

5-2024

Who Will Speak for the Trees? How the Save Our Sequoias Act Underscores the Urgent Need to Protect Giant Sequoias and the Tule River Indian Reservation from Wildfire Destruction

Bradly DeMoll

Follow this and additional works at: https://repository.uclawsf.edu/hastings_environmental_law_journal

Recommended Citation

Bradly DeMoll, *Who Will Speak for the Trees? How the Save Our Sequoias Act Underscores the Urgent Need to Protect Giant Sequoias and the Tule River Indian Reservation from Wildfire Destruction*, 30 *Hastings Env'tl L.J.* 127 (2024)

Available at: https://repository.uclawsf.edu/hastings_environmental_law_journal/vol30/iss2/4

This Article is brought to you for free and open access by the Law Journals at UC Law SF Scholarship Repository. It has been accepted for inclusion in UC Law Environmental Journal by an authorized editor of UC Law SF Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

Who Will Speak for the Trees? How the Save Our Sequoias Act Underscores the Urgent Need to Protect Giant Sequoias and the Tule River Indian Reservation from Wildfire Destruction

Bradly DeMoll

Abstract

Increasing rates of high-severity wildfires threaten the existence of giant sequoia trees, as well as the reservation and sacred cultural sites of the Tule River Indian Tribe. Decades of fire suppression have created a ticking time bomb across millions of acres of land. The result: the last two fire seasons alone wiped out nearly 20% of all giant sequoias on the planet and burned thousands of acres of forests across the Tribe's land. This Article explores the ecological background and significance of the giant sequoias and their relationship to the Tribe. It then examines the existing legal framework for sequoia grove management and analyzes the proposed legal framework under the House version of the Save Our Sequoias Act. This Article highlights some of the advantages of the bill while conceding its main weaknesses, ultimately arguing that the bill could provide powerful tools for both implementing a swift and effective response to the increasing threat of high-severity wildfires in giant sequoia groves and advancing the interests, knowledge, and concerns of Indigenous people of the area—namely the Tule River Tribe.

TABLE OF CONTENTS

INTRODUCTION	129
I. GIANT SEQUOIAS, THE TULE RIVER TRIBE, AND HIGH-SEVERITY WILDFIRES	131
A. Background: Ecology and Conservation Status of Giant Sequoias	131
B. The Tule River Indian Tribe & Their Home Amongst the Giant Sequoias	133
II. EXISTING LEGAL FRAMEWORK: GIANT SEQUOIA NATIONAL MONUMENT.....	135
III. SAVE OUR SEQUOIAS ACTS—H.R. 2989	136
A. Selected Sections of H.R. 2989	136
1. Section 3—Shared Stewardship Agreement	137
2. Section 4—The Coalition.....	137
3. Section 5—The Assessment.....	138
4. Section 6—Giant Sequoia Emergency Response.....	139
5. Section 7—Reforestation and Rehabilitation (R&R) Strategy.....	140
6. Section 8—Strike Teams.....	140
7. Section 9—Collaborative Restoration Grants	141
8. Remaining Sections.....	141
B. Urged by the Tribe; Praised by Trade and Industry; Criticized by Environmental Groups	142
C. Proponents	142
1. Tule River Indian Tribe.....	143
2. Trade Organizations & Industry.....	144
3. Environmental Groups	144
4. Forest-Related Associations.....	145
5. Government Entities.....	145
D. Opponents.....	146
IV. DISCUSSION.....	146
CONCLUSION.....	150

Introduction

One of the many consequences of climate change is longer and more intense fire seasons.¹ In California, wildfires have had a devastating impact on communities and biodiversity alike.² From an ecological standpoint, perhaps the most devastating impact of all is the threatened annihilation of giant sequoia trees by high-severity wildfires.³ Endemic to California, giant sequoias are the oldest and largest living beings on the planet.⁴ These ancient and magnificently large trees are not only ecologically unique, but culturally significant to the Indigenous people of the area.⁵ Moreover, their groves provide sanctuary to dozens of plant and animal species, as well as a home to the Tule River Indian Tribe.

Giant Sequoia National Monument is a nationally protected area of land that contains many of the giant sequoia groves, and is divided into two areas: the Northern and Southern portions.⁶ The Southern portion shares a border with Sequoia National Forest on its eastern side, while its western side envelops most of the Tule River Indian Reservation.⁷ Twenty giant sequoia groves make up the Southern portion, including Black Mountain Grove, which lies on the Tule River Indian Reservation.⁸ These groves are of major cultural importance to the Tribe, and have been home to them and their ancestors for thousands of years.⁹ Recent and future fires not only threaten the existence of the giant sequoias, but they pose an existential threat to the ancestral homelands of the Tribe. One fire season alone saw the incineration of nearly a third of the Tribe's land—leaving behind a barren wasteland.¹⁰ If the forests continue to burn, so too will the Tribe's home.

1. Williams et. al, *Observed Impacts of Anthropogenic Climate Change on Wildfire in California*, 7 EARTH'S FUTURE 892, 892 (2019).

2. See Annie Rosenthal et al., *Health and Social Impacts of California Wildfires and the Deficiencies in Current Recovery Resources*, PLOS (Mar. 26, 2021), <https://perma.cc/52P9-QUGF>; see also, *Science: Wildfire Impacts*, CAL. DEP'T OF FISH & WILDLIFE (2018), <https://perma.cc/5U8N-MMNN>; see also Nathan Stephenson & Christy Brigham, *Preliminary Estimates of Sequoia Mortality in the 2020 Castle Fire*, NAT'L PARK SERV., <https://perma.cc/5YVZ-M5CT>.

3. See Kristen Shive et al., *2021 Fire Season Impacts to Giant Sequoias*, NAT'L PARK SERV. (2021), <https://perma.cc/PX26-7JBL>; see also IUCN RED LIST, *Giant Sequoia*, <https://perma.cc/KKA2-SZR4>.

4. *Sequoiadendron Giganteum*, GYMNOSPERM DATABASE, <https://perma.cc/DXV2-4XLY>.

5. Floyd J. Franco, Jr., *Native American Views and Values of Giant Sequoia*, USFS (1992), <https://perma.cc/XP38-MG3N>.

6. *The Giant Sequoia National Park*, U.S.D.A. FOREST SERV., <https://perma.cc/XKR3-LEUQ>.

7. *Id.*

8. Franco, *supra* note 5.

9. *Id.*; see also Joshua Yeager, *California Wildfire May Have Killed Hundreds of Giant Sequoias, Burning Through Earth's Largest Grove*, USA TODAY (Oct. 8, 2021), <https://perma.cc/ZRF7-AP29>; see also Jeanine Pfeiffer, *Wildfire Management and Recovery on Tribal Lands Complicated by Policy Inequities*, KCET (Aug. 18, 2022), <https://perma.cc/V2HF-YQ5B>.

10. Pfeiffer, *supra* note 9; *Notice of Availability of the Draft Supplemental Environmental Assessment Tule River Tribe Fuels Reduction Project*, TULE RIVER RESERVATION, <https://perma.cc/VU9Z-NUPE>; *Testimony on behalf of the Tule River Tribe of California: Hearing on H.R. 4685* (statement of Kenneth McDarment).

In recent years, there has been a push to restore native land rights to Indigenous peoples of the U.S. in order to right historical wrongs and to promote conservation efforts through Indigenous land stewardship.¹¹ Currently, the Tule River Tribe stewards all or portions of five giant sequoia groves near or on their reservation.¹² Indigenous techniques of land management, which include cultural burning and manual thinning, have been proven in many cases to be the most effective methods for reducing the impact of high-severity wildfires and promoting biodiversity.¹³ Unfortunately, these methods were largely stamped out and replaced by less effective methods of land management—such as fire suppression and clear-cutting—by European and American colonization of the Western U.S.¹⁴ However, one example of a push to restore land rights to Indigenous North Americans recently took place in New York. Earlier this year, the state returned over 1,000 acres of ancestral land to the Onondaga Nation to create a wildlife sanctuary—a major win for both Indigenous folks and conservationists.¹⁵

In 2000, former President Bill Clinton designated over 300,000 acres of land consisting of giant sequoia groves a national monument to be managed by the Secretary of Agriculture and the U.S. Forest Service (USFS), which barred all timber production in the area in order to protect these trees.¹⁶ The President's proclamation established Giant Sequoia National Monument (the Monument) and required the Agriculture Secretary to develop a land management plan within two years.¹⁷ After many legal challenges, the Department of Agriculture finally released the Giant Sequoia Management Plan in 2012—over a decade after its original due date. Despite these efforts, the International Union for Conservation of Nature (IUCN) listed giant sequoias as an endangered species the year before, with the most salient threat being wildfires.¹⁸

However, recently renewed attempts to provide legislative protections to giant sequoias have found their way to each chamber of Congress. Each bill is titled the “Save Our Sequoias Act,” and both bills provide for aggressive strategies aimed at advancing the health and resiliency of giant sequoia groves. This Article will mainly focus on the House version of these bills.

Above all, this Article is meant to highlight the imminent and existential threat that increasing high-severity wildfires pose to both giant sequoias and the Tribe. To that end, this Article will analyze how passage of the Save Our Sequoias Act (H.R.2989) would impact (1) the legal and operational aspects of giant sequoia

11. Lauren Sommer, *To Manage Wildfires, California Looks to What Tribes Have Known All Along*, WBUR (Aug. 24, 2020), <https://perma.cc/2XQL-ENL9>.

12. *A Progress Report for Saving the Sequoias 2022*, GIANT SEQUOIA LANDS COALITION (2022), <https://perma.cc/BLS3-AF45>.

13. Hoffman et al., *Conservation of Earth's biodiversity is embedded in Indigenous fire stewardship*, PNAS (2021), <https://perma.cc/88HN-K7EB>.

14. *Id.*; see also, Stephens et al., *Prehistoric Fire Area and Emissions from California's Forests, Woodlands, Shrublands, and Grasslands*, 251 FOREST ECOLOGY AND FIRE MGMT. 205, 206 (Nov. 2007).

15. *Secretary Haaland Applauds Return of Traditional Homelands to Onondaga Nation*, U.S. DEP'T OF INTERIOR (2022), <https://perma.cc/5VL6-ALEY>.

16. PROCLAMATION NO. 7295, 65 FED. REG. 24095 (Apr. 25, 2000).

17. *Id.*

18. IUCN RED LIST, *supra* note 3.

land management, and (2) the participation of Indigenous Tribes in that decision-making process. Part I will provide background on the ecological and cultural significance of giant sequoias and will discuss how the increase in high-severity wildfires threatens the existence of both the giant sequoias and the Tule River Tribe. Part II will outline the existing legal framework for governing the protection of giant sequoia groves. Part III will provide an overview of the Save Our Sequoias Act, detail its most pertinent sections, and discuss the controversy surrounding the bill. Part IV of this Article will provide a critical analysis of the bill, considering its strengths and weaknesses. This fourth Part will explain how, although language in H.R. 2989 could allow agency officials to severely undercut major environmental statutes, doing so would (1) allow for quicker implementation of fire prevention measures; (2) would increase Tribal presence and influence in decision-making processes; and (3) promote more effective Indigenous land management techniques such as Indigenous fire stewardship (IFS). This Article will briefly discuss the practical political feasibility of passing such legislation, ultimately concluding that this is an environmental *and* human rights issue requiring urgent attention.

I. Giant Sequoias, the Tule River Tribe, and High-Severity Wildfires

A. Background: Ecology and Conservation Status of Giant Sequoias

The *sequoiadendron giganteum* is listed endangered by the International Union for Conservation of Nature (IUCN), and is a species of coniferous redwood endemic to the western slopes of the Sierra Nevada in California.¹⁹ The species are among the tallest, oldest, and largest species of trees in the world, with a few measuring over 300-feet tall.²⁰ In fact, the tree with the largest volume in the world is a giant sequoia named General Sherman, measuring 275-feet tall, 103-feet wide, 52,500 cubic-feet, and estimated to be between 2,300 and 2,700 years-old.²¹ These massive trees grow in clusters called groves and are a habitat for dozens of flora and fauna from birds to deer, including some endangered species.²² They are also considered an indicator species for the surrounding ecosystem.²³ In addition, giant sequoias provide an invaluable service to our planet through its function as a carbon sink. These trees are massive carbon sinks—old-growth Sequoia forests store and sequester more carbon on an annual basis than any other forest on a per

19. H. Thomas Harvey et. al, *Giant Sequoia Ecology: Fire and Reproduction*, DOI 1, 1 (1980) (although giant sequoias are listed as endangered by IUCN, the species is not considered endangered for purposes of the Endangered Species Act).

20. *Giant Sequoia (Sequoiadendron Giganteum)*, U.C., AGRIC. & NAT. RES., <https://perma.cc/5HZT-SMKN>.

21. GYMNOSPERM DATABASE, *supra* note 4.

22. Angela Cahill, *Nature's Masterpiece: Giant Sequoias*, PAC. HORTICULTURE, <https://perma.cc/477H-RE8C>.

23. Giant Sequoia National Monument Scientific Advisory Board, *Adopted Advisories*, USFS, 3 (2008).

acre basis.²⁴ Yet, despite its great ecological importance, the giant sequoia is listed as endangered by IUCN, imperiled by the increasing frequency of high severity wildfires.²⁵

The giant sequoias have a long and intertwining history with fire.²⁶ In fact, fires play a crucial role in the sequoia's reproductive cycle.²⁷ For sequoias, fire serves three important functions. First, fire clears some or all of the understory and canopy brush, allowing sunlight to reach the soil and make space for seedlings to grow.²⁸ Second, the fire's heat will make its way up to the pinecones of the mature trees, warming and opening them up to disperse hundreds of seeds below.²⁹ Third, fire clears away ground brush that would otherwise prevent the seeds from reaching the mineral-rich soil that they enjoy best for germination.³⁰

For thousands of years, these trees relied on a cycle of low- to mid-severity wildfires occurring approximately every fifteen years.³¹ However, following a catastrophic fire in 1910, the USFS took action to prevent fires completely.³² By 1935, the USFS sought to extinguish every observed fire by 10 AM the following morning, known as the "10 o'clock" rule.³³ Whereas frequent- and low-severity fires from lightning strikes and cultural burnings maintained healthy forests free of fuel build-up, the last century of fire suppression has "wildly overstocked the forest with unhealthy trees."³⁴ By the 1960s, the agency realized the importance of wildfire for forest management and began reintroducing fires to the giant sequoia groves.³⁵ However, this was too little, too late.³⁶ Current fire conditions exacerbated by climate change and drought, have greatly reduced our ability to restore historic fire regimes to the forests.³⁷ Primed by years of fire suppression, the forests are now experiencing much bigger and much hotter fires.³⁸

24. See Sillett et al., *Aboveground Biomass Dynamics and Growth Efficiency of Sequoia sempervirens Forests*, 458 *FOREST ECOLOGY AND MGMT.* (2020); see also Sebastian Luyssaert et al., *Old-Growth Forests as Global Carbon Sinks*, 455 *NATURE* 213, 213-215 (2008).

25. IUCN RED LIST, *supra* note 3.

26. See Thomas W. Swetnam, *Fire History and Climate Change in Giant Sequoia Groves*, 262 *SCI.* 885, 885-889 (1993); see also Harvey et. al, *supra* note 19, at 4-5.

27. Harvey et. al, *supra* note 19, at 41-44.

28. *Id.*

29. *Id.*

30. *Id.*

31. Shive et al., *supra* note 3; see also Swetnam et. al, *Multi-Millennial Fire History of the Giant Forest, Sequoia National Park, California, USA*, 5 *FIRE ECOLOGY* 120, 120-125 (2009), <https://perma.cc/5CRJ-KM6F>.

32. Mandy Godwin, *Biochar Ambassadors Hope to Save the Methow*, INVESTIGATEWEST (Sept. 1, 2021), <https://perma.cc/PA8K-DGTB>.

33. *Id.*

34. *Id.*

35. Swetnam et. al, *supra* note 31.

36. See Ezra David Romero, *The Racist Removal of Native Americans in California is Often Missing from Wildfire Discussions, Experts Say*, CAPRADIO (Sept. 16, 2020), <https://perma.cc/W7ES-VG32>.

37. Williams et al., *supra* note 1.

38. Shive et al., *supra* note 31.

The increasing frequency of high-severity fires has led to massive population loss for the species.³⁹ Although the species relies on fire for reproduction, “they are not adapted to extensive high severity fire” and usually cannot withstand them.⁴⁰ According to NPS, conservative estimates place sequoia mortality rates between 75% and 100% when exposed to the recent high-severity wildfires.⁴¹ Compared to rates of 0% to ~30% for low- to moderate-severity fires, this represents a catastrophic threat to the species’ existence.⁴²

B. The Tule River Indian Tribe & Their Home Amongst the Giant Sequoias

Located in the beautiful foothills of the Sierra Nevada, the Tule River Tribe is a federally designated Native American tribe made up of a diverse community of peoples indigenous to the region, mainly Yokuts-speaking peoples.⁴³ After disease and genocidal warfare at the hands of Europeans and Americans killed nearly three-fourths of the Yokuts people, the survivors joined together to live on the Tule River Indian Reservation.⁴⁴ Current tribal membership is 1,952.⁴⁵

Established in 1873, the Tule River Indian Reservation contains approximately 58,000 acres of land, most of which is heavily forested.⁴⁶ The Monument envelops a huge portion of this land, bounding more than 50% of the perimeter of the reservation.⁴⁷ The Tribe manages approximately 15,000 acres of conifer forest, forming a continuum with the Monument forest.⁴⁸ Because nearly 9,000 acres of the Monument are located within the Tribe’s watershed, actions taken to fight fires in this area could impact the Tribe’s water supply.⁴⁹ This close proximity also means that any actions taken to protect the Monument will almost certainly impact the reservation, and vice versa. Since fire knows no boundaries, cooperation between the Forest Service and the Tribe is crucial for implementing an effective response in areas of overlapping jurisdiction.

Besides their historical and physical proximity to the giant sequoias, the Tribe shares a close cultural and spiritual relationship to the trees.⁵⁰ From an early age, Tribal members are taught to respect trees by learning about them through Tribal folklore.⁵¹ According to former Tribal Chairman, Floyd Franco Jr., the trees themselves “provide excellent recreation sites in which Tribal members can teach

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *See California Indians and Their Reservations: An Online Dictionary*, SDSU UNIV. LIB., <https://perma.cc/XDN5-W22Q>.

44. *Id.*

45. *Id.*; *see also Testimony on H.R. 2989, Save Our Sequoias Act: Hearing on H.R. 2989 Before the H. Comm. on Nat. Res.*, 118th Cong. (2023) (statement of Shine Nieto).

46. Giant Sequoia National Monument Scientific Advisory Board, *supra* note 23, at 30.

47. *Id.*

48. *Id.*

49. *Id.*

50. Franco, *supra* note 5.

51. *See id.*

our youth tradition and respect for trees.”⁵² These forests are also home to key cultural gathering areas and sacred sites such as Redwood Corral and Painted Rock.⁵³ Naturally, some Tribal members feel a sense of duty to protect the giant sequoias since they act as a repository of the Tribe’s knowledge and history.⁵⁴

Yet, these values are inherently at odds with the emergency response priorities of agencies such as California Department of Forestry and Fire Protection (CAL FIRE). For those agencies, human life and property are the main priorities.⁵⁵ For the Tribe, however, it is not just human life and property that is worth saving. According to Chief Fire Council Zane Santos, “it [is] the headwaters of the Tule River, the giant sequoias, the redwood trees, the cultural sites and all the plants and animals we consider culturally important.”⁵⁶ This tension underscores the need to restore land rights to Indigenous groups and provide adequate resources to help them steward their lands as they see fit.

The result of this tension can be seen with the recent impacts of the last two fire seasons. Roughly 20,000 acres of land on the reservation were scorched in 2021.⁵⁷ One of the main reasons for the scale of devastation is the lack of Tribal resources to combat the fires.⁵⁸ On a practical level, managing nearly 60,000 acres of land is logistically difficult for a Tribe of less than 2,000 people. The Tribe has been vocal about its need for increased resources.⁵⁹ Since the Monument designation in 2000, the Tribe has been advocating for a fire break buffer zone along its shared border.⁶⁰ The Tribe has also expressed its need for personnel resources such as a hot shot crew, dozer crew, helitack crew, and water tenders.⁶¹

Consequently, the increasing frequency of high-severity wildfires and lack of adequate resources to fight or prevent them poses a serious risk to the Tribe. First, wildfire smoke compromises the air quality on the reservation and jeopardizes the health of the community, especially elders and people with medical conditions.⁶² Additionally, the wildfires can negatively impact the Tribe’s water supply. Soot, ash, and biochar from the fires can deposit into the watershed and impair the water supply.⁶³ On top of that, environmentally hazardous fire retardants can runoff into the watershed, depositing high concentrations of nutrients that

52. *See id.*

53. *See Pfeiffer, supra note 9; see also Painted Rock, TULE RIVER TRIBE* (Apr. 2014), <https://perma.cc/7GZD-KLQH>.

54. *See Pfeiffer, supra note 9.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Cecilia Parsons, *Tribe Can’t Sit and Wait for Sparks to Fly*, PORTERVILLE RECORDER (Sept. 6, 2000), <https://perma.cc/S4BB-BC5X>.

60. *Id.*

61. Pfeiffer, *supra note 9.*

62. *See Health Effects Attributed to Wildfire Smoke*, EPA, <https://perma.cc/G23R-XBPY>; *see also* Adrian Thomas, *Tule River Indian Tribe Feeling Impact of Windy Fire Burning Through Sequoia National Forest*, YOUR CENT. VALLEY (Sept. 20, 2021), <https://perma.cc/BM8Y-6CAY>.

63. Edward Struzik, *Soot-Filled Rivers Mark the Need for a National Wildfire Strategy*, CONVERSATION (Oct. 24, 2018), <https://perma.cc/5EGT-W9JU>.

cause algal blooms (eutrophication).⁶⁴ Algal blooms produce cyanotoxins and can cause a variety of health issues from rashes and dizziness to liver and kidney damage.⁶⁵ This is an issue that the Tribe has been actively coping with since at least the 2021 fire season.⁶⁶ But behind the obvious impacts to air and water quality lurks a more sinister threat to the Tribe's continued existence on the reservation. Hundreds, sometimes thousands, of homes are destroyed across California every single year due to wildfires.⁶⁷ Given that the Windy Fire alone scorched about a third of the Tribe's land, time is ticking. Therefore, urgent solutions in the form of action and resources are desperately needed to ensure the Tribe's continued enjoyment of their ancestral homeland.

II. Existing Legal Framework: Giant Sequoia National Monument⁶⁸

The primary law that protects the giant sequoias is Proclamation 7295, which established the Giant Sequoia National Monument. As mentioned, the Monument contains several hundred thousand acres of land consisting of giant sequoia groves and is managed by the Secretary of Agriculture and USFS.⁶⁹ The proclamation begins by acknowledging the rare majesty of the giant sequoias, touching on its flora and fauna, and mentioning its long history as ancestral lands to Native Americans of the Sierras.⁷⁰ It then sets out several mandates.

In accordance with the American Antiquities Act, the land designated was to be the "smallest area compatible with the proper care and management of the objects to be protected."⁷¹ As such, the Monument contains about half of the known sequoia groves.⁷² Further, the proclamation bars all timber production in the Monument, allowing for tree removal only "if needed for ecological restoration and maintenance or public safety."⁷³ The grounds for tree removal are determined by the Department of Agriculture, likely through the USFS.⁷⁴ Next, the proclamation tasks the Secretary of Agriculture, in consultation with the National Academy of Sciences, with appointing a scientific advisory board to assist in creating a management plan for the Monument.⁷⁵ The management plan was to be

64. Autumn Spanne, *We're Dumping Loads of Retardant Chemicals to Fight Wildfire. What Does It Mean for Wildlife?*, ENV'T HEALTH NEWS (Sept. 27, 2021), <https://perma.cc/84LW-BT88>.

65. See *What Are the Effects of HABs*, EPA, <https://perma.cc/NBW9-95SR>; see also Pfeiffer, *supra* note 9.

66. Pfeiffer, *supra* note 9.

67. See *2019 Incident Archive*, CAL FIRE, <https://perma.cc/V2AH-FRZK>; see also *2020 Incident Archive*, CAL FIRE, <https://perma.cc/5PD2-B8Q9>; see also *2021 Incident Archive*, CAL FIRE, <https://perma.cc/4RDR-8PH4>.

68. 65 FED. REG. 24095, *supra* note 16.

69. *Id.*

70. *Id.*

71. See *id.*; 16 U.S.C. 431.

72. Philip Rundel, *Habitat Restriction in Giant Sequoia: The Environmental Control of Grove Boundaries*, 87 AM. MIDLAND NATURALIST 81, 81 (1972), <https://perma.cc/S2EU-SZBM>.

73. See 65 FED. REG. 24095, *supra* note 16.

74. *Id.*

75. See *id.*

created within three years, and the Secretary was required to consult with the Interior Secretary in developing the management plan.⁷⁶ However, the Agriculture Secretary had the final decision on implementation of the management plan.⁷⁷ Finally, the Secretary was required to provide a transportation plan for visitor enjoyment and understanding about the giant sequoias.⁷⁸

This proclamation is one such example of increased governmental interest in protecting our forests, specifically, in response to the negative impacts of climate change. This law also highlights an important tension. The monument designation and ban on timber production are, no doubt, significant steps towards protecting the sequoia groves. However, more rigorous protections for the species could have been enacted if Congress designated the tree as an endangered or threatened species under the Endangered Species Act. In that case, a critical habitat designation would be required, which would likely prevent any sort of infrastructure that allows for human enjoyment, such as trails and roads through the forests.⁷⁹ While outside the scope of this Article, a question lurking in the background is how we balance protecting the natural landscape against its use for our enjoyment.

III. Save Our Sequoias Acts—H.R. 2989

Recently, two bills, both titled the “Save Our Sequoias Act,” were introduced in each chamber of Congress. The House version of the bill, H.R. 2989, was introduced by then-minority leader Kevin McCarthy—a Republican representing California’s 23rd District. In the Senate, the late Democratic Senator from California, Dianne Feinstein, introduced a similar version of the same bill a few months later, S. 4833. Both bills are likely in response to the devastating impacts of the fire seasons between 2017 and 2021, which killed roughly 20% of the population of giant sequoias.⁸⁰ This Article will focus on H.R. 2989.

A. Selected Sections of H.R. 2989⁸¹

Then-House Republican leader Kevin McCarthy, whose former district encompasses much of the giant sequoia groves, first introduced the Save Our Sequoias Act to Congress in late June of 2022.⁸² The bill was then reintroduced in April 2023 with the new session of Congress under H.R. 2989.⁸³ With fifty-six co-

76. *See id.*

77. *See id.*

78. 65 FED. REG. 24095, *supra* note 16.

79. *See* CAL. DEPARTMENT OF PARKS AND RECREATION, *Growth & Development*, <https://perma.cc/W3AS-NG4T> (despite being some of the largest trees on the planet, Giant Sequoias have a shallow root system made up of narrow feeders. Usually, their roots are not deeper than 4 or 5 feet below the soil making them relatively delicate. Infrastructure such as trails and roads put stress on the roots and can weaken the trees over time); *see also* Jon Kinney, *Mariposa Grove of Giant Sequoias*, NAT’L PARK SERV. (1986), <https://perma.cc/AGY4-7JGV>.

80. *See* Shive et al., *supra* note 3.

81. *See* Save Our Sequoias Act, H.R. 8168, 117th Cong. (2022).

82. *California’s 23rd Congressional District*, GOVTRACK, <https://perma.cc/DNL4-6WTH>; *See* Save Our Sequoias Act, H.R. 2989, 118th Cong. (2023).

83. *See* Save Our Sequoias Act, *supra* note 82.

sponsors in total, split almost evenly across party lines, this bill has received substantial bipartisan support from members representing districts in California and across the country.⁸⁴

1. Section 3—Shared Stewardship Agreement⁸⁵

Section 3 is the first substantive section of the bill, and mainly sets forth the parties, timetables, and parameters for entering into a “Shared Stewardship Agreement” for protecting giant sequoia trees.⁸⁶ Specifically, this section provides that the Governor of California, and/or the Tule River Indian Tribe, may submit a request to the Interior Secretary (referred to hereafter as “the Secretary”) to enter into a shared stewardship agreement.⁸⁷ After receiving such a request, the Secretary is required to, within ninety days, enter into an agreement with each of those parties, as well as the Agriculture Secretary, to carry out specific provisions of the Act discussed in more detail below.⁸⁸ These provisions include certifying the Giant Sequoia Lands Coalition (GSLC) within thirty days; conducting section 6 “Protection Projects” within thirty days; and implementing the Giant Sequoia Restoration and Rehabilitation Strategy (R&R Strategy) within 120 days.⁸⁹

If the Secretary does not receive a request from the California Governor or the Tule River Indian Tribe within ninety days after the bill’s enactment, the Secretary will enter into and jointly implement a shared stewardship agreement with the Agriculture Secretary.⁹⁰ However, the Secretary must accept the Governor and/or Tule River Tribe as a party to the agreement, regardless of whether either entity participated in the formation of an agreement.⁹¹

2. Section 4—The Coalition⁹²

Section 4 requires that the Secretary, in consultation with the parties to the shared stewardship agreement, certify the Giant Sequoia Lands Coalition (the Coalition).⁹³ However, pursuant to the Giant Sequoia Lands Coalition Charter, the Coalition already existed; this section simply codifies its existence and authority.⁹⁴

The members of this coalition are made up of representatives from academia, federal, state, Tribal, and local agencies alongside governments that oversee the range of lands home to the giant sequoias.⁹⁵ The Coalition’s duties are mainly

84. *Id.*

85. H.R. 2989, *supra* note 82, § 3.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* § 4.

92. *Id.*

93. *Id.* § 4.

94. *See Giant Sequoia Lands Coalition*, NAT’L ‘PARK SERV., <https://perma.cc/NX3M-9CV8>.

95. H.R. 2989, *supra* note 82, at 4 (the coalition members include two National Park Service agents each representing Sequoia and Kings Canyon National Park and

advisory. However, perhaps the most important of their duties includes carrying out the Giant Sequoia Health and Resiliency Assessment required by section 5, which will be discussed below.⁹⁶ Its other substantive duties include observing the implementation of Protection Projects and providing policy recommendations to the Interior Secretary regarding the R&R Strategy.⁹⁷ Additional duties include facilitating Protection Projects that cross jurisdictional boundaries as well as information sharing regarding best available science and the dissemination of educational materials regarding threats to the giant sequoia groves.⁹⁸

3. Section 5—The Assessment⁹⁹

The Coalition's first duty is submitting the Giant Sequoia Health and Resiliency Assessment (the Assessment) to the relevant Congressional Committees, based on the best available science.¹⁰⁰ Within 180 days after its first meeting, the Coalition is to identify giant sequoia groves and the surrounding areas that have experienced or are at risk of experiencing adverse impacts due to high-severity wildfires.¹⁰¹ In the Assessment, the Coalition should identify each at-risk grove, and should also propose a list of the highest priority protection projects to be carried out under section 6.¹⁰² Furthermore, the Assessment should examine how "historical, Tribal, or current approaches to wildland fire suppression and forest management activities . . . have impacted the health and resiliency of giant sequoia groves . . ."¹⁰³ This examination should also include program and policy recommendations to address policies that impede efforts to improve the health and resiliency of giant sequoias.¹⁰⁴

Under this section, the Coalition must provide annual updates including any new data on health and resiliency, the number of planned protection projects, and status updates on those projects.¹⁰⁵ If the Secretary of the Interior fails to initiate at least seven protection projects, she must provide a written explanation detailing why she failed to initiate the protection projects and what actions she is taking to ensure they happen the following year.¹⁰⁶ The Coalition is further required to maintain a website that publishes the Assessment and planned protection projects,

Yosemite National Park, respectively; three Forest Service Agents, representing Sequoia National Forest and Giant Sequoia National Monument, Sierra National Forest, and Tahoe National Forest, respectively; a Bureau of Land Management agent representing Case Mountain Extensive Recreation Management Area; a Tule River Indian Tribe member, representing Black Mountain Grove on the reservation; two State of California agents, representing Calaveras Big Trees State Park and Mountain Home Demonstration State Forest, respectively; an agent of a qualified academic institution to represent Whitaker's Research Forest; and an agent of Tulare County, CA, representing Balch Park.).

96. *Id.* § 4.

97. *Id.*

98. *Id.*

99. *Id.* § 5.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

as well as projected costs. As noted above, the Assessment should be based on the best available science. This includes data and peer-reviewed research from qualified scholars and institutions as well as data from federal, state, Tribal, local governments, or agencies. Most notably, the definition of best available science also includes “traditional ecological knowledge from the [Tule River Indian Tribe] related to improving heath and resiliency.”¹⁰⁷ This Article will argue that this language could be powerful in promoting Indigenous fire stewardship, an essential tool in promoting healthy and resilient forests.¹⁰⁸

As will be discussed below, much of the controversy surrounding the bill begins with subsection (g) of section 6.¹⁰⁹ Particular criticism is directed at Section 6. Subsection (g), entitled “Relation to National Environmental Policy Act of 1969,” gives explicit authority to the Coalition to develop and submit the Assessment without being subject to the procedural constraints required by NEPA.¹¹⁰

4. Section 6—Giant Sequoia Emergency Response¹¹¹

This section is by far the most controversial section of the Act and is the main cause for the concern voiced by environmental groups, domestic and abroad.¹¹² The language here asserts an “emergency determination” by Congress in order to justify carrying out “Protection Projects” (Projects) without adhering to requirements under the National Environmental Protection Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA).¹¹³

If enacted, the first step would be for Congress to declare that there is an emergency in the National Forest System.¹¹⁴ This emergency declaration expires after seven years and means that Congress believes it is necessary to carry out Projects to respond to the threats facing giant sequoias.¹¹⁵

Controversially, the Act allows an agency official to carry out any Projects described above, before initiating any of the following: (1) a section 102 analysis under NEPA; (2) a section 7 consultation under ESA; or (3) a section 106 consultation under NHPA.¹¹⁶ The only federal statute from which the Projects are

107. H.R. 2989, *supra* note 82, at 16.

108. *See* discussion *infra* Part III.

109. *See* discussion *infra* Part II.B.

110. *Id.* § 6(g).

111. *Id.*

112. *See Letter from Environmental and Public Interest NGOs to Members of Cong. on H.R.2989* (June 17, 2022), <https://perma.cc/P995-ECB2>.

113. *Id.*

114. H.R. 2989, *supra* note 82, § 6.

115. *Id.* § 6 (these Projects could include: (1) any activities recommended in the Assessment; (2) hazardous fuels management, including mechanical thinning and prescribed burns; (3) underbrush removal, including dead and hazard trees, or trees at risk of dying; (4) removal of trees to address overstocking or crowing; (5) chemical treatments to address insects, disease, and vegetation competition; and (6) activities included in grove-specific hazardous fuels reduction plans.).

116. *Id.*

not exempted is section 106 of the Healthy Forests Restoration Act of 2003.¹¹⁷ More specifically, the Act provides for a categorical exclusion of these actions from the preparation of an environmental assessment (EA) or environmental impact statement (EIS) under NEPA.¹¹⁸ The Act asserts that the Projects are “consistent with improving the health and resiliency of critical habitat for threatened and endangered species, including the pacific fisher and California spotted owl.”¹¹⁹ However, the Department of the Interior (DOI) is required to fulfill its consultation requirements in accordance with the ESA.¹²⁰ Lastly, the Act places certain geographic limits on Projects, requiring that Projects cover an area of no more than 2,000 acres, and in some cases 3,000 acres.¹²¹

5. Section 7—Reforestation and Rehabilitation (R&R) Strategy¹²²

Section 7 sets forth the requirements for developing and implementing the Reforestation and Rehabilitation (R&R) Strategy (the Strategy). The Secretary of the Interior, in consultation with the parties to the shared stewardship agreement, are to develop and implement the Strategy to “enhance the reforestation and rehabilitation of giant sequoia groves”¹²³ As such, the Strategy will identify the groves most in need of regeneration and will create a priority list of R&R activities.¹²⁴ The Strategy should also include recommendations needed to improve the Strategy’s effectiveness.¹²⁵ This section of the Act also provides a carve out within the Wilderness Act, allowing the Interior and Agriculture Secretaries to conduct “reforestation activities to reestablish giant sequoias following a wildfire.”¹²⁶

6. Section 8—Strike Teams¹²⁷

To assist each of the Secretaries with the implementation of sections 6 and 7, the Act allows each Secretary to establish a Giant Sequoia Strike Team (Strike Team).¹²⁸ Each Strike Team is primarily responsible for the implementation of Projects and the Strategy.¹²⁹ However, the first listed duty in this section calls for assistance from the Strike Team(s) with any reviews, including the preparation

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*; see 50 CFR §402.05(a).

121. H.R. 2989, *supra* note 82, at § 6.

122. *Id.* § 7.

123. *Id.*

124. *Id.* §7 (the Strategy should identify: (1) barriers to R&R efforts including, but not limited to, regulatory barriers, labor shortages, and technological gaps; (2) public-private partnerships to help complete R&R projects; and (3) strategies to promote genetic diversity across groves.).

125. *Id.*

126. *Id.*

127. *Id.* § 8.

128. H.R.2989, *supra* note 82, § 8.

129. *Id.* § 8.

analyses and consultations under NEPA, NHPA, and the ESA.¹³⁰ In addition to implementing the Projects under section 6 and any R&R under section 7, the Strike Team(s) are to assist with any necessary site preparation to facilitate such activities.¹³¹

7. Section 9—Collaborative Restoration Grants¹³²

Section 9 establishes a grant program for eligible entities interested in contributing to R&R efforts. The Secretary of the Interior, in consultation with the parties to the agreement, shall create a program to award grants to eligible entities “to advance, facilitate, or improve giant sequoia health and resiliency.”¹³³ As defined by the section, eligible entities that may receive grants include nonprofits, tribal and local governments, academic institutions or private organizations. However, there is some prioritization of grant awards. Priority is to be given primarily to entities “likely to have the greatest impact on giant sequoia health” and secondarily to small businesses that create or support jobs in rural areas.¹³⁴ The section also outlines how grant funds shall be used.¹³⁵

8. Remaining Sections¹³⁶

The rest of H.R.2989, sections 10 through 13, focus primarily on amendments to existing legislation to carry out sections 6 through 9, as well as appropriations and other funding sources. First, the Act gives “good neighbor” authority to the Governor of California, which allows for the removal and sale of timber for restoration projects—the funds of which will be retained and used by the Governor to carry out further restoration projects.¹³⁷ Next, the Act amends the Health Forest Restoration Act of 2003 to allow the Directors of the Bureau of Land Management (BLM) and the National Park Service (NPS) to enter into stewardship contracting projects with public or private entities to achieve land management goals.¹³⁸ The express purpose would be to expedite hazardous fuel removal projects to “promote the health and resiliency of giant sequoias.”¹³⁹

Section 12 of the Act establishes a Giant Sequoia Emergency Protection Fund for agencies to use to support primarily the “management and conservation

130. *Id.*

131. *Id.* (the membership of each Strike Team is not to exceed 10 individuals. These individuals are to include employees of the DOI and USFS, private contractors from nonprofits, academic institutions, and state, Tribal, and local governments. Members may also be volunteers from any of these entities.)

132. *Id.* § 9.

133. *Id.*

134. *Id.*

135. *Id.* (grant funds may be used for the following: (1) creating, expanding, or developing markets for hazardous fuels removed, including biomass and biochar; (2) facilitating the removal of such; (3) creating and developing storage facilities for hazardous fuels; and (4) establishing, developing, expanding, enhancing, or improving nursery capacity or infrastructure necessary to facilitate the Strategy.)

136. *Id.* § 10-13.

137. *Id.* § 10.

138. *Id.* § 11.

139. *Id.* § 11.

of giant sequoias” and, secondarily, the reforestation of giant sequoias on NPS and USFS lands.¹⁴⁰ Of the funds provided, no less than 15% are to be used to support Tribal management and conservation efforts.¹⁴¹ Finally, the Act authorizes millions of dollars in scheduled appropriations, from fiscal year 2024 to fiscal year 2033, to carry out the Act.¹⁴² It stipulates that at least 90% of appropriations should go towards carrying out Protection Projects and Collaborative Grants.¹⁴³ The corresponding sections of S. 4833 are identical to those described in this section.

B. Urged by the Tribe; Praised by Trade and Industry; Criticized by Environmental Groups

Shortly after the bill’s introduction was picked up by media outlets in the early summer of 2022, public controversy ensued. Most of the major environmental advocacy groups have opposed the bill. In fact, over 80 environmental groups—including Earthjustice, the Sierra Club, and Natural Resources Defense Council (NRDC)—signed an opposition letter sent to Congress a week before the bill was introduced to committee.¹⁴⁴ A few months later, a similar bill—with key differences—was introduced in the Senate by the late U.S. Senator Dianne Feinstein. Thus far, two notable environmental advocacy groups have voiced their support for the House bill, The Nature Conservancy and Save the Redwoods League.¹⁴⁵ On the other side, the Tule River Indian Tribe voiced strong support for the bill and urged legislators for the bill’s immediate passage. Among its additional supporters are trade industries and governmental entities.

C. Proponents

The supporters of H.R. 2989 include a variety of voices, including the Tribe, organizations representing industry and special interests, environmental and climate NGOs, as well as governmental entities from all levels. Notably, most of the industries supporting this bill primarily stand to benefit from the harvest and sale of timber and biofuel.¹⁴⁶

140. *Id.* § 12.

141. *Id.*

142. *Id.* § 13.

143. *Id.*

144. *See* Letter, *supra* note 112.

145. *See* Kameran Onley, *Senators Propose Amended Save Our Sequoias Act*, NATURE CONSERVANCY (Sept. 14, 2022), <https://perma.cc/EF59-886E>; *see also* Kameran Onley, *The Nature Conservancy’s Statement on the Save Our Sequoias Act*, NATURE CONSERVANCY (June 23, 2022), <https://perma.cc/VF7Q-SYY5>; *see also* Charles Whisnand, *Feinstein Introduces Senate Version of SOS Act*, PORTERVILLE RECORDER (Sept. 15, 2022), <https://perma.cc/BHK5-V49D>.

146. *See* Press Release, Ranking Member Bruce Westerman, House Committee on Natural Resources, U.S. Congress, *What They are Saying: The Save Our Sequoias Act* (June 27, 2022), <https://perma.cc/2PKM-SEM6> (providing a list of the bill’s endorsements and supporting quotes).

1. Tule River Indian Tribe

First and foremost, the Tule River Indian Tribe has voiced support for the Save Our Sequoias Act. On May 10th, 2023, Vice-Chairman Shine Nieto of the Tule River Indian Tribe gave a speech to the House Committee on Natural Resources, voicing strong support for H.R. 2989 and urging its immediate passage.¹⁴⁷ In his speech, Vice-Chairman Nieto spoke for the Tribe and touched on several topics. After providing a brief history of the Tribe and its origins, Nieto shared the devastating impact that the 2021 Windy Fire had on the reservation. He highlighted the fact that without the Tribe’s stewardship of the land—including preventative work such as hazardous fuels reduction—the damage would have been far greater.¹⁴⁸

Vice-Chairman Nieto noted that while the emergency actions taken thus far have been helpful, they are short-term solutions to a long-term problem.¹⁴⁹ According to him, the Save Our Sequoias Act “paves the way to formalize a clear path forward on how we can combine our strengths to safeguard the sequoias” and would allow “long-term management approaches . . . to flourish.”¹⁵⁰ Lastly, Nieto discussed a time in July 2022 when over thirty government officials from the Bureau of Indian Affairs, including the Assistant Secretary of the Interior, visited the reservation and were given a first-hand perspective on the effects of the Windy Fire.¹⁵¹ During the trip, the Tribe was able to showcase not only the devastating impacts of the fire itself, but also demonstrate the success of its work in helping to mitigate the damage.¹⁵² As Vice-Chairman Nieto described:

“We were able to show our guests that our traditional forest management practices worked. There was a very clear difference between those Giant Sequoia groves managed under our traditional practices and those that were not. The destruction of the Windy Fire could not reach past the lines of our traditional risk reduction treated areas and that saved many trees and our Reservation.”¹⁵³

Nieto concluded by sharing his gratefulness to his ancestors for passing along such a gift of knowledge and urging Congress to pass the Save Our Sequoias Act.

147. *Save Our Sequoias Act, Hearing on H.R. 2989 Before the H. Comm. on Natural Resources*, 118th Cong. (2023) (statement of Shine Nieto, Vice Chairman, Tule River Tribe of the Tule River Reservation, California).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

2. Trade Organizations & Industry

Trade organizations and companies in support of H.R. 2989 include industries that rely, either directly or indirectly, on timber for manufacturing.¹⁵⁴ In voicing their support, these industries recognize the devastation that giant sequoias have faced due to wildfires.¹⁵⁵ Moreover, they refer to giant sequoias' "worth[iness] of protection as natural treasures" and identify that "lack of proper forest management" is to blame for increased high-severity wildfires.¹⁵⁶

On the face of it, these trade organizations are saying all of the right things. However, for environmental conservationists, the support from these trade organizations, though not surprising, is alarming. What specifically attracts them to the bill? For one, it provides several economic opportunities for members of these industries, including collaborative grants and public-private partnerships for restoration projects. These contracts would be highly lucrative, as they would likely take place across hundreds or thousands of acres of land. This raises questions regarding whether the legislation is most beneficial to the giant sequoias, or those seeking to profit from the removal and sale of timber and biochar.

3. Environmental Groups

Though shorter than the list of trade organizations throwing their support behind H.R. 2989, there are several environmental advocacy groups and think tanks that also support the bipartisan effort. Although some of these organizations vary in their level of commitment to aggressive strategies for combatting climate change, each of them is nonetheless involved in some form of environmental advocacy.¹⁵⁷ The think tanks voicing their support for the bill include the Center for Climate and Energy Solutions and the Great Basin Institute.¹⁵⁸

However, among the most notable supporters are the Nature Conservancy and Save the Redwoods League.¹⁵⁹ After S. 4833 was introduced, these organizations put out separate messages supporting the amended Senate version and, both organizations were initial proponents of the House bill.¹⁶⁰ However, the Nature Conservancy did not provide unbridled support for the legislation as is. The organization asserted that "maintaining environmental safeguards throughout the

154. *See id.* (some of the listed organizations whose industries directly rely on timber include, but are not limited to, the American Loggers Council, American Wood Council, Associated California Loggers, Outdoor Industry Association, Hardwood Federation, and the National Alliance of Forest Owners. Other industries and companies in support include renewable energy companies Envia, Drax Energy Solutions, and Yosemite Clean Energy, as well as PG&E. Many of the other industries listed rely indirectly on healthy forests and streams, such as the American Sportfishing Association and the Archery Trade Association.).

155. *See id.*

156. *See id.* at 140.

157. *See id.* (the supporting organizations include Carbon180, Evangelical Environmental Network, and Wildlife Forever).

158. *See id.*

159. *See id.*

160. *See id.*; *see also* Kameran, *supra* note 145.

process” is necessary for success as well as collaboration with “agencies, Indigenous peoples, scientific experts,” and other stakeholders.¹⁶¹

4. Forest-Related Associations

Other relevant organizations in support of H.R. 2989 include entities with varying degrees of proximity to environmental issues. One such entity is Calaveras Big Trees Association, which describes itself as “the non-profit partner of the only California state park with giant sequoia groves.”¹⁶² It supports the removal of hazardous fuels in order to protect the park, surrounding communities, and the local economy, which greatly benefits from park tourism.¹⁶³

Other supporting entities include the National Association of Forest Service Retirees, the National Park Foundation (NPF), and the National Forest Foundation (NFF).¹⁶⁴ Under the Act, the NPF and NFF would oversee designing and implementing philanthropic programs that support conservation of the giant sequoias.¹⁶⁵ Moreover, the two foundations would jointly oversee the “Giant Sequoia Emergency Protection Fund” with discretion—at the approval of the Forest Service Chief—to carry out activities supporting the “management and conservation of giant sequoias on Service land and covered National Forest System lands.”¹⁶⁶ In other words, this bill would task the NPF and NFF with overseeing and administering the donations received in support of giant sequoia grove management.

5. Government Entities

Finally, there is a relatively short list of government entities that have come out in support of H.R. 2989. These include the Board of Supervisors for Calaveras, Kern, Placer, and Tuolumne counties, as well as Calaveras and Placer Counties’ water agencies.¹⁶⁷ The most notable agency in support of the bill is CAL FIRE. It combats forest fires across over 31 million acres of California’s land.¹⁶⁸ CAL FIRE also shares an interagency emergency command center with federal agencies such as USFS, NPS, and BLM to streamline operations across jurisdictional boundaries within California.¹⁶⁹ In voicing the agency’s support, fire chief Joe Tyler expressed appreciation for the Act’s commitment to preserving the sequoias while touting the Newsom administration’s successful forest management practices, including the use of prescribed burns.¹⁷⁰

161. See Westerman, *supra* note 146.

162. See *id.*

163. See *id.*

164. See *id.*

165. H.R. 2989, *supra* note 82.

166. *Id.*

167. See *id.*

168. *Fire Protection*, CAL FIRE, <https://perma.cc/5P2D-PSYR>.

169. *Federal Interagency Communications Center*, USDA FOREST SERV., perma.cc/EZ62-KE6d.

170. See Westerman, *supra* note 146.

D. Opponents

As mentioned above, dozens of environmental groups penned an opposition letter to Congress.¹⁷¹ The letter is in response to the House version, as the Senate version had not yet been introduced. The primary objections focus on Section 6(a)(2), which “would waive environmental laws under a broad so-called ‘emergency.’”¹⁷²

Under this objection, the letter advances several arguments against the law.¹⁷³ First, they argue that legislation would prevent community and expert voices from being heard, due to the Coalition’s exemption from the Federal Advisory Committee Act (FACA) requirements.¹⁷⁴ The 118th Congress version of the bill does not include language exempting the Coalition from FACA requirements.

Next, the letter argues that the bill would lead to negative impacts on the environment and endangered or threatened species.¹⁷⁵ It asserts that the bill would lead to poorly planned logging projects that would impact the ecosystem and could lead to increased wildfire risk.¹⁷⁶ In addition, it argues that bypassing the ESA consultations would be “more likely to harm imperiled species than to help them.”¹⁷⁷

Finally, the groups raise a more technical argument against the law. They argue that the categorical exclusions for Projects created by the bill’s language are redundant because NPS and Forest Service already have plenty of categorical exclusions to complete the work.¹⁷⁸ They further argue that there is no evidence for the need of “yet another categorical exclusion.”¹⁷⁹ The letter concludes by correctly connecting high sequoia mortality to climate change and fire suppression, while asserting that active management is already happening in these groves.¹⁸⁰ While the Tule River Tribe did not sign on to this letter, it is unclear if they were asked to.

IV. Discussion

One of the main advantages of the bill is that it would allow the Secretary to swiftly undertake major wildfire Projects. In declaring an emergency, the bill not only accurately reflects the urgency of the issue, but it allows the agency to bypass bureaucratic red tape and avoid resource-intensive litigation. More importantly, it empowers current land managing entities to scale up their work in a way that adequately addresses the threat faced. While opponents of this bill argue that it

171. *See supra* Part III.B.

172. Letter, *supra* note 112.

173. *Id.*

174. *See id.*

175. *See id.*

176. *See id.*

177. *See id.*

178. *See id.*

179. *See id.*

180. *See id.*

wrongly undercuts NEPA, ESA, and NHPA, there are several practical counterarguments.

For one, although NEPA helps hold a federal agency accountable for the environmental impacts of its actions, it is a procedural law, and current categorical exclusions are inadequate to address the scale of the issue. NEPA provides numerous categorical exclusions for federal agency actions and for the relevant agencies such as USFS and DOI, many activities related to fire management such as prescribed burns and mechanical thinning—within certain limits—already fall under categorical exclusions.¹⁸¹ The limits of these categorical exclusions do allow the Secretary to conduct smaller-scale projects, around 2,600 acres or less, without preparing an environmental study.¹⁸² However, this is simply too small of an area to address the issue.

In July 2022, the Pacific Southwest Region of the USFS requested authorization to operate under the emergency provisions of NEPA in order to scale-up and speed up the process of hazardous fuels reduction in Sequoia National Forest.¹⁸³ The request sought approval to immediately conduct prescribed burns on nearly 12,000 acres of land, well above what is permitted by the categorical exclusion, noting the massively urgent threat faced by the giant sequoias.¹⁸⁴ The request further noted that the then-current approval timeline—nearly a year—left the sequoias “highly vulnerable” and that the fuels removal projects needed to be conducted immediately.¹⁸⁵

After receiving approval for the Giant Sequoia Lands Coalition formation and designation of management, the coalition of land managers currently stewarding the giant sequoias, implemented the Giant Sequoias Emergency Response.¹⁸⁶ In December 2022, the Coalition announced that its members—including the Tule River Indian Tribe—successfully treated over 4,000 acres of land and planted nearly 250,000 native conifers.¹⁸⁷ According to Jessica Morse, a deputy secretary within the California Natural Resources Agency, “[u]nprecedented funding and a shift in government business practices – like deploying emergency authorities for the National Environmental Policy Act – have enabled us to scale and speed up crucial resilience projects.”¹⁸⁸

Actions such as the Giant Sequoias Emergency Response arguably undercut NEPA but are still being conducted under the emergency provisions set forth in NEPA. Since the Coalition already exists and is conducting this work, this bill would also apply some legal pressure on the Coalition by implementing deadlines and procedures for management plans. Thus, the bill would not only allow the

181. *Categorical Exclusions*, N.E.P.A., <https://perma.cc/MLH2-5XBW>.

182. 36 CFR 220.6(e)(9)(25).

183. *Letter from Pacific Southwest Region of USFS to USDA Requesting Emergency Response*, FOREST POLICY PUB, 1 (July 2022), <https://perma.cc/YA6W-BU9R>.

184. *See id.*

185. *See id.*

186. *Giant Sequoia Lands Coalition*, NAT'L PARK SERV., <https://perma.cc/NEG7-NXN6>.

187. *See Giant Sequoia Lands Coalition Gains Momentum in Fight to Protect Giant Sequoias Threatened by Unprecedented Wildfire Risk*, CAL. DEP'T PARKS & RECREATION (Dec. 14, 2022), <https://perma.cc/M2YQ-JCX9>.

188. *Id.*

Secretary to scale-up her actions in a way that adequately addresses the threat, but the law would streamline the process so that agencies do not need to request emergency authorization for every necessary emergency action.

There is some irony in the idea that legislation intended to protect and save an endangered species would effectively undercut the ESA. Yet here, that is the case, and perhaps for good reason. Although not listed under the ESA, the IUCN classified giant sequoias as an endangered species noting its decreasing population due to high-severity wildfires.¹⁸⁹ In addition to being an endangered species itself, giant sequoias provide a home to several threatened and endangered species listed under the ESA, such as the spotted owl.¹⁹⁰ Therefore, effective actions taken to protect the sequoias would benefit those threatened or endangered species by helping to preserve their habitat. To this end, the interagency consultation required by the ESA would be unnecessary. The Secretaries would be weighing the cost of, for example, protecting the spotted owl against the cost of protecting that species' home, the redwood forests containing giant sequoias. This is not to say that every possible or potential action undertaken by the Secretary would be entirely beneficial to every species involved. However, this bill aligns with the purpose of the ESA because it would not only help protect an unlisted endangered species (giant sequoias) but would also protect the habitat of other listed species.

Passage of the Save Our Sequoias Act could also help advance Indigenous knowledge, interests, and concerns. First, the Tule River Tribe is a member of the Coalition and handles stewardship for some portions of all five of the giant sequoia groves—Black Mountain, Red Hill, Peyrone, Parker Peak, and Cold Springs groves.¹⁹¹ Importantly, this bill would legally recognize the Tribe's membership in the Coalition and would ensure its rightful presence in these decision-making processes. The bill would also allow other tribes to apply for membership to the Coalition, such as the Bishop Paiute and the Mono Tribe of Cold Springs Rancheria.¹⁹²

Besides providing a seat at the table, the bill also contains language that promotes the use of Indigenous knowledge in fire management, or Indigenous Fire Stewardship (IFS). Under section 5, the Coalition creates an assessment based on the "best available science," which importantly includes "traditional ecological knowledge" from the Tule River Tribe.¹⁹³ While such knowledge will not form the only basis for making decisions, it lends credence to the notion that the Tribe will not just have a seat at the table, but that their ideas will actually be considered. Moreover, this language reflects a growing trend towards increased collaboration with Tribes to restore IFS and other ecocultural practices to the land.¹⁹⁴ As Vice-Chairman of the Tribe, Shine Nieto, has pointed out, "Our Traditional Ecological Knowledge *is* science and we appreciate that the legislation not only acknowledges

189. IUCN RED LIST, *supra* note 3.

190. See *Saving the California Spotted Owl*, CTR. FOR BIOLOGICAL DIVERSITY, <https://perma.cc/4SJ4-AV57>.

191. GIANT SEQUOIA LANDS COALITION, *supra* note 12.

192. See NATIONAL PARK SERV., *Native Americans of the Southern Sierra*, <https://perma.cc/4928-CLVF>.

193. H.R. 2989, *supra* note 82, §5.

194. *California's Strategic Plan for Expanding the Use of Beneficial Fire*, CAL. WILDFIRE & FOREST RESILIENCE TASK FORCE (Mar. 2019), <https://perma.cc/EB2Z-BWKP>.

this, but requires it. The holder of this knowledge is the Tule River Tribe.”¹⁹⁵ Towards this end, the bill earmarks no less than 15% of funds from the Giant Sequoia Emergency Protection Fund towards supporting Tribal management and conservation efforts—in addition to grant funds available to the Tribe.¹⁹⁶

Indigenous and tribal peoples have manipulated and adapted fire regimes to respond to changing environmental conditions and to increase the abundance of certain resources for thousands of years.¹⁹⁷ Several comprehensive studies have shown that cultural burnings have increased biodiversity and habitat heterogeneity across different biomes by reducing fuel build-up in the forest understory.¹⁹⁸ However, due to the Tribe’s traumatic decline from periods of colonization, genocide, forced removal, and cultural assimilation, cultural burnings by the Tribe have been severely limited.¹⁹⁹ Moreover, years of fire suppression and fire prevention propaganda have dominated North American public discourse surrounding fire management.²⁰⁰

Nevertheless, there has been a major push recently to return to Indigenous practices of land management.²⁰¹ For example, the Karuk and Yurok Tribal members are currently leading a highly successful collaborative regional effort to conduct cultural burnings and fuels reduction treatments in the Klamath Mountains.²⁰² The purpose of this effort is to reduce understory brush that leads to high-severity wildfires, which negatively impacts the ecocultural hazelnuts’ stems used for basket weaving.²⁰³ According to a Stanford study, the effort has been successful in achieving both ecological and cultural objectives of Indigenous land management.²⁰⁴

Finally, this bill contains a provision that could directly address one of the specific requests of the Tule River Tribe—fuel break zones. Shortly after the monument designation in 2000, the Tribe began lobbying Washington for the creation of a firebreak buffer zone along the Tribal land border.²⁰⁵ A firebreak zone is a narrow strip of land where all vegetation has been removed, creating a corridor where the fire cannot burn. Fuel breaks, on the other hand, are wider areas where vegetation has been reduced but not removed entirely.²⁰⁶ The purpose of a fuel break is to reduce the amount of fuel that is available to burn, thereby reducing the

195. Testimony on H.R. 2989, *supra* note 45, at 2 (emphasis added).

196. H.R.2989, *supra* note 82, § 12.

197. See Frank Lake & Amy Christianson, *Indigenous Fire Stewardship*, USDA FOREST SERV. 3 (2019), <https://perma.cc/VY8F-L9FS>.

198. Hoffman et al., *supra* note 13.

199. *Id.*

200. *Id.*

201. Sommer, *supra* note 11.

202. See Marks-Block et al., *Effects of Understory Fire Management Treatments on California Hazelnut, an Ecocultural Resource of the Karuk and Yurok Indians in the Pacific Northwest*, 450 FOREST ECOLOGY & MGMT. (Oct. 2019), <https://perma.cc/8FEC-B2PF>.

203. *See id.*

204. *See id.*

205. *See* Parsons, *supra* note 59.

206. *See* Davide Ascoli et al., *Firebreak and Fuelbreak*, RESEARCHGATE (Sept. 2018), <https://perma.cc/9SH9-SGJF>.

heat-intensity to a level manageable for suppression.²⁰⁷ Although firebreaks are more effective at suppressing wildfires, it is logistically less-feasible due to topographical limitations.²⁰⁸

As most bills are heavily amended by the time they reach a floor vote, it is unlikely that this bill would pass as is. Moreover, the Senate's inability to pass legislation—especially legislation aimed at protecting the environment—makes it unlikely that the bill will pass at all. Nevertheless, the introduction of the Save Our Sequoias Act in both chambers of Congress highlights the bipartisan support for protecting these magnificent giants. Even if only to increase visibility and public awareness of the issue, the Act could be a powerful tool.

Conclusion

Regardless of whether this bill passes, the reality is that increasingly hotter and longer wildfire seasons are the new normal, and we must act accordingly. But how we should act is the big question. While the Save Our Sequoias Act allows for an urgent and larger-scale response, it also tramples over seminal environmental laws that have protected public lands for decades. At what point do circumstances become so dire that we must consider all possible options? Is it when 50% of the sequoias have burned? Or is it when the Tribe is forced to abandon the reservation?

In truth, the writing is on the wall. Unless we respond to the increasing frequency of high-severity wildfires with drastic and urgent measures, many of us will bear witness to two major catastrophes: the annihilation of giant sequoias, and the destruction of a Native American reservation—home to the Tule River Tribe. While this bill is far from perfect, it underscores the pressing need for us to do *something*. Moreover, the fact that the Tribe has vocalized their support for the bill should be of the utmost importance. When the people who are most affected by an issue tell us what they want, we should listen.

These ancient trees are not easily replaceable. They must be protected by all means possible. We continue to assess and recover from the Windy Fire and have learned much from it. We have been reminded that we need to collaborate to reduce fires. We need to share our knowledge and our resources. We need to respect and employ Traditional Ecological Knowledge. We need to do this together as co-stewards - and we need to do this now.

Shine Nieto, Vice-Chairman of the Tule River Tribe of the Tule River Reservation, California.²⁰⁹

207. *See id.*

208. *See id.*

209. Testimony on H.R. 2989, *supra* note 45, at 3.
