime otherwise applicable to lands managed by the Forest Service; it limits the management discretion that the Forest Service might otherwise have, by eliminating commercial timber harvesting within the area and mandating the protection of the historic and scientific objects within the national monument.

The Proclamation requires the Secretary to appoint a Science Advisory Board in consultation with the National Academy of Sciences. The primary role of this Board will be to provide scientific guidance during the development of the initial management plan by the agency. Board membership will include, but not be limited to, the physical, social and biological sciences. The Secretary is further directed to complete and publish the management plan in three years from the date of the proclamation. The Secretary would retain the discretion to continue the Science Advisory Board after release of the monument management plan to ensure that implementation and monitoring of the monument management plan reflect current scientific understanding.

The designated wilderness areas and congressionally designated special management areas encompassed within the monument will continue to be managed in accordance with statutes and policies that pertain to them.

Impact of Monument Designation on Existing or Planned Activities in the Area

Currently authorized livestock grazing, recreation and non-recreation special uses, recreation activities, hunting and other similar activities:

These uses generally would not be affected except where (1) the Forest Service, under applicable law, identifies areas where such uses are to be restricted or prohibited as necessary to protect the federal lands and resources, including the objects protected by the monument designation; or (2) where the Forest Service finds a clear threat from such a use to the federal lands and resources, including the objects protected by the monument designation and the circumstances call for swift protective action. Such uses will, of course, remain subject to applicable laws and regulations, and will therefore remain subject to regulation and limitation under such provisions for reasons other than establishment of the monument.

Use of Existing rights-of-way:

The area covered by the proclamation contains several roads, including state highways and county roads. Use of existing rights-of-way will generally be subject to the same standards as described in the preceding paragraph regarding currently authorized uses. In some cases existing rights-of-way may be valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights.

Scheduled timber harvest:

Timber sales under contract as of the date of the proclamation and sales with a decision notice signed prior to January 1, 2000, will be completed consistent with the terms of the decision notice and contract. This allows for an orderly completion of the fuels reduction and forest health treatments currently approved or under contract. No portion of the monument will be within the timber base or used in a calculation or basis of a sustained yield timber. Removal of living trees from within the monument may only take place for purposes of ecological restoration and maintenance, or public safety.

Prescribed fire projects, cultural treatments, wildlife, fisheries, watershed improvements and regularly scheduled facility, road, and trail maintenance activities:

In general, these activities are consistent with the goals of the monument. Current projects with an approved environmental decision document will be completed as planned. Scheduled maintenance will continue as planned for the protection of monument resources.

Motorized and mechanized use:

All motorized and mechanized use is limited to designated roads and trails. Off-road and off-trail motorized and mechanized uses are prohibited except for emergency or authorized administrative purposes.

Activities on state or private land:

The area within the monument contains approximately 4,807 acres of state, 160 acres of county, and 16,650 acres of private land. The monument designation does not apply to those lands, but the Proclamation provides that if any of these lands within the outer boundaries of the monument are acquired into federal ownership in the future, they will become part of the monument. In the absence of acquisition, the laws applicable to the use of private or state lands prior to the establishment of the monument will apply.

Mining claims:

New mining claims are prohibited. The proclamation withdraws the area from the 1872 Mining Law (30 U.S.C. section 21 et seq.) and other mining laws. Existing mining claims with a valid discovery of a valuable mineral deposit as of the date of the designation will constitute valid existing rights. The exercise of such rights may be regulated in order to protect the purposes of the monument, but any regulation must respect such rights. Existing mining claims that lack a valid discovery of a valuable mineral deposit have no valid existing rights; activities on such claims may be regulated or prohibited to protect the purposes of the monument.

Attachment: Bibliography, Sequoia Forest National Monument

Sunday, April 09, 2000

Draft background report on "Sequoia Forest National Monument" under the Antiquities Act of 1906 -
4/9/00

OPINION OF THE OFFICE OF LEGAL COUNSEL

MANAGEMENT OF ADMIRALTY ISLAND AND MISTY FIORDS NATIONAL
MONUMENTS

1980 OLC LEXIS 35; 4 Op. O.L.C. (Vol. B) 396

February 8, 1980

SYLLABUS: [*1]

Executive Order No. 6166 leaves intact forest reservations on national monument lands, and the Department of Agriculture and the Department of the Interior thus share administrative responsibility for Admiralty Island and Misty Fiords National Monuments. Conclusion of opinion of February 9, 1979 (3 Op. O.L.C. 85 (1979)), that management functions in connection with the two national monuments must be transferred from the Department of Agriculture to the Department of the Interior, reconsidered and amended.

ADDRESSEE:

Memorandum Opinion for the Director, Office of Management and Budget

OPINIONBY: HAMMOND

OPINION:

[**396] This is to advise you that, at the request of the General Counsel to the U.S. Department of Agriculture (USDA), we have reconsidered and are amending, as follows, our February 9, 1979, memorandum to you concerning the "Management of Admiralty Island and Misty Fiords National Monuments." [3 Op. O.L.C. 85 (1979)]. We concluded in that opinion that § 2 of Executive Order No. 6166, 5 U.S.C. § 901 note (1976), required a transfer of management functions from the Forest Service in USDA to the National Park Service in the Department of the Interior with respect to two national monuments created in December [*2] 1978, on national forest lands. As explained below, we have subsequently concluded that both USDA and Interior have legal authority to manage the lands in question.

I. Background to the February 9, 1979, Opinion

The President, on December 1, 1978, exercised his powers under § 2 of the Antiquities Act of 1906, 16 U.S.C. § 431 (1976), to create national monuments at Admiralty Island and Misty Fiords, Alaska. Pres. Proc. Nos. 4611 & 4623, 43 Fed. Reg. 57,009, 57,087 (1978). Included within these monuments were approximately 3.4 million acres of federal land that had been reserved as part of Tongass National Forest in 1907 or 1909. 35 Stat. (Pt. 2) 2152, 2226. On November 30, 1978, your General Counsel's office inquired orally of this Office whether the placement of a monument reservation on these national forest lands required the transfer of the management of the lands to the Department of the [*397] Interior under Executive Order No. 6166, issued in 1933. Section 2 of that order provides:

All functions of administration of . . . national monuments . . . are consolidated in the National Park Service in the Department of the Interior . . .; except that where deemed desirable [*3] there may be excluded from this provision any public building or reservation which is chiefly employed as a facility in the work of a particular agency.

In response to your inquiry, on December 1, 1978, we solicited views on this question from Interior and USDA. Interior chose to express no view. USDA forwarded its opinion to us that § 2 of Executive Order No. 6166 would have expunged the forest status of Misty Fiords and Admiralty Island -- thus requiring a transfer of management functions from USDA to Interior -- but for § 9 of the National Forest Management Act of 1976, 16 U.S.C. § 1609 (1976), which, in its view, pro tanto repealed the executive order and required the management of national forest land to remain in the Forest Service until removed by Act of Congress. In essence, our February 9, 1979, opinion treated USDA's analysis as the sole issue in dispute, and concluded, contrary to its view, that § 9 of the National Forest Management Act had no

effect on the operation of the executive order. We consequently informed you that, absent some legislative action, the management of these monuments had to be transferred from the USDA to Interior.

II. Reconsideration

On [*4] September 12, 1979, USDA's General Counsel forwarded certain materials to us suggesting the appropriateness of reconsidering our February 9, 1979, opinion. Although, in prior conversations, the General Counsel had indicated that he did not wish to challenge our conclusions on the relationship of the Forest Management Act to Executive Order No. 6166, he questioned the premise, implicit in our opinion and in his own Department's earlier view, that Executive Order No. 6166 operated to expunge the national forest status of Admiralty Island and Misty Fiords. In his view, such status, at least with respect to monuments created on forest lands after 1933, could be expunged solely by the express exercise of authority under 16 U.S.C. § 473, which permits the President to revoke or modify prior presidential actions creating national forests, such as Tongass National Forest, out of unreserved public lands. He urged that the effect of the executive order was only to vest additional management responsibilities in the Department of the Interior for national monuments created on forest lands, thus permitting the two departments to share administrative responsibility for Admiralty Island and Misty [*5] Fiords.

[**398] We have concluded that USDA's General Counsel has correctly interpreted the 1933 order. The purpose of Executive Order No. 6166 was to effect economies in government by facilitating the consolidation of similar functions under single government authorities. With respect to national monuments, it consolidated management functions in the National Park Service of the Department of the Interior. Its subject matter, however, does not include the status of reservations attaching to national monument lands. It does not expressly expunge nonmonument reservations on national monument lands, and no expungement appears by implication. The executive order is fully effective so long as it is interpreted to make possible National Park Service management of forest lands that are national monuments, which itself does not require the elimination of forest status.

The conclusion that Executive Order No. 6166 leaves forest reservations on national monument lands intact is buttressed by the existence, since 1897, of express statutory authority permitting the President to expunge the forest status of forest lands removed previously by the President from unreserved public lands. [*6] 16 U.S.C. § 473 (1976). Nothing in the executive order suggests that it is to be viewed as an alternative or even an additional means of terminating the forest status of national forests. Indeed, the order's limited organizational function is inconsistent with the notion that it confers additional substantive authorities with respect to public lands. In cases of national monuments created on national forest lands since 1933, the President has consistently exercised his authority under 16 U.S.C. § 473 to revoke or modify the forest status of lands he wished to be treated as having only national monument status. See, e.g., Pres. Procs. Nos. 2330, and 2339, 53 Stat. (Pt. 3) 2534, 2544 (1939). This practice implies a continuing administrative interpretation that Executive Order No. 6166 does not itself automatically terminate the national forest status of monuments created on national forest lands.

On November 17, 1972, USDA and Interior entered into an agreement, concluding that Executive Order No. 6166, as amended, expunged the dual status of monuments created on forest lands prior to 1933. In essence, the departments agreed to follow a 1933 opinion of the Solicitor of the [*7] Department of the Interior, holding that, in the absence of a timely interdepartmental agreement to the contrary, the management of pre-1933 monuments on forest lands was transferred automatically to Interior by Executive Order No. 6166. We have not been asked to consider this opinion or the 1972 agreement, and express no view as to their conclusions. We note, however, that such a determination as to pre-1933 monuments, which did not construe the effect of the executive order on the status of reservations attaching to national monument lands, does not preclude a case-by-case administrative decision as to the proper management of post-1933 national monuments to [**399] the extent permitted by the executive order and any other applicable statutory authorities. Executive Order No. 6166 creates management authority in the National Park Service with respect to national monuments even if created on forest lands; whether that authority is exclusive, additional, delegable, or forfeitable depends on the terms of the order and other authorities that may exist with respect to the lands.

III. Management Options

Because the President, in creating Admiralty Island and Misty Fiords National [*8] Monuments, did not terminate the national forest status of those lands, the National Park Service, under Executive Order No. 6166, and the Forest Service,

under its statutory authorities, *16 U.S.C. § 551 et seq.*, are both authorized to participate in the management of these monuments. Both, we have been advised, have appropriations that may be applied to this purpose.

On January 15, 1980, representatives of this Department met with representatives of USDA and Interior, to discuss the future management of Admiralty Island and Misty Fiords. The USDA and Interior representatives agreed that the Forest Service and the National Park Service would enter into a memorandum of understanding to govern the management of these monuments, accounting for the land use standards binding on the departments and specifying each department's regulatory and budgetary responsibilities. We have concluded that this is a permissible option for structuring the management responsibilities of the two departments. Cf. *16 U.S.C. § 2* (1976), permitting the Secretary of Agriculture to cooperate with the National Park Service, to the extent requested by the Secretary of the Interior, in the supervision, [*9] management, and control of national monuments contiguous to national forests.

LARRY A. HAMMOND

Deputy Assistant Attorney General

Office of Legal Counsel

DRAFT PROCLAMATION FOR
THE GIANT SEQUOIA NATIONAL MONUMENT

The rich and varied landscape of the Giant Sequoia National Monument holds a diverse array of scientific and historic resources. Magnificent groves of towering giant sequoias, the world's largest trees, are nested within a great belt of coniferous forest, jeweled with mountain meadows. Bold granitic domes, spires, and plunging gorges texture the landscape. Elevation climbs from about 2,500 to 9,700 feet over a distance of only a few miles, capturing an extraordinary number of habitats within a relatively small area. This spectrum of ecosystems is home to a diverse array of plants and animals, many of which are rare or endemic to the southern Sierra Nevada. The monument embraces limestone caverns and holds unique paleontological resources documenting tens of thousands of years of ecosystem change. The monument is also peppered with archaeological sites recording Native American occupation and adaptations to this complex landscape, and historic remnants of early Euroamerican settlement and commercial exploitation of the giant sequoias. The monument provides exemplary opportunities for biologists, geologists, paleontologists, archaeologists, and historians.

Ancestral forms of giant sequoia were a part of the western North American landscape for millions of years. Giant sequoias are the largest trees ever to have lived, and are among the world's longest-lived trees, reaching ages of 3,200 years or more. Besides being of interest in its own right, the great longevity of giant sequoias means that they hold within their tree rings multi-millennial records of past environmental changes, such

as changing climate, fire regimes, and consequent forest response. Only one other North American tree species, the high-elevation bristlecone pine of the desert mountain ranges east of the Sierra Nevada, holds such lengthy and detailed chronologies of past changes and events.

Sequoias and their surrounding ecosystems can provide a context for understanding ongoing environmental changes. For example, a century of fire suppression has led to an unprecedented failure in sequoia reproduction in otherwise undisturbed groves. Climatic change also has influenced the sequoia groves; their present highly disjunct distribution is at least partly due to generally higher summertime temperatures and prolonged summer droughts in California from about 10,000 to 4,500 years ago. During this period, sequoias were much rarer than today. Only following a slight cooling and shortening of summer droughts about 4,500 years ago have the sequoia been able to spread and create today's groves.

Sequoia groves and the surrounding forest have great value associated with understanding the consequences of different approaches to forest restoration. These forests are in need of restoration to counteract the effects of a century of fire suppression and logging. Fire suppression has caused forests to become denser in many areas, with increased dominance of shade-tolerant species. Woody debris has accumulated, causing an unprecedented buildup of surface fuels. One of the most immediate consequences of these changes is an increased hazard of wildfires of a severity that was rarely encountered in pre-Euroamerican times. Outstanding opportunities exist for studying the

consequences of different approaches to mitigating these conditions and restoring natural forest resilience.

The great elevational range of the monument embraces a number of climatic zones, providing habitats for an extraordinary diversity of plant species and communities. The monument is rich in rare plants and is home to more than 200 plant species endemic to the southern Sierra Nevada, arrayed in plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest. Numerous meadows and streams provide an interconnected web of habitats for moisture-loving species.

This spectrum of interconnected vegetation types provide essential habitat for wildlife, ranging from large, charismatic animals to less visible and less familiar forms of life, such as fungi and insects. The mid-elevation forests are dominated by massive conifers arrayed in a complex landscape mosaic, providing one of the last refugia for the Pacific Fisher in California. The fisher appears to have been lost from the northern Sierra Nevada. The forests of the monument are also home to great gray owl, American marten, northern goshawk, peregrine falcon, spotted owl, and a number of rare amphibians. The giant sequoias themselves are the only known trees large enough to have provided nesting cavities for the California condors, which otherwise must nest on cliff faces. In fact, the last pair of condors breeding in the wild was discovered in a giant sequoia that is part of the new monument. The monument's giant sequoia ecosystem remains available for the return and study of condors.

The physiography and geology of the monument have been shaped by millions of years of intensive uplift, erosion, volcanism, and glaciation. The monument is dominated by granitic rocks, most noticeable as domes and spires in areas such as the Needles. The magnificent Kern Canyon forms the eastern boundary of the monument's southern unit. The canyon follows an ancient fault, forming the only major north-south river drainage in the Sierra Nevada. Remnants of volcanism are expressed as hot springs and soda springs in some drainages.

Particularly in the northern unit of the monument, limestone outcrops, remnants of an ancient seabed, are noted for their caves. Subfossil vegetation entombed within ancient woodrat middens in these caves have provided the only direct evidence of where giant sequoias grew during the Pleistocene, and document substantial vegetation changes over the last 50,000 or more years. Vertebrate fossils also have been found within the middens. Other paleontological resources are found in meadow sediments, which hold detailed records of the last 10 millennia of changing vegetation, fire regimes, and volcanism in the Sierra Nevada. The multi-millennial, annual- and seasonal-resolution records of past fire regimes held in giant sequoia tree-rings are unique worldwide.

During the past 8,000 years, Native American peoples of the Sierra Nevada have lived by hunting and fishing, gathering, and trading with other people throughout the region. Archaeological sites such as lithic scatters, food-processing sites, rock shelters, village sites, petroglyphs, and pictographs are found in the monument. These sites have the

potential to shed light on the role prehistoric people played in shaping the ecosystems on which they depended, and vice versa.

The earliest recorded reference to giant sequoias is found in the notes of the Walker Expedition of 1833, which described “trees of the redwood species, incredibly large....”

The world became aware of giant sequoia when sections of the massive trees were transported east and displayed as curiosities for eastern audiences. Logging of giant sequoias began in 1856 and has continued intermittently to this day on nonfederal lands within the area of the monument. Early entrepreneurs, seeing profit in the gigantic trees, began acquiring lands within the present monument under the Timber and Stone act in the 1880s. Today our understanding of the history of the Hume Lake and Converse Basin areas of the monument is supported by a treasure trove of historical photographs and other documentation. These records provide a unique and unusually clear picture of more than half a century of logging that resulted in the virtual removal of most forest in the area. Outstanding opportunities exist for studying forest resilience to massive disturbance and the consequences of different approaches to forest restoration.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which

in all cases, shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Giant Sequoia National Monument:

NOW, THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Giant Sequoia National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Giant Sequoia National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 355,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws including, but not limited to, withdrawal from locating, entry and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. Lands and interests in lands not owned by the

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United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of Agriculture shall manage the monument through the Forest Service, pursuant to applicable legal authorities to implement the purposes and provisions of this proclamation. The Secretary of Agriculture shall prepare, within three years of this date, a management plan for this monument, and shall promulgate such regulations for its management, as he deems appropriate. *[In light of the larger ecosystem issues affecting*

all existing groves of Giant Sequoia on federal land, the Secretary, through the U.S.D.A. Forest Service, shall in developing the management plan and any regulations governing the monument, consult with the Secretary of the Interior, through the

Bureau of Land Management and the National Park Service, ~~on natural resource~~ issues affecting the Giant Sequoia groves and their larger ecosystem. The final decision to issue the plan rests solely with the ~~Department~~ of Agriculture.

Management plans or regulations developed by the Secretary of the Interior governing uses within national parks or monuments administered by the Department of the Interior shall not apply within this monument. At a minimum, the management plan

shall provide that [R]removal of living trees [from within the monument] may only take place for the purposes of ecological restoration and maintenance or public safety.

*only if necessary
clearly*

The establishment of this monument is subject to valid existing rights.

~~Because~~^{am} *of the unique scientific and ecological issues involved in management of this resource*, the Secretary, in consultation with the National Academy of Sciences, shall appoint a Scientific Advisory Board to provide scientific guidance during the development of the initial management plan. Board membership shall represent a range of scientific disciplines pertaining to the objects to be protected, including, but not necessarily limited to, the physical, biological, and social sciences.

mark [The management plan shall contain a transportation plan for the monument that addresses the actions necessary to protect the objects identified in this proclamation. *The plan shall provide for and encourage continued public and recreational access.* No new roads or trails will be authorized within the monument, except to further the purposes of the monument. Roads and trails may be closed or altered to protect the objects of interest prior to the development of the management plan, if there is a clear risk to the values of the monument.

consistent
w/ the
purpose
of the
monument

For the purposes of protecting the objects identified above, all motorized and mechanized vehicle use off designated roads and trails will be prohibited, except for emergency or authorized administrative purposes.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of California with respect to fish and wildlife management.

There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. The priority date of such reserved water rights shall be the date of enactment of this proclamation. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

Laws, regulations and policies pertaining to administration by the Department of Agriculture of grazing permits and current timber sales under contract on all lands within the boundaries of the Monument shall continue to apply with regard to lands within the monument.

Nothing in this proclamation shall be deemed to affect existing special use authorizations; existing uses shall continue to be governed by applicable laws, regulations, and management plan.

Nothing in the proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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IN WITNESS WHEREOF, I have hereunto set my hand this xxx day of xxx, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

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Geographical Information System (GIS) Products Available

Giant Sequoia Grove Boundaries (Treeline, Administrative)
Giant Sequoia Zones of influence (Hydrologic watersheds plus microclimate and downstream potential influence to groves)
Forest Vegetation Strata
Capable, Available and Suitable Timber Land Base
Fire Occurrence, Frequency-Risk
Fire Susceptibility (Hazard + Risk + Predicted severity)

Draft background report on "Sequoia Forest National Monument" under the Antiquities Act of 1906

Fire History

Current Land Use allocation

- Wilderness

- Wild and Scenic Rivers

- Visual Quality Objective constraints

- Regulation Class for Timber management

- Spotted Owl Habitat Areas (SOHAs) and Protected Activity Centers (PACs)

- Condor Management Areas

- Goshawk Management Areas

- Roadless areas

Plantation Layer

Sensitive Plant Layer

Fisher/ Marten survey locations

Ecologically significant and/or administrative areas

- Areas of Late Seral Emphasis (Sierra Nevada Ecosystem Project)

- Aquatic Diversity Management Areas (ALSE)(Sierra Nevada Ecosystem Project)

- Late Seral / Old Growth ranked 3,4, or 5 (Sierra Nevada Ecosystem Project)

- Research Natural Areas and Candidates

- Botanical Special Interest Areas and Candidates

Forest Recreation Base Map

Shaded relief map of the Forest

Cattle Grazing Allotments

Boundaries for 1993 and 1997 Brown Bill Giant Sequoia Preserve, and NRDC Proposal