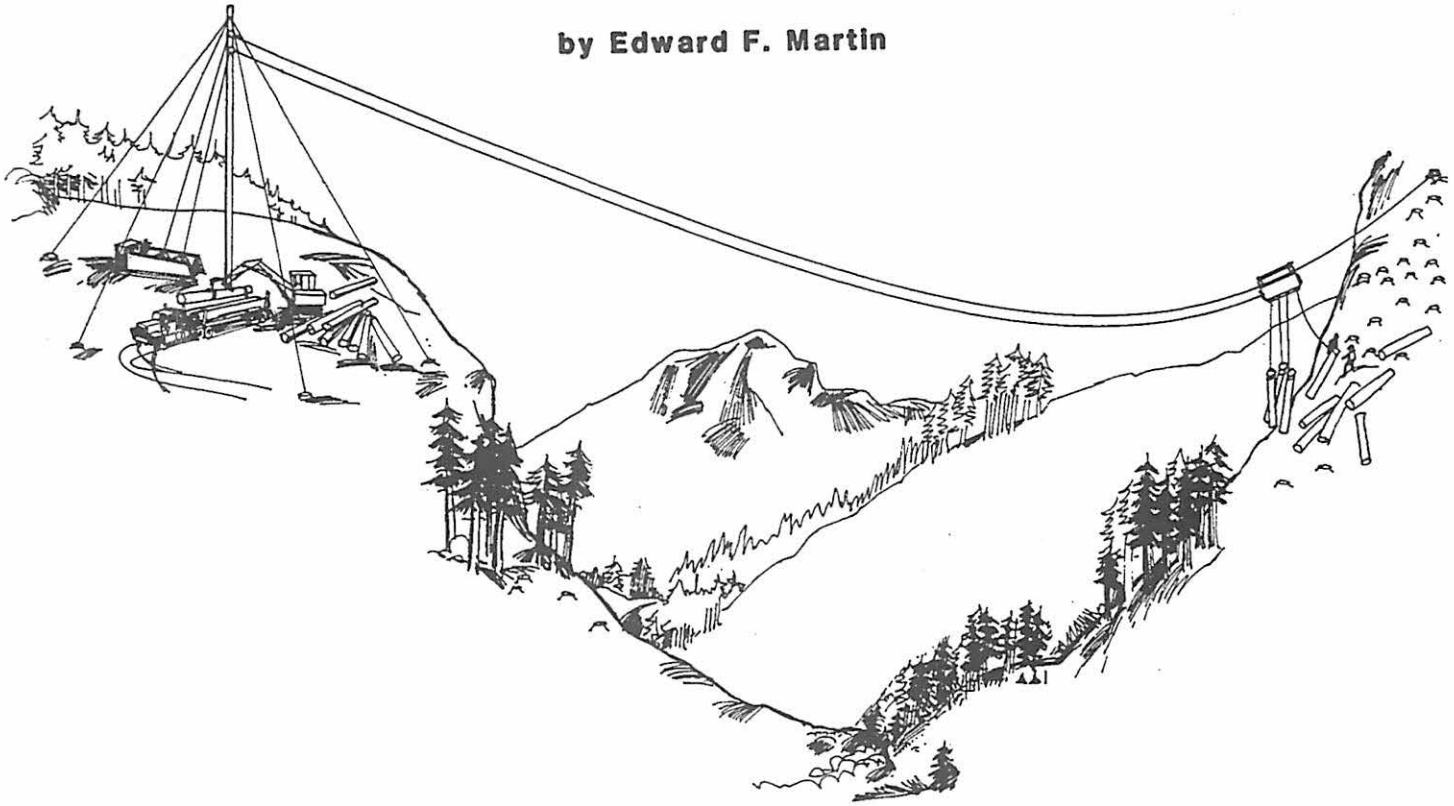
"A TALE OF TWO CERTIFICATES"

THE CALIFORNIA FOREST PRACTICE PROGRAM

1976 THROUGH 1988

by Edward F. Martin



STATE OF CALIFORNIA

GEORGE DEUKMEJIAN
Governor

GORDON VAN VLECK
Secretary for Resources
The California Resources Agency

RICHARD ERNEST
Director
Department of Forestry and Fire Protection

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FOREWORD

This history begins where Tobe Arvola's excellent little history "Regulation of Logging in California, 1945 - 1975" left off. 1974 and 1975 had been tumultuous years, as Tobe related, and he suspected that more strife lay ahead. How right he was! The relative length of these two histories illustrates that rather graphically, although I have to admit I'm a bit more wordy than Tobe was.

The title I chose for this book is based on the two certifications around which, by far, the largest part of the story of these thirteen years revolved. The first was the certification of the Timber Harvesting Plan (THP) preparation and review process as a "Functional Equivalent" of an Environmental Impact Report (EIR). This certification came at the very beginning of the story; indeed it was mentioned prominently by Tobe Arvola at the end of his history. Nevertheless, that certification has come under continual attack, and its retention motivated many of the decisions of both the Board of Forestry and the Department of Forestry and Fire Protection (CDF). Many decisions undoubtedly would have gone other ways but for the threat of decertification.

The second was the certification of the entire Forest Practice program as "Best Management Practices" for the reduction of non-point source water pollution. That certification came very near the end of the thirteen years. Again, it provided an impetus for decisions made by the two forestry agencies that they might have preferred to make differently. Side plots abound throughout the story, but these two certifications stand like two telegraph poles with the basic message suspended between them.

In telling this story I have elected not to use a chronological arrangement. The story is so complex that the larger picture would be lost in the maze of interactions that took place. In so doing I have run the risk of over-simplification. Obviously, many decisions in one arena were made on the basis of decisions made in other arenas that on the surface had no direct bearing on one another. In a few places I've tried to point out some of the more obvious connections. In many others the reader will simply have to infer the connections. They shouldn't be too hard to pick out.

I have tried to be as objective as possible and have tried to "call it as I saw it." Nevertheless, readers will surely sense a bias favoring CDF. As the agency usually caught in the middle between fiercely contending forces, CDF reactions came somewhere in the middle most of the time. That doesn't automatically make them the best actions every time, but statistically speaking, they're usually going to be closer to the

right choice than most of the other possibilities.

Moreover, I'm proud of my association with as fine a group of dedicated professional people as you'll ever find anywhere. These people, with all their human frailties, have tried hard to do right by the forest and its environment, and by all the citizens of the State of California who pay for their services. I make no apology for that kind of bias, if it shows.

I have tried to offend no one, but honesty has compelled me to tell the story as it happened, at least as it appeared to me. Not everyone comes out always looking especially heroic, including myself. I will apologize for any possible offense that might occur, and I hope that my motivation for objectivity might be understood even if I might not be forgiven personally.

This story has obviously been told from a personal viewpoint. My point of observation was a pretty good one, however, in that I was present as an observer almost continually from before 1976 through the end of 1986. From time to time, I also participated in certain aspects of the story. I have relied heavily upon my own recollection and have related a few events that to the best of my knowledge have never been documented anywhere else. A few other events came from the memories of other persons who were present. Most of the story, however, was gleaned from a review of the minutes of board meetings. I have made no attempt to document those references because to have done so would have made the footnotes longer than the story. Published references have been noted where pertinent.

Edward F. Martin,
March 13, 1989

The Klamath River is part of California's
Wild and Scenic River System.

Chapter 1

CEQA AND FUNCTIONAL EQUIVALENCY

1976 began with a promise of relative peace on the Forest Practice front. The previous year had been extremely hectic, as Toivo F. "Tobe" Arvola has so eloquently described in his book "Regulation of Logging in California, 1945 - 1975."[1] The decision of Judge Arthur B. Broaddus in NRDC v. Arcata National had thrown the timber industry and its regulators into turmoil. That landmark decision ruled that the Z'berg-Nejedly Forest Practice act of 1973 was subject to the California Environmental Quality Act, or "CEQA" (pronounced "see-kwa") as most persons call it. New legislation had passed to soften the blow, and, although not everyone was comfortable with the new situation, the readjustments had begun.

CERTIFICATION

SB 707, authored by Senator Randolph Collier, added Section 21080.5 to CEQA in the Public Resources Code, making it the most important bill to emerge during 1975. The new section specifically authorized in law what Governor Jerry Brown had begun to do with doubtful authority soon after the Broaddus decision. It authorized approval of a review process that was "functionally equivalent" to the Environmental Impact Report (EIR) required by CEQA. Section 21080.5 required the Resources Secretary to make a number of technical findings that the process in question would provide a review of environmental impacts essentially equivalent to an EIR. Making those findings proved not insurmountable after the Board of Forestry made extensive Forest Practice Rule changes. Thus, on January 6, 1976 Resources Secretary Claire T. Dedrick certified the Timber Harvesting Plan (THP) review process to be a "Functional Equivalent."

Certification exempted the THP review process from the preparation of a full-blown EIR. Since the lengthy EIR process had been the main sticking point to the application of CEQA, relative peace and calm were expected to follow certification. While 1976 certainly was less hectic than 1975, it proved to be merely a lull before the stormy years that followed.

OPPOSITION TO FUNCTIONAL EQUIVALENCY

Initially, most of the opposition to functional equivalency

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[1] T.F. ARVOLA. Regulation of Logging in California, 1945-1975. California Department of Forestry and Fire Protection, 1976. 98 pages.

appeared to come from representatives of the timber industry. As described by Arvola, in late 1975 these persons strongly opposed any effort by the Board of Forestry to seek certification.[2] At that point an industry appeal from Judge Broaddus' decision was still going forward, and industry representatives devoutly believed that the decision would be overturned. Certainly there was confidence that despite any possible setbacks in court, legislative efforts would sooner or later pay off with a permanent and total exemption from CEQA. Many industry representatives expressed conviction that there would be no need to try for certification. The law was so obviously burdensome in their opinion that exemption was sure to come soon.

NRDC v. Arcata National Corporation (1976 Cal Reporter 172, 59 C.A. 3rd 959) was eventually upheld by the appellate court in a decision rendered on July 8, 1976. This decision not only reaffirmed the findings of Judge Broaddus but went even further in declaring unequivocally that Forest Practice Act implementation was subject to CEQA. The State Supreme Court refused to hear an appeal from the Appellate Court decision. Legally the matter stands little changed since that time, except that later decisions have strengthened the connection.

There have been repeated efforts in the legislature to modify the laws and to obtain a complete exemption from CEQA. SB 477 by Senator Randolph Collier and AB 328 by Assemblyman Z'berg (Carried by Assemblyman Rosenthal after Z'berg's death) in 1975 and SB 1122 by Senator John Nejedly in 1976 were early attempts at overturning NRDC. Only SB 477 would have flatly reversed the decision. The other two bills would have added environmental protection provisions to the Forest Practice Act while granting an exemption from CEQA. None of these went anywhere, mainly because the administration had settled on SB 707 (Nejedly) as the appropriate solution.

SB 637 By Senator Reuben Ayala in 1977 and SB 720 introduced by Senators Johnson and Greene in 1981 also sought complete exemption. CDF discussed seeking amendments to SB 720 during its active life to make the Forest Practice Act more environmentally protective. CDF could then support the bill. Nothing came of these discussions.

One important measure did pass. SB 707 had a life of only two years, and legislation was needed to extend these changes. That was done with AB 884 (McCarthy) which quietly passed and was signed into law in October 1977. This bill made several other relatively minor procedural changes in CEQA, apparently camouflaging its connection with forest practices. At any rate, the bill passed with little comment.

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[2] Ibid. p.94.

1976 saw the adoption of one other piece of important legislation: SB 1618 by Senator Randolph Collier. Senator Collier's SB 476 in 1975 had given a temporary respite from CEQA but, in so doing, had terminated THPs approved during that period on May 31, 1976. That date came during logging season, a bad time to have to submit new plans. SB 1618 extended those THPs until the end of 1976.

It must be emphasized here that, contrary to an opinion held by many persons, Certification as a Functional Equivalent did not exempt the Forest Practice Act from CEQA. Certification led only to exemption from certain parts of the Environmental Impact Reporting process. The fundamentals of CEQA fully applied. That fact made the subsequent discussion about review of alternatives extremely crucial.

MULTI-DISCIPLINARY REVIEW

An early disagreement centered on the function of review teams. To certify a functional equivalent, Secretary Dedrick had to find that a multi-disciplinary review process existed. No such specific process for THPs existed in either law or regulation at the time. Early in 1975 multi-agency review teams headed by the Division of Forestry (now the Department of Forestry and Fire Protection, abbreviated CDF) had been established by executive order. These teams continued to function even after 1975 legislation had provided a temporary reprieve from compliance with CEQA. In making her findings of functional equivalency, Secretary Dedrick merely took official notice of the existence of the teams. Eventually, the teams were established in regulation. For over eight years, however, they operated simply under the administrative authority of the State Forester and later the Director of Forestry.

The incentive to formally recognize review teams in the regulations came eventually from the State Water Resources Control Board. Negotiations between the two boards for compliance with Section 208 of PL 92-500 made it clear that the water board would insist on review teams being given status in the regulations. The Board of Forestry held its first hearing on this subject on November 3, 1981. After a further discussion on December 2 they referred the matter to the District Technical Advisory Committees for redrafting. The matter came before the board again on November 3, 1982. Formal recognition for Review Teams came with the adoption of CCR 1037.5 on January 5, 1983.

No little controversy surrounded this action. Memberships of various agency representatives were debated; as were the meaning and procedure for non-concurrence by team members, whether decisions should depend on a majority vote, and many

extraneous issues. Not the least important issue under debate centered on the authority of the Board of Forestry to adopt regulations for review teams. Many witnesses argued that the matter was up to the director, not the board, since the director holds primary THP review authority. The director chose not to pursue that point which largely mooted the issue. In other points of debate, industry witnesses questioned the board's authority to require non-forestry agencies to participate. They questioned the effect on a THP under review if an agency failed to participate. In the end the board essentially placed into regulation the same process that CDF had followed for eight years.

The main advantage to having the teams established in regulation has been to deflect much of the criticism about how the team functions. Public hearing and debate demonstrated that the process had been soundly considered and that it worked well. Approval by an independent public body such as the Board of Forestry served to underscore that point.

Demonstrating that some issues never die was a piece of 1987 legislation bearing on some of these points. SB 1335 by Senator Dan McCorquedale would have required CDF to deny a THP unless Department of Fish and Game and Regional Water Quality Control Board representatives participate in the preharvest inspection. Board of Forestry and CDF both opposed this bill because neither had the authority to require another agency to participate. It would have meant that a THP could be held hostage by an uncooperative agency. The legislature approved SB 1335, but Governor Deukmejian vetoed it, much to the relief of the forestry agencies.

TIMBER HARVESTING PLAN REVIEW

To keep this subject in perspective, an understanding of review teams and their workings is necessary. Each of the Regions of the CDF has at least one review team. The heavily timbered north coastal region has four teams, geographically dispersed. Each team includes at least one CDF member, one member from the Department of Fish and Game, and one member from the staff of the Regional Water Quality Control Board. Under certain circumstances, the county, the Coastal Commission, the Department of Parks and Recreation, and the Tahoe Regional Planning Agency are also represented. Other advisers such as geologists, hydrologists, and archeologists may participate but are not team members.

Since by law the Director of Forestry is solely responsible for enforcing the Forest Practice Act, the CDF team member is always the chairperson. Other team members are advisory only. The final recommendation of the team is made by the chairperson.

If other team members do not concur with the chairperson's recommendations, they may submit formal "Statements of Nonconcurrence." Such statements require a written response from the chairperson.

Decisions whether THPs conform to the regulations of the Board of Forestry are made by a designee of the Director of Forestry who does not belong to the review team. Review teams advise the director's designee on actions to take on individual plans. Review teams typically meet twice to review each plan: once to determine whether a preharvest inspection is necessary and to identify possible problems in need of field review; and a second time to analyze the results of the preharvest inspection. Not all plans require a preharvest inspection. Review team members may but frequently do not participate in preharvest inspections. Plans are frequently modified during the review process, usually in consultation with the RPFs who prepare them. In 1985 more than half of all plans submitted were modified in some significant way during review.[3]

TIME LIMITS FOR THP REVIEW

Review teams thus comply with CEQA requirements for multidisciplinary review of projects. Review teams must, however, complete their reviews within time periods that come from the Forest Practice Act, not from CEQA. They are generally shorter than CEQA periods. These limits are matters of law not under the control of either the board or the CDF. The act requires that any preharvest inspection be completed within ten days after a THP has been filed. Subsequent plan review must be completed within 15 days after completion of the preharvest inspection.

The board by regulation has given CDF an additional ten days to review plans before filing them. This latter period is not provided in the act, but the regulation has been upheld by the Office of Administrative Law.

Thus, at most, 35 days are available for plan review. The average is somewhat less. In a few counties, because of special legislation, not less than 35 days must be provided. More time usually can be obtained from the plan submitter if needed, but without permission from the plan submitter, CDF must act within the legal time limits or the plan becomes approved by default.

Environmental critics of the Forest Practice Act frequently

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[3] CALIFORNIA DEPARTMENT OF FORESTRY. California Forest Practice Program, 1985. State of California. 12 pages. See Page 1.

point out that these time limits are much shorter than those required by CEQA. They argue that insufficient time is allowed for public or even for agency review of plans. Even the Board of Forestry at one time agreed and for several years running requested legislation to extend the review period. With one limited exception the legislature has not given additional time. AB 328 was introduced in 1976 by Assemblyman Herschel Rosenthal to add ten days to the review period. The bill failed. In 1984 AB 3838 by Assemblyman Farr did succeed in granting a guaranteed 35 days of review to plans in counties that had regulations adopted under SB 856.

The critics go on to argue that with such short review times, the process cannot be the functional equivalent of EIR review. These arguments miss the point that CEQA does not require functionally equivalent programs to be equal to CEQA in all respects. Specifically, CEQA in PRC Section 21080.5 does not require THP review times to be equal to those provided for other projects.

FEASIBILITY ANALYSIS

Some of the earliest controversies over functional equivalency arose over the review of possible alternatives to proposed operational methods. CEQA requires review of a project to include an analysis of feasible project alternatives to ascertain that the least damaging choices have been made. The scope of such review under CEQA is quite broad. The Director of Forestry took the position that he had an obligation to review all aspects of a proposed timber harvesting operation. This occasionally meant evaluating project design factors that timber operators believed were private management decisions not subject to governmental review.

This position led to charges that CDF Forest Practice Officers were adding requirements to THPs that went beyond the Forest Practice Rules. Industry representatives objected strongly to what they considered ad hoc rulemaking. They found no little sympathy in the person of Senator John Nejedly who in 1977 introduced SB 886 to bring the practice under control. The bill contained language that strictly limited the Forestry Director to the rules of the board when reviewing THPs. It also required the board to adopt specific rules to guide the director in those cases where it wanted him or her to use discretion.

At first both the board and the director opposed SB 886. Then Senator Nejedly amended the bill to allow the director to withhold decision on a THP that appeared to lead to serious environmental consequences not covered by rules of the board. The matter would then be taken to the board to seek an emergency rule to address the situation. This latter process became known

as a "PRC 4555 referral" because SB 886 added wording to PRC Section 4555 to allow such referrals. With this compromise, the bill became law on January 1, 1978.

Writing the law proved easier than writing the regulations needed to put it into effect. Board of Forestry staff began trying to develop new rule language even before the law became effective and ran into more than one impasse. Functional equivalency was at stake. Without some practical mechanism to permit the CDF to review feasible alternatives as mandated by CEQA, loss of certification seemed almost certain. The ability to delay a THP decision appeared too cumbersome for any but the most serious cases. Even then, a question existed as to the director's ability to consider alternatives not contemplated in a board rule.

Robert Testa, a member of Senator Nejedly's staff, helped break the deadlock during an ad hoc meeting of board staff with concerned individuals on December 12, 1977. He suggested a rule giving the responsibility for review of alternatives to the RPF (Registered Professional Forester) who prepared the plan. The director's designee could then perform the required review while carrying out the broader review responsibilities and do so within the rules of the Board.

This Solomon-like solution met only one hitch enroute to becoming one of the most controversial rules ever adopted by the Board of Forestry. Most RPFs who prepare THPs objected to a requirement to write out all the alternatives and the reasons for their choices. They argued that the THP itself would contain all the evidence needed to determine whether the best alternatives had been chosen. The board accepted this reasoning and on January 10, 1977 adopted what became known as the "unwritten feasibility analysis." It was described as a thought process the proof of which should be evident in the THP. No other writing would be needed.

Despite attacks and a number of amendments adopted by the board, some of them almost immediately, the rule stood in its basic form for over ten years. At the request of the board, the CDF quickly prepared a set of guidelines for making a feasibility analysis.

The board also adopted rules to guide the director when delaying decision on a plan to refer the issue to the Board for an emergency rule. The CDF made a number of 4555 referrals to the board, but the process demands a relatively significant issue to justify its use. CDF has not used the process often.

Senator Nejedly himself made a dramatic appearance at a Board of Forestry meeting on February 1, 1978 when the board was considering the first of its amendments to its new rule. He

admonished the board on the need for public involvement in the rule making process. He pointed out that rule making was a quasi-legislative function which the legislature viewed very seriously. He urged the board not to evade its responsibility by allowing the department to adopt ad hoc rules through excessive administrative discretion. He argued that this process tends to exclude the public from rule making.

Almost immediately environmentalists began to attack the unwritten feasibility analysis for not providing a way for the public-at-large to evaluate the choices made. Demands for a full EIR-like analysis of alternatives were made at almost every turn. Virtually every lawsuit against the department or the board concerning forest practices charged that the unwritten analysis failed to comply with CEQA. A number of legislative bills were introduced to require a written analysis, among them AB 3473 by Assemblyman Byron Sher in 1984. AB 3473 eventually did become law, but only after references to the feasibility analysis had been removed.

Nevertheless, the board did eventually conclude that it should change the rule. The feeling grew that the unwritten feasibility analysis was vulnerable to legal challenge because it did not run exactly parallel to CEQA requirements. CEQA does not specifically require a feasibility analysis of the type contemplated in the board's rule. The unwritten feasibility analysis was directed toward the operational details of timber harvesting, whereas the review of alternatives in CEQA was directed toward alternative ways to conduct the project as a whole.

Although the unwritten feasibility analysis had been successfully defended in court on more than one occasion, it seemed safer to end any doubt. After lengthy hearings and debate that stretched out over a five month period, the board on January 7, 1986, finally repealed its unpopular rule. They then adopted a new rule in 14 CCR 897 that more closely parallels CEQA requirements. The new rule was further clarified on June 4, 1986 by adding a definition for "significant adverse impact" to 14 CCR 895.1.

REVIEW TEAMS AND CAMERAS

Coupled almost inextricably with industry charges of ad hoc rule making against the CDF were complaints against the whole review team process. In fact, most of the complaints about unlawful additions to THPs arose not from disagreements with the CDF but from disputes by private RPFs with non-CDF members of the review teams. The non-CDF team members were seen as not having the knowledge or experience to make practical recommendations to solve environmental problems. Indeed, they were often seen as

incapable of recognizing whether a problem actually existed. In a few instances feelings became so intense that attempts were made to bar certain review team members from taking part in preharvest reviews of THP areas.

Green and Gallez found in their 1982 study of the perceptions held by RPFs about the Forest Practice Act that the primary objections to the review team procedures were based on negative feelings about non-CDF team members.[4]

On the other hand non-CDF review team members have often complained that their requests are not given serious consideration by the CDF chairperson. This complaint has led environmentalists to claim that the CDF has a bias towards the industry. "CDF sleeps with the timber industry" has been a frequent charge. For this reason, environmentalists often insist that review team decisions should be made by majority vote. At least one legislative attempt was made to impose a majority vote, and several serious proposals have been made to the board for regulations to do so. Nothing has ever come of these efforts.

One of the most crucial review team controversies occurred in 1980. Forestry Director David Pesonen denied a THP submitted that year by Masonite Corporation because Masonite refused to allow a team member to use a camera during a preharvest inspection. The member, who represented the Regional Water Quality Control Board, insisted that pictures were necessary to help confer with other persons in his agency about the THP. Masonite argued that the agency had in the past used such photos out of context in a pejorative manner. The company also feared that the photos could be used in possible law enforcement actions in contravention of search and seizure statutes.

Director Pesonen sided with the team member and denied the plan. This was an action of considerable discretion by the director since no specific rule of the board even mentioned the review team, let alone cameras. The Board of Forestry, on a close split-vote on May 7, 1980 sided with the director and upheld the denial.

Masonite appealed the denial in court. The court found in favor of Masonite on relatively narrow, technical grounds. The court ruled that the Board of Forestry had failed to show specifically how the lack of photos had prejudiced the water board's ability to make an informed judgement in that instance.

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[4] PETER F. GREEN and GORDON P. GALLEZ. Private Forester and Timber Operator Perceptions of the Implementation of Forest Practice Regulation in California. Institute of Ecology, University of California, Davis California, 1982. 117 Pages. See pages 57 and 58.

(The team member had declined to participate in the inspection after being refused the right to take pictures.) The decision seemed to imply that in specific cases, denial of the right to take pictures might justify denial of a THP.

The board decided not to appeal. On June 2, 1981 the board set aside its original decision and approved the plan. Cameras have rarely been allowed since that time. This is another of those issues that seem to have immortality. Thought to be dead as a dodo, it came to life again in 1987 in the ill-fated SB 1335 by Senator McCorquedale. Along with its insistence that Water Quality Board staff participate in all preharvest inspections, it would have allowed these worthies to use cameras with impunity. Governor Deukmejian's veto deep-sixed the idea for the time being.

FLEXIBILITY AND PROFESSIONAL DISCRETION

As we have seen, the Board of Forestry and CDF were brought under considerable pressure to limit the use of discretion by the latter, especially when reviewing THPs. At the board's direction, CDF drew up a number of proposed rule revisions specifying limits in those situations where the board seemed to want the director to use discretion. CDF presented its proposals to the board as early as April 27, 1978. Obviously, the department had begun to give the matter serious thought even before SB 886 passed the previous fall.

The board had already dealt with this concept to some extent in earlier regulations. For example, in the Stream and Lake Protection Rules adopted in 1975, they had given the RPF preparing the plan and the director a measure of latitude. The rule prescribed a standard width protection zone where certain operations were restricted. The RPF then, with the director's concurrence, could propose protection zones up to 50% wider or narrower than the prescribed limits.

The proposed rules submitted by CDF in 1978 built on these examples and suggested upper and lower limits for many other rule standards. The proposals were forwarded to the District Technical Advisory Committees for review, as prescribed by law. There, the proposals received a luke-warm, and at times hostile, reception. Many committee members appeared to resent CDF's suggesting such extensive rule changes. The proposals did not immediately find their way into regulation, largely because of many other pressures on the board. Many of the principles, however, eventually found their way into the rule revisions adopted because of PL 92-500, Section 208, and AB 1111.

From the start the board has consistently sought ways to maximize flexibility in the Forest Practice Rules. The majority

belief, to some extent even crossing the environmentalist/industrial line on the board, has been that forestry principles cannot be bound into a rigid set of rules. Conditions and circumstances on the ground are considered far too variable to permit hard, inflexible prescriptions. The majority has come to believe that both environmental protection and resource production require flexibility within the rules, one as much as the other. This belief means that the persons in charge on the spot must be allowed discretion to take whatever action is best at that time and place. The board's rule adoptions have repeatedly reflected this philosophy.

Achieving an appropriate degree of flexibility has not always come easily, however. Industrial representatives have appeared to prefer discretion to flex in their direction. CDF believes, on the other hand, that it needs maximum discretionary authority to comply with legal mandates. The environmental community, for its part, seems to view all flexibility with great distrust. This group obviously lacks confidence in the industry, but neither does it regard CDF with high favor. They have clamored for very strict rules on virtually every occasion. The most that such persons seem willing to grant would be a system allowing variances under strictly defined circumstances. This thought was expressed most clearly by a spokesman for the State Water Resources Control Board at a board hearing on the Road and Landing Rules on November 3, 1981.

To overcome objections to flexibility, the board has unsuccessfully tried to provide a review team veto over the use of alternatives. They made an attempt to require disapproval of plans where two or more members could not concur with a proposed departure from the standard. Industry vigorously opposed this type of veto. The CDF also resisted the concept even during the Governor Brown years, seeing it as an unlawful delegation of the Forestry Director's review authority.

The Office of Administrative Law agreed with the opponents when it reviewed the Watercourse and Lake Protection Rules in 1982. The board thus found it necessary to adopt less restrictive wording. The new rules insist that CDF must give very careful consideration when two or more review team members submit statements of non-concurrence with the decisions of the chairperson. A written response must be prepared giving evidence to show that the non-concurrence was not justified, but no veto exists. Flexibility was preserved.

Flexibility continues to be the guiding principle, reaching an epitome with the adoption of amendments to 14 CCR 897 on September 4, 1985. That rule allows alternate prescriptions to <u>any</u> standard rule where clear and convincing justification can be shown. The same rule for review team member non-concurrences has been applied here and in all other similar situations.

DEPARTMENTAL DISCRETION

Does the CDF have authority to encourage RPFs to include environmental mitigations in THPs beyond specific Forest Practice Rule requirements? This question has never been resolved to the satisfaction of many industry representatives. Since SB 886, CDF has tried to draw a clear distinction between what it can require and what it recommends. The agency has never, however, shied away from pressing for environmentally sensitive Timber Harvesting Plans. CDF foresters (most of whom are also RPFs) believe they have a professional as well as legal responsibility to speak out during plan review. Industry representatives, on the other hand, regard such comment as a form of "blackmail" or "extortion." Both descriptions have been used at times. At the least, many believe, it is an abuse of agency authority.

The matter came to a head on April 8, 1981 when Fred Landenberger, representing the California Forest Protective Association (CFPA), wrote to the board and charged CDF with abuse of authority. In that letter and in a later one dated August 4, 1981 he cited some 100 or more cases where CDF had allegedly required or coerced private RPFs to include unauthorized mitigations in THPs.

CDF with the board's support undertook a detailed review of a random sample from the cases cited. Its investigation indicated that CDF personnel had correctly followed departmental policy. No one had been "required" to add the mitigations in question. CDF's information further indicated that many of the items in question had actually been suggested by the RPFs who had prepared the plans. In other cases, there had existed an honest difference of opinion whether the matter could be required under a rule.

No doubt many of the mitigations cited in the complaint had come out of hard negotiating sessions. Quite likely many of the private RPFs did feel at a negotiating disadvantage when dealing with representatives of a strong agency. They perhaps accepted suggestions unwillingly so as to avoid delays in getting their plans approved. CDF does have the ultimate weapons of plan denial and PRC 4555 referral. Denial would have required a showing of actual non-compliance with a rule, but many private RPFs are uncertain about specific rule interpretations. Moreover, even if the board should overturn a denial or decline to act on a referral, the RPF has lost time. In such instances, grudging acquiescence may often be the easier, less expensive way out.

CDF has reported, also, that most RPFs in private employment agree with the principles of environmental protection and will try to avoid problems. These persons apparently object mostly to

having the requirements spelled out in an enforceable written document. They seem to fear that if some detail is inadvertently overlooked, they might be subjected to disciplinary action despite good intentions. The argument is often made that the best way to protect the environment is to allow the RPF the maximum flexibility on the ground.

At any rate the issue remains a standoff. The Board of Forestry has never publicly discussed CDF's written response to the charges in the CFPA. The board has held more than one discussion about departmental discretion in reviewing THPs but has never reached a consensus. Board member David Pesonen, who later became Forestry Director, on January 10, 1978, stated what has become more or less the guiding principle, "The director must have discretion to deal with CEQA and other laws requiring his attention. The Forest Practice Act is not the only law governing timber operations." The exact amount of discretion may never be settled except on a case by case basis.

One such case, which will be discussed in greater detail in a later chapter, involves logging in an area with extreme erosion hazard near Little Grass Valley Creek in Trinity County. In that 1986 case, board members themselves participated in the development of mitigations that, on the surface at least, appear to go well beyond any rule of the board.

Tensions that arise in cases like these seem almost inevitable in view of the two apparently incompatible ideals that must be reconciled. Such tension may not be all bad. It may help keep all parties from straying very far out of line when it proves impossible to write precise, rigid regulations to compel compliance.

From the other side, few environmentalist critics of the Board and CDF will ever concede that CDF is too tough on the industry. They have expressed their opinion frequently in letters to the governor, in editorials, and in the language of their lawsuits: CDF is far too lenient toward the industry for their liking.

The matter came to the surface again, without any final resolution, in February 1988. CDF had delayed approval of several THPs that called for clearcutting stands of old-growth redwood. Department of Fish and Game and several other critics had urged modification of the plans to accommodate old-growth dependent species of wildlife. CDF concluded it had no rules to compel such modifications and requested board advice.

After a lengthy hearing, the board determined that no emergency existed since the wildlife species under scrutiny were not on threatened or endangered lists; thus, the existing rules were sufficient to deal with the issue. CDF insisted that it had

no choice but to bring such matters to the board. Rule 14 CCR 898.1(f) apparently required CDF to do so. The board responded by voting to delete the rule under emergency provisions.

At its April 1988 meeting the board took up the matter again, since by law emergency rule actions must be reconsidered within 120 days. The board apparently concluded that its February action had been hasty, and it voted not to make the rule deletion permanent. Throughout the two hearings, board members and witnesses repeatedly stated that CDF had been going beyond the rules of the board in making its determinations. The feeling was reiterated that the rules must clearly guide and limit the department. Whether this can ever be done to everyone's satisfaction remains problematical in view of court decisions and the breadth of CEQA mandates.

TIMBER HARVESTING PLANS AND CEQA DOCUMENTATION

Under impetus provided by CEQA, the Timber Harvesting Plan has come a long way in its development as CEQA documentation. CEQA relies heavily on paperwork. Single EIRs on large projects often resemble small libraries by themselves. THP documentation in contrast does not require such extensive paperwork, although industrial critics often complain otherwise.

The first THP forms provided in 1974 were only the two sides of one sheet, plus a map. With the rule amendments that went into effect in 1975, the form grew to six pages, plus several maps when more than one was required to show all necessary detail. CDF meticulously avoided placing any questions on the form not required specifically by a rule or regulation of the board. Then, in June, 1977 the Board of Forestry ordered CDF to add questions to the THP form requesting information about snags retained for wildlife habitat purposes. Although the board had recently adopted snag retention rules, the information thus requested was not required by the rules. It was designed purely to reveal information about the environmental consequences of certain actions, the precise function of most CEQA documents.

By 1981 the need to protect cultural values had become serious enough to require the addition of questions concerning the presence of recorded archeological sites. This move grew entirely from CEQA requirements to protect such cultural values; the Forest Practice Act does not provide specifically for any such protection.

Following the EPIC v. Johnson decision in 1985, the board approved adding a question to the THP form concerning review of cumulative impacts. By that time even the board's rules had so changed in response to CEQA requirements that more and more CEQA related information had to be provided. Questions on archeology

were also broadened and strengthened in a new THP form which was approved for use late in 1986.

Meanwhile, the form itself expanded to ten pages by 1981, then shrank to seven pages in its current version. The recent shrinkage in form size does not, however, indicate a reduction in information required -- quite the contrary! The earlier versions of the form provided spaces for RPFs to write the answers within the form. Now the RPF must add the information in addendum sheets.

Gradually it became necessary to insist upon longer and longer narrative statements to complete a satisfactory THP. Since not all THPs require lengthy answers to all questions, a form to cover all contingencies became impractical. Less space is now provided for answers on the form, requiring attachments to complete the plan. More and better maps now are usually necessary to comply with informational requirements. THPs often run 15 or more pages, with many addenda providing detailed explanations of answers to questions on the plan form.

CEQA documentation doesn't stop with the THP, a fact not often appreciated by environmental critics who complain that the THP doesn't measure up to EIR standards. They often refer to the THP derisively and somewhat inaccurately as a simple "check the box form." Much of the required documentation is in the form of written comments and reports from review team members, the report of the CDF inspector who conducts the preharvest inspection, and responses to environmental concerns raised by the public and review team members. Correspondence with the plan submitter and with the public, together with filing notices, add to the record on each plan.

To be sure, the THP record does not compare with a typical EIR in length or weight. Nevertheless, the essential information may be found in the THP record, albeit in summarized format. Then, too, most of the environmental protection is located in the Forest Practice Rules, which are automatically made a part of every THP. The rules need not be written out except when a rule requires an explanation. There was one exception. In a lawsuit over a THP filed by David Dixon in Marin County in 1985, the trial court ordered CDF to prepare a summary of the rules to be appended to the THP.

One criticism with no ready answer is that much of the information is expressed in technical terms not readily understandable by a lay person. CDF routinely faces questions of this type from critics of specific THPs.

LONG-TERM TIMBER HARVESTING PLANS

Defining the period during which a THP is active has long provided difficulties for timber operators and the CDF alike. The Forest Practice Act states rather ambiguously that a THP is effective for a period of not more than three years. 1985 legislation has added a way to extend the period beyond three years, but it left many ambiguities intact. Arvola mentions a need to solve difficulties left over from 1975 dealing with extensions of THPs after they have been approved. The board took care of these initial problems in April 1976 by adopting amendments to its regulations to define more clearly the beginning and end of a THP. Extensions would have to be completed within three years of the original plan approval date and would have to be requested not less than ten days before a plan was due to expire.

The result was a large number of plans submitted for the full three-year period so as to retain the maximum flexibility for the timber owner and operator. This practice, in turn, gave CDF headaches because many small plan areas could be logged in a matter of only a few days. For years there was no way for CDF to know when a plan would begin. Locating new operations often required a "catch as catch can" search. The adoption of CCR 1034.5 in August, 1988 put an end to that uncertainty. CDF must now be notified of the start-up date.

At the other end, many problems still remain. An operation might be essentially completed early in the life of a THP but no one can be sure until the THP actually expires. Rules that require specific actions after completion of operations, particularly the new rules requiring maintenance of erosion control structures, give rise to difficulty. Uncertainty over completion dates could delay the installation of many needed protective measures for two or more years.

These matters are relatively small, however, when compared with industry's desire to obtain timber harvesting approval for longer terms. A concomitant desire is to obtain relief from constantly changing rules and regulations for a period long enough to accomplish long-term resource management goals. These desires are not unreasonable. Timber management is a long-term enterprise. Investments must be held for long terms at considerable risk. Not the least of these is the risk that future regulations may deny the owner a chance to harvest his or her timber at reasonable cost and profit. The risks most certainly will affect the way timber owners choose to invest in the future productivity of their properties.

These concerns have led the industry more than once to seek legislation providing for a long-term timber management and harvesting plan. At various times and in various ways, the board

and CDF have agreed at least partially and have sought to work with industry to have such laws passed.

The first serious effort was actually spearheaded by Forestry Director David Pesonen in 1981. No one could have called David Pesonen a timber industry lackey. In fact, when Governor Jerry Brown announced Pesonen's appointment in April, 1979, John Callaghan, Executive Vice-President of the California Forest Protective Association, predicted open warfare between CDF and the industry. Pesonen, in concert with Board of Forestry Chairman Dr. Henry Vaux, developed a proposal for a long-term timber harvesting plan and had legislation introduced by Assemblyman Byron Sher. The bill number in 1981 was AB 1600.

Pesonen's goal was to bring peace between environmentalists and the timber industry. He thought he had a workable plan. Originally, his idea had been to offer the long-term THP and exemption from CEQA in exchange for amendments to the Forest Practice Act that would provide a greater measure of environmental protection within the act. Critical to his proposal was obtaining sufficient information on future plans of the timber owners to allow analysis of long-term cumulative effects. This noble goal foundered on two points: environmentalists would not give up CEQA, and industry would not divulge cumulative effects information.

Because of opposition from outside the board and the department, CEQA exemption never made it into the bill. It was never even made public, and few people know that such a plan existed. Perhaps if it had been adopted, industry might have yielded, and a far-sighted piece of legislation would have brought lasting stability to an industry and resource that need stability more than most.

As it was, AB 1600 came within a hair of passing, minus the CEQA exemption and the cumulative effects information. What hung the bill up in its final moments was intransigence over review of annual cutting notices. CDF believed this review to be an essential part of any THP that has many years to run. Industry wouldn't agree to any lengthy review or to denial by CDF; CDF insisted on both. The bill was dead in legislative committee by April 6, 1982.

Sponsored by the California Licensed Foresters Association, and authored by Senator Ray Johnson, SB 1797 was immediately introduced to carry forward the long-term THP concept. In most respects SB 1797 was quite similar to AB 1600, but there were enough differences to raise questions whether it could be certified as a Functional Equivalent. The board and CDF attempted to work with the sponsors to overcome these difficulties, but in the end the bill failed for many of the same reasons as AB 1600. It was reported dead by September 1982.

The California Forest Protective Association continued to work with the concept and by 1986 developed what they termed a "Timber Resource Production Plan" (TRPP). In most ways, TRPP was like the long-term THP. One new element was a provision for exemption from new Forest Practice Rules for a predictable period of time. The harvesting plan would have a ten-year life, but could be renewed every year by submitting to any rule amendments adopted since plan approval. There were provisions for an annual cutting notice, with a brief review period and no CDF denial. Industry argued that the stop-order included in the Forest Practice Act by 1982 legislation is sufficient protection against abuse.

Senator Barry Keene introduced the TRPP as SB 2394 on February 4, 1986. Environmentalists immediately attacked the bill on several points, the most crucial of which were the exemption from new rules and the lack of provision to deny or delay an annual cutting notice for any cause. They were also uncomfortable with the short review periods provided both for the TRPP and for the annual cutting notice. Forestry Director Jerry Partain supported the bill, and the board supported it in concept. The bill went through several substantial amendments, however, and support by board and director became less than enthusiastic at times.

In the meantime, the woodworkers union had actively attempted to obtain a requirement for sustained yield commitments from industrial timber owners. Union members had become concerned about what to them appeared to be overcutting by some large corporations that would leave the sawmills stranded without a timber base. If the mills were forced to shut down for lack of timber, their members would lose employment. The Sierra Club tended to support such a requirement, and for a time it appeared that a trade-off might be arranged whereby approval for a TRPP might be obtained in exchange for a sustained yield commitment. Industry would not budge on the points of concern to the Sierra Club, however, and the bill never left the Senate Natural Resources Committee.

Senator Keene made a final attempt to pass the legislation. He took another bill of his own, SB 2554, that the senate had approved and sent to the assembly. He amended it to include the provisions of SB 2394, a not uncommon legislative maneuver. This attempt also failed.

Fred Landenberger of the California Forest Protection Association has ventured the opinion that the industry lost some credibility through its all-out effort on the TRPP. He has suggested further that it may have helped lead to the demise of the association, which ceased to exist as an independent body in

1988.[5]

Industry did not lose out entirely, however. In 1985, SB 398(Nielsen) made it through the legislature despite considerable environmentalist suspicion. This bill, for "good cause" allows two one-year extensions to the three-year THP period. It also allows for annual submission of stocking reports which previously had not been allowed. Both of these changes provided more flexibility to the land manager. Board of Forestry regulations to implement the legislation suffered attacks from both ends of the spectrum. Industry objected to provisions requiring evidence of a good cause for extension. Environmentalists and the Department of Fish and Game objected to the extensions being made normally only minor amendments. Despite the attacks, the legislation was successfully implemented on March 5, 1986.

EXPEDITED THPS FOR SMALL HARVESTING OPERATIONS

No issue has lasted longer with fewer results than the various attempts to ease the bureaucratic burdens for timber operators working on small parcels. In 1974, attempts were made to exempt operations as large as 40 acres from THP requirements. The board then settled on a three-acre exemption. A number of attempts followed, often led by the Associated California Loggers, to have the exemption level raised to ten acres, at least. CDF opposed most of these attempts on the grounds that even very small operations in sensitive areas can lead to unacceptable environmental risk.

Nevertheless, CDF and the board have searched for some middle ground between outright exemption and the full THP process. The board for years has recommended legislation to this end. CDF has tried to develop criteria for identifying those operations that entail minimal risk, based on size and other criteria. Operators might thus obtain permission to harvest under some simplified form of THP that would take less time to process. Low-risk operations might even be made exempt from the THP. Size alone, however, was not considered a safe criterion. One of CDF's early efforts was included in an all-purpose bill to amend the Forest Practice Act in 1977. Assemblyman Calvo introduced AB 1236 on March 30 of that year. Among the bill's many provisions was an exemption for low-risk operations of less than ten acres. That bill failed for a variety of reasons, few of which had anything to do with the exemption. That same year, SB 1043 by Senator John Garamendi took up much the same fight with the same lack of results.

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[5] C. FRED LANDENBERGER. Gains and Losses, California Forest Protective Association, 1909-1988. CFPA, 1988. 271 pages. See page 258.

The next serious attempt came in 1984 when the Associated California Loggers made several proposals to ease the way for small operations. They suggested a reduction in review time and permission for certain types of operations to commence before THP approval. ACL received little encouragement from the board's subcommittee on Forest Practices. The Forest Landowners of California then picked up the ball and ran with it a while. They worked closely with CDF and developed a proposal for an expedited THP on low-risk areas. A regular THP form would be used, but the review would be abbreviated.

This most recent proposal came before the Board of Forestry on January 7, 1986 when draft wording was approved but upon advice of counsel held it over for further review. Deputy Attorney General Bill Cunningham had counseled that the proposal might not qualify for functional equivalency. Finally, on May 7, 1986 board members decided, based on further advice of counsel, that they could not afford the risk to functional equivalency, and they set it aside. CDF had previously suggested that most problems could be solved administratively. CDF has since developed policies to approve such THPs with minimal delay. This issue surely will continue to come up. Perhaps this is another situation where a perpetual state of tension between the parties is the best that can be obtained.

PUBLIC NOTICE OF TIMBER HARVESTING PLANS

Few issues have stirred up more controversy than the giving of notice of individual THPs to neighboring property owners and the public-at-large. Public notice of projects allowing enough time for the public to make meaningful comment is a central point of CEQA. As it turns out, it is also a rather important constitutional issue.

Initially, Resources Secretary Claire Dedrick insisted on improvements in public notice as a condition for granting Functional Equivalent Certification. The Board of Forestry adopted regulations to her satisfaction late in 1975, but the environmental community was never satisfied with those rules. Those rules provided notice only to persons who requested notification. A person would have to learn of a proposed THP from some other source or else be one of the regular THP watchers who routinely request notification. Ordinary citizens or neighbors, especially absentee owners, who might have significant interest in selected individual plans had no practical way to learn of the ones affecting them.

Director Pesonen wrote to the board on May 1, 1979 suggesting that the board's rules for public notice needed

strengthening to meet the needs of CEQA. At their May 23rd meeting, the board referred the director's letter to the District Technical Advisory Committees (DTACs).

Almost at the same time, the State Supreme Court ruled in Horn v. County of Ventura that an agency must provide for meaningful notice to neighbors who might be affected adversely by an activity that requires a permit. The court based its decision on the constitutional guarantees against deprivation of property without due process. The theory is that if granting a permit to one person might cause another property owner to suffer loss, the affected owner ought to have an opportunity and enough time to protect against loss. The board discussed the implications of Horn at their July meeting later in 1979.

The matter came on again at the August 1979 meeting, this time in the form of a letter from Attorney Joseph Brecher on behalf of the Sierra Club, addressed to Secretary for Resources Huey Johnson. Brecher's letter petitioned Secretary Johnson to decertify the functional equivalency of Timber Harvesting Plans. Brecher cited many arguments for decertification: lack of cumulative impact review, inadequate analysis of alternatives, inadequate interdisciplinary review, lack of public appeal of approved THPs, and inadequate public notice or opportunity for participation in the THP review process. All of these were CEQA issues, but Horn was also very much on the minds of board members.

Deputy Attorney General John Martinez wrote to the board on August 29, 1979 and Assistant Attorney General Robert Connett wrote again on October 24. Both men insisted that Horn applied absolutely to THPs.

CDF began to draft proposed regulations for the board to consider. There was some little confusion at that point whether Horn or CEQA was the primary driving force behind the effort. The draft that CDF submitted to the board ultimately emphasized a CEQA based general public notification. Notice to neighbors, as Horn demanded, was given less emphasis, though not ignored.

The board's first hearing on the subject opened on November 27, 1979. The positions of the industry and environmentalists differed sharply. Industry representatives argued strongly that existing public notice was entirely adequate and that more notice would merely lead to more criticism of timber harvesting -- more heat than light, in other words. They further argued that any member of the general public who wanted to know about THPs could receive notices from CDF under existing regulations. Another argument was that TPZ (Timber Preserve Zoning -- later changed to Timber Production Zoning) amounted to notice that timber would be harvested; at the worst, additional notice ought to be limited to non-TPZ lands. Still another argument was that the public

interests were adequately represented in the review teams.

Environmentalist arguments were simpler and mainly to the point that the law and the constitution together required broad, specific public notice. They added that TPZ only meant that logging might occur sometime in the next 80 to 100 years, hardly the kind of notice that the court meant in Horn. Moreover, it wasn't simply logging that required notice but the details of how soon and in what manner. They also cited examples of how CEQA had protected the environment through public disclosure of impacts that might not otherwise have come to light.

The board held more hearings on December 10, January 7, and March 5. The board then adopted a new rule on March 5, 1980 that included a requirement that CDF post notices in post offices. It did not provide notice to neighboring federal land management agencies. Plan submitters would have to submit a list of names of adjacent property owners within 300 feet of the boundary of the planned operating area, and CDF would mail the notices. No more than 15 names need be submitted. If more, a notice in a newspaper of general circulation in the area would suffice. Other types of posted notice were also provided, with the responsibilities divided between CDF and the plan submitter.

Several of the changes made that day were not part of the public notice of the hearing; thus, the board realized immediately it would have to hold a new hearing. At this point, CDF specifically requested the board to add notice to federal agencies and to delete the requirement for CDF to visit post offices. CDF emphasized that it could not afford to do the post office posting without curtailing other operations. The board revised its proposed rule for further hearing by including federal agency notice and a number of editorial changes. It did not delete the CDF post office requirement.

In April, the board formally approved its new version of the rules. By that time, the board had become aware of AB 1111 and its additional standards for rule adoption. At its May, 1980 meeting, the board postponed the matter for further hearing under the new standards. Because of AB 1111, a routine eventually became established to approve final wording at one meeting, then to delay adoption until a later meeting. Chapter 5 has more about AB 1111.

On July 2, 1980 the board once again heard the issue and readopted its April version, this time with expanded findings as required by AB 1111. The findings based the authority for the new rule on both CEQA and Horn. At the same board meeting, the board received a petition from attorney Robert Ferris to rescind the rules it had just adopted. His arguments generally paralleled those of the timber industry. He also stressed his opinion that Horn did not apply to THPs because of substantial

differences in circumstances. Horn involved a zoning change, and Ferris did not think the principles could be stretched to apply to THPs. At its August 1980 meeting, the board voted to deny the Ferris petition.

On January 7, 1981 CDF notified the board that the Department of Finance had rejected the public notice rule because of excessive costs to CDF. The board discussed the matter further on February 4 and decided to rehear the matter at a later date.

The next hearing on the rule did not come until the August, 1981 meeting of the board. At that time, the post office posting requirement was modified and shifted from CDF to the submitter of the THP. Some board members expressed considerable annoyance at CDF for refusing to seek the resources to comply with the posting requirement, claiming further that CDF had not given sufficient warning of its position. The board adopted a resolution urging CDF to seek a budget increase to take on this burden. Members pointed out that it seemed inequitable to place that burden on plan submitters.

The 15-name limitation on mailed notices continued to haunt the board in various ways. It bothered many observers that the distinction seemed arbitrary and lacking in justification. The board discussed the issue again on September 1 but made no changes until 1985 when AB 3473 required several revisions.

Early in 1982, Assemblyman Norman Waters introduced AB 2552 for the Forest Protective Association. Wording of the original bill seemed to indicate an intention to legally substitute TPZ for any notice of planned timber harvest. CFPA denied any such intention and sponsored amendments to clarify the bill. The bill that eventually passed specified that TPZ did in fact mean the owner planned to conduct a timber harvest at some point. Sponsors hoped that such wording might reduce increasing public opposition to logging. Such opposition often resulted from migration of urbanites to the woods to live. If potential adversaries were warned in advance of a possible "nuisance" perhaps they wouldn't move so close to the problem area. Turkey farms and airports have also had to cope with similar problems.

In April 1982 CDF informed the board of an unfortunate omission from the public notice rule. While the rule required submission of up to 15 names of neighboring property owners, it did not specify submission of addresses. Because of this omission, one RPF had refused to supply addresses. CDF believed this to be mere obstructionism because addresses of adjoining owners are readily available at the same time and place as their names. The board voted 4-3 to adopt a corrective emergency regulation at that meeting. The rule could not go into effect at that time, however, because the Forest Practice Act requires 5

"aye" votes to adopt a rule. The board eventually made the change on August 3, 1982.

Early in 1984 an unexpected situation arose that widened the concept of "affected property owner." A rancher complained to CDF that he had not received notice of a THP although he owned grazing rights in fee on the property to be logged. A hurried call to Deputy A.G. Bill Cunningham verified that the rancher had a valid complaint. Furthermore, Cunningham pointed out that in the absence of proper notice, the THP could not be construed as properly filed. Therefore, the THP would have to be resubmitted, properly noticed, and reviewed again. This incident alerted staff that ownerships are often divided in some manner such as subsurface rights, water rights, rights only to certain species of timber, etc. CDF mailed a notice to all RPFs reminding them that when such ownerships are found on the assessors roll, they must receive notice as neighboring property owners.

Opposition to public notice continued outside the Board of Forestry. In 1983, Assemblyman Norman Waters introduced AB 925 that would have restricted public notice on THPs. It would have forced the board to retract some of its new rules. The bill did not pass, but it engendered some valuable discussion at the May 1984 board meeting. CDF was able to report that increased public review had resulted in more than a little benefit. While much public comment had been of an emotional anti-logging nature, as expected, quite a lot had proven constructive and useful. Several plans had been improved by incorporating suggestions received in this manner. Comments from neighboring property owners had increased, and most were constructive in tone. CDF also reported that experience showed little value in posting notices at post offices and recommended dropping that requirement.

Later in 1983 the RPF Liaison Committee spoke out on this issue. The next chapter will describe this committee in more detail. The committee recommended that CDF include an informative letter with public notices to help the public understand that logging operations will be regulated. The committee provided a sample letter, and CDF staff agreed with the idea. CDF reported to the board on December 6, 1983, that it would use a similar letter everywhere except in certain counties. In a few counties in the Southern Subdistrict of the Coast Forest District, the board's rules make the plan submitter responsible for giving notice. CDF has since prepared a sample letter recommended for use in those counties also.

The informational letter seems to have helped. A few citizens have complained, however that the letters misled them into believing there would be no problems with logging on the neighboring property. Apparently it's still impossible to please

everybody.

In 1984 Assemblyman Byron Sher introduced AB 3473 which came to have a large effect on public noticing. The bill started out as an attempt to require a written feasibility analysis as well as an augmented public notice. By the time it passed in late 1984, only the public notice provisions remained. The surviving provisions, however, required the board to adopt stronger rules than those in effect. Hearings began on February 5, 1985.

Assemblyman Sher testified at the February hearing and urged that notice be provided to users of water within one mile downstream from logging operations and to all adjacent property owners within 300 feet of the boundary of the parcel being logged. He also thought that the plan submitter ought to pay all costs. The board held a further hearing on April 2 and approved a final version, eventually adopted on November 6, 1985.

The new rules dropped the 15 name limit because the law now required mailed notice to all affected property owners. The post office posting requirement was finally dropped altogether because CDF reported again that it had shown little benefit. No notice was provided for downstream water users because no practical way to identify all the users could be found. The State Water Resources Control Board has records of persons who have allocated water rights, but even these are available only in Sacramento. SWRCB staff could not guarantee that they could provide information on such records within a reasonable time. Moreover, persons holding prescriptive water rights are not necessarily recorded anywhere.

Watching the proceedings from the Capitol, Assemblyman Sher chided the board for, in his opinion, failing to respond substantively to his bill. He secured an opinion from the Legislative Counsel that supported his contention, but the board made no further changes.

TIME FOR PUBLIC REVIEW

As we have already discussed, the length of time provided in the Forest Practice Act for review of THPs prior to approval is brief by CEQA standards. The subject has come up for discussion and criticism on numerous occasions. The critics usually seem not to realize that neither the board nor the CDF have more than minimal control over the situation. The THP review periods are set in law, and the legislature has not acceded to requests either from the board or from others to grant a longer period.

The one small way in which the board can add to the review period is to grant the CDF a reasonable amount of time to ascertain whether a plan is accurate, complete, and otherwise

suitable for filing. The act makes no mention of such a period of review. Actually, it is doubtful that the legislators ever contemplated a need for such review. The act tends to use the terms "filing" and "submission" interchangeably. The wording implies that a plan is filed at the time it is submitted, and that the clock immediately starts to run on the 10-day preharvest inspection and the 15-day review periods.

In practice, however, it has proven necessary to make a distinction between submission and filing. Unfortunately, not all plans arrive at CDF offices in immaculate condition. Experience has shown that many have serious omissions of required information or inconsistencies that cast doubt on their accuracy, making them unacceptable for filing. In the busier offices, plans often arrive in large bunches. Simply reading through all of them to check for obvious deficiencies may take several days. Therefore, the board has granted CDF up to ten days in which to make this pre-filing review.

The length of this period has changed a number of times. Originally, the rules of the board provided no such review at all. Then, soon after the court decision in NRDC v. CDF administratively adopted a five-day review period. In July 1975, the board ratified this practice in regulation, despite strong opposition from industry.

During 1980 and 1981 when the public notice rules were expanded, the pre-filing review was also extended to ten days. These ten days ran without regard to holidays or weekends, so in practical effect this extension could result in as few as five working days, never more than eight. The extension certainly did relieve some of the administrative difficulties. The board's primary reason for adopting the extension, however, was to provide more time for public inspection of THPs. Board discussion at the time of adoption made that intent quite clear.

Ambiguity in the wording of the rule, however, made for some strained feelings among the board, the CDF, RPFs, and timber operators for a time. Board discussion had hinted that only "sensitive" plans should necessarily be held for the full 10-day pre-filing review, but despite CDF requests for clarification, no direction was given initially. Because the need for additional public review time was quite clear, CDF took the position that, until told otherwise, all plans would be held for the entire ten days. A howl of protest arose almost immediately from private RPFs and the industry. The additional delay in getting plans through the bureaucracy made them see red, especially in view of their opposition to public notice.

The board never did clarify the rule itself, but at a meeting on April 6, 1982 after a long discussion, the board instructed CDF to take a "practical" approach to the matter.

After that, CDF issued instructions to the field to hold only sensitive plans for the full ten days. The term "sensitive" is, of course, quite subjective, but CDF instructions seem to have satisfied most of the public most of the time. Sensitive plans are defined as those that include timber in populated areas, next to major streams or lakes, in important view-sheds, near parks and in other areas where experience has shown that controversy may erupt. Experience has sharpened the definition. Most plans can now be cleared for filing in three to five days. The average, including those which policy dictates must be held for ten days, runs only about seven days, including non-work days.

PUBLIC APPEAL

In almost every instance when public review has come before the board or the CDF, a method for public appeal has also been urged. Public access to environmental documentation, time for adequate public review, and opportunity for public comment are central to CEQA. CEQA also anticipates that the public will assert its will through some sort of forum. Thus, an unwise project, or one whose impacts have not been thoroughly explored may be delayed or stopped.

The Forest Practice Act provides for review and public participation, as we have seen. It goes one step further in that it provides an appeal to the Board of Forestry for submitters of THPs whose plans the Director of Forestry has denied. On approved plans, however, the act, with a single exception, does not provide any party with an appeal to the board for review of the approval. That one exception was only recently granted to "SB 856" counties by AB 3838 in 1984. Thus, the Board of Supervisors in a county which has had special Forest Practice Rules adopted by the Board of Forestry may appeal approved plans to the board. No one else may do so.

The lack of direct appeal rights has rankled environmental critics of the forest practice program from the beginning. Many have insisted that this lack should have prevented the program from originally being certified as a functional equivalent. Moreover, the critics assert that the Forest Practice Act is unconstitutional because the lack of appeal rights denies equal protection under the law. Joseph Brecher included this argument as a principle item in his letter of July 31, 1979 to the Resources Secretary requesting decertification of functional equivalency. It has been a main item of complaint in nearly all lawsuits against the board and CDF over the Forest Practice Act.

As of this writing, the lack of such appeal rights has stood the test of legality, including cases that have gone to the appellate court level, such as EPIC v. Johnson. Although the state lost that case, the decision was based on other matters in

the suit. The court did not find fault with the lack of public appeal rights. Several other cases, including Laupheimer v. State of California and Lexington Hills Assoc. v. State of California went to appellate court with the same results. Upon appeal, the State Supreme Court on June 29, 1988 declined to hear the issue, thus sustaining the lower court.

CEQA does not in itself grant any appeal rights. Such appeals as the public has against projects subject to CEQA come from other laws. Appeal rights have always existed through the courts for those who can demonstrate a standing to sue. The trial court judge in Laupheimer stated unequivocally that the general public does not have the same values at risk as the immediate property owner, thus does not necessarily have rights to the same hearing process as the timber owner. That language was upheld by the appellate court and by the Supreme Court in its 1988 rejection of the appeal.

CDF and the board have often discussed a possible Forest Practice Act amendment that would allow the heads of certain environmental agencies to appeal approved plans. Such an amendment was seen as a compromise to provide a measure of public appeal. The Board of Forestry in its annual reports to the legislature in 1978 1979, 1980, and 1981 requested legislation to authorize the head-of-agency appeal concept. For a time in 1981 the legislature actively considered SB 720 (Johnson/Greene), a bill which would have exempted the Forest Practice Act from CEQA. CDF worked to add head-of-agency appeal to the bill in case it passed, but the bill failed. SB 1641 by Senator Berry Keene in 1987 made a stab at it again, along with the effort to require sustained yield on private lands. That enormously complicated proposal never went far. Although the bill cleared the assembly, it died in the senate.

CUMULATIVE EFFECTS

Another question which the board and CDF have faced almost continuously with no satisfactory resolution has been how to address cumulative effects. CEQA has since 1972 required a review of cumulative effects, along with other possible detrimental effects. Since December, 1977, Section 208 of Public Law 92-500 has required that Best Management Practices include measures to deal with cumulative effects.

More than one definition of cumulative effects exists, adding to the problem of providing protection. Generally, the concept is that, although a project may not by itself lead to significant environmental impacts, it may do so when coupled with other activities. It's like the question "How many straws can a camel carry?" One significant difference of opinion about the definition arises over the existence of synergistic effects: a

situation where the total impact is greater than the sum of the parts because of some "multiplier" action. Scientists can argue for days on end whether environmental synergism exists.

While on the subject of definitions, a cumulative impact is the same thing as a cumulative effect, at least so far as CEQA is concerned. Also, while there is a tendency to think almost exclusively in terms of cumulative watershed effects, CEQA makes no such distinction. In fact, most of the case law on cumulative effects arising out of CEQA addresses other types of issues. One of the most significant cases, San Franciscans for Reasonable Growth v. City of San Francisco (151 Cal App 3rd 61) addresses cumulative traffic problems. Section 208 is, of course, mainly concerned with effects on water quality, but 208 is not the only authority.

Historically speaking, the issue first presented itself to the Board of Forestry at its June 24, 1976 meeting when the National Park Service pressed the board for access to long-range future harvesting information in the Redwood Creek drainage. The Park Service wanted better protection for the downstream values in Redwood National Park. On December 9, 1976 CDF sent the board several rule proposals addressing road maintenance and cumulative effects. The board sent these proposals to the DTACs (District Technical Advisory Committees) for review. At about the same time, the Attorney General's Office advised that the board could not release information acquired by subpoena in actions relative to the NRDC case. The board advised the park service that it lacked the authority to require the information requested.

The DTACs returned to the board in March 1977 and indicated that they were unsure what to do with the CDF proposals. Far too many unmeasurable and unpredictable factors were felt to be at work simultaneously to allow any practical regulatory scheme. In October of that same year, the Northern DTAC reiterated its earlier stand and went on to register disapproval of any specific rule on the subject. NDTAC believed the individual rules could cumulatively attack the problem. The problem seemed to be, in effect, that camels can weigh straws more accurately than people can predict cumulative effects, especially in a natural resource context.

In the meantime, the Board of Forestry met with the State Board of Mining and Geology in April 1978 and discussed the issues without reaching any conclusions. In July 1978, geologist Ralph Scott of the Department of Water Resources addressed the board on cumulative watershed problems in the South Fork of the Trinity River.

On March 9, 1979 CDF gave the board a report about THPs

submitted solely for road construction. CDF saw such THPs as having cumulative effect implications because they generally involve construction of permanent access roads. Once a road system has been installed, it tends to govern future management decisions for a long time. CDF staff believed it had to raise questions during plan review concerning long-range planning, but answers were hard to come by. Timber owners in a competitive situation are understandably reluctant to share long-range plans with an agency. The board did not challenge the CDF procedures.

During their October 1979 meeting, the board again discussed Joseph Brecher's letter to the Resources Secretary requesting decertification of functional equivalency. His insistence that the Forest Practice Rules failed to address cumulative effects was noted as was the board's previous frustrations with the topic. Board Chairman Dr. Henry Vaux proposed a symposium on the subject as a partial response to Brecher's allegations.

Following Dr. Vaux's suggestion, a symposium called "The Edgebrook Conference" was held in Berkeley at the University of California on June 2 & 3, 1980. The symposium dealt mainly with watershed effects. The proceedings of the conference are entitled "Cumulative Effects of Forest Management on California Watersheds - An Assessment of Status and Need for Information."[6] The title pretty well sums up the conclusions of the conference. There was disagreement on the existence of synergism. The participants did seem to agree that not much was known about how to measure or to predict cumulative effects in such a complex environment.

The board again addressed the subject on March 4, 1981. Controversy had been growing over new Watercourse and Lake Protection rules under study as Best Management Practices to comply with Section 208, PL 92-500. Cumulative effects issues lay at the center. Chairman Vaux decided to appoint a task force to study the issues. This group consisted of: former State Forester Larry E. Richey as chairman, Bob Coats, James Brown, Paul Seidelman, Andrea Tuttle, and Sue O'Leary. These persons had expertise not only in forestry but also in geology and hydrology. Both environmental and industrial interests were represented in the membership of the task force.

As might be expected with the expertise represented, the

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[6] RICHARD B. STANDIFORD and SHIRLEY I. RAMACHER. 1981. Cumulative Effects of Forest Management on California Watersheds: An Assessment of Status and Need for Information. Proceedings of the Edgebrook Conference, June 2 & 3, 1980. University of California, Berkeley, California. 109 pages.

task force report dealt mainly with watershed effects, but it did not ignore other concerns. The group concluded that the best regulatory way to address cumulative effects was to make the individual rules as effective as possible to reduce site-specific impacts. The group believed that if individual impacts were reduced sufficiently, there would be no adverse cumulative impact. The report also suggested a requirement to consider adjacent and downstream channel conditions when reviewing alternatives during plan preparation and review. It recommended in strong terms against any system of allocated cuttings by ownerships within watersheds. The group believed there were too many unknowns and uncertainties to justify such regulations, which were certain to be highly controversial. The board received this report on March 3, 1982 almost exactly one year after appointment of the task force.[7]

The board reviewed and discussed the report at its April and September, 1982 meetings, concluding that the advice of the task force was sound. One board member, Dr. Clyde Wahrhaftig, did express dissatisfaction with the report. He objected that the task force had ignored portions of the hydrologic effect pertaining to the change in the percentage of rainfall that becomes run-off as a result of clearcutting and road compaction. The board proposed a study of the adequacy of the rule requiring retention of uncut buffers between clearcut blocks. This rule had been adopted earlier by the board specifically to deal with cumulative effects. The board took no further action at the time, but the record indicates that members realized their rules did not always preclude cumulative effects.

The issue reappeared frequently. Board member Cecile Rosenthal pleaded on several occasions for more research. The Sierra Club in September 25, 1984 letter demanded that the board adopt an effective rule to deal with cumulative effects on timber harvesting operations. The board responded that the issue was complex, that scientists couldn't agree, that it defied easy solutions, but that the board would continue to study the possibilities.

CDF faced a unique cumulative effects issue early in 1984 when Pelican Lumber Co. submitted three THPs for logging young-growth timber they owned in the Soquel Creek drainage in Santa Cruz County. The company revealed that two more plans were in the works and would be submitted soon. The total acreage was large and represented a substantial proportion of the total watershed. Furthermore, the watershed had suffered severe damage in the heavy winter storms of early 1983. A number of slides had

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[7] LARRY E. RICHEY, BOB COATS, LAMES BROWN, PAUL SEIDELMAN, ANDREA TUTTLE, SUE O'LEARY. 1982. Report of the Cumulative Effects Task Force. 18 pages.

occurred from natural causes during that storm. To make matters worse, the creek runs through the heart of several towns, with the town of Soquel lying below the watershed "in the mouth of the cannon," as it were.

Director of Forestry, Dr. Jerry Partain, concluded that the first two THPs submitted could probably be harvested without undue risk. Because of the substantial acreage and an especially sensitive portion of the watershed that lay within the third THP area, Dr Partain hesitated to give it his approval. Lacking a specific rule on which to base a denial, Dr. Partain elected on February 3, 1984 to delay his decision and request an emergency rule under PRC 4555. The matter came before the board first on March 7, 1984 in Santa Cruz. The hearing continued the following April 16 in Redwood City.

Just before the Redwood City hearing, Pelican Lumber Co. withdrew the unapproved plan from consideration. This mooted the PRC 4555 hearing, but the board decided to receive testimony on the subject matter anyway. Among other things, the board heard a description of a method for predicting cumulative effects based on equivalent roaded acres developed by Paul Seidelman, of the U.S.D.A. Forest Service.

Although the PRC 4555 emergency no longer existed, Pelican indicated they probably would resubmit the plans. CDF therefore persisted with its request for a special rule dealing with the problem. CDF requested the board to make the Soquel Creek drainage a Special Treatment Area and to adopt a rule allowing the director broad authority to use judgement to deny THPs within the area. Cumulative effects would form the basis for judgement. In the face of so many uncertainties, reliance on the director's judgement seemed about the only way to go; in theory, while the director's authority would be broad, the affected area was small. Justification was based on the unique combination of circumstances that existed in that drainage.

The uniqueness of the drainage became the focal point of attack on the proposed rule as the hearing continued in San Rafael on May 16. Many witnesses from both sides of the issue testified that there was nothing especially different about Soquel Creek. County officials wanted a similar rule for the entire county and argued that any rule appropriate for this creek could apply to all of the county's creeks. Industry spokes-persons countered that they were afraid of just exactly that. To them, the rule was too broad and a bad precedent equally applicable to many drainages. CDF insisted, on the other hand, that the <u>combination</u> of circumstances was indeed unique - not the watershed alone but the watershed, plus the severe storm damage concentrated in that drainage, plus the vulnerability of the downstream communities.

The hearing continued at the June 7 meeting in Fort Bragg. The county of Santa Cruz was represented by Supervisor Gary Patton. Pelican Lumber Co. had a brace of attorneys. Following a sharp skull-session during a recess called for that purpose, compromise wording evolved giving CDF almost everything it needed. The rule was finally adopted on July 10 in Sacramento in the form agreed upon the previous month.

Despite CDF's efforts to gain a high level of protection, the county of Santa Cruz went ahead on February 27, 1984 and sued to block operations under the two plans that the director had previously approved. Among other things, the county charged that the Forest Practice Act was unconstitutional because of the lack of equal appeal rights for the public. The plaintiffs argued further that CEQA had been violated because of inadequate public notice and inadequate review of cumulative impacts. Plaintiffs also presented a new argument - failure of the THP process to be recertified as a functional equivalent following rule changes made since 1976. On April 23, 1985, Judge W. J. Harpham rejected the county's case and ruled in favor of the state. The county has appealed the decision, but no decision has come down as yet.

In the meantime, AB 1965 was introduced by Assemblyman Sam Farr on May 5, 1987 to make a "living state park" out of the area. Farr proposed a park that would furnish a small measure of forest products while being used for recreation and watershed protection. He later amended the bill to make the area into a state demonstration forest under CDF management but included no funds.

The amended bill was successful, and Governor Deukmejian signed it into law on September 9, 1984. 2900 acres of the drainage were acquired by the state through a fascinating three way exchange involving the Bank of America and some funds owed the state by the bank. The remaining areas will be acquired as funds become available. In the meantime, the area remains for a time under the supervision of The Nature Conservancy.

On July 25, 1985 a significant event occurred. The First District Court of Appeals reached a decision in EPIC v. Johnson with far-reaching repercussions on the review of cumulative effects. That case had begun on November 1, 1983 when the Environmental Protection Information Center (EPIC) sued CDF and the board over a THP submitted by Rex Timber Co., a subsidiary of Gerogia-Pacific Corporation. The company intended to harvest a block of approximately 40 acres of old-growth redwood timber near Sinkyone Wilderness State Park in north-coastal Mendocino County.

EPIC objected on many grounds, but mainly because old-growth redwood would be clearcut, and the operation was too near the park and the coastal hiking trail. Also, as a result of an earlier forest practice case, an ancient archeological site had

been discovered within the THP area. This site became the focus of much furor over possible burials sacred to Native Americans. The lawsuit complained of CEQA and constitutional failures similar to the Santa Cruz County case described previously. Archeological review received special mention.

After trial, the superior court ruled against the plaintiffs and on December 6, 1983 denied the requested writ of mandate. EPIC appealed. The appellate court rejected all of the constitutional arguments but did find for the plaintiffs on four points related essentially to CEQA and the Forest Practice Act:

1. CDF did not adhere to its own regulations and submitted its responses to environmental concerns a few days late.

2. CDF had not made a proper response to archeological concerns.

3. CDF had failed to send a notice of the plan to the Native American Heritage Commission.

4. CDF had not demonstrated an adequate assessment of cumulative effects in approving the plan.

The decision made a fifth point in response to a defense argument raised by an attorney for the real parties in interest, Georgia-Pacific Corp. The attorney had suggested that because of PRC 4582.75, a section added to the Forest Practice Act by SB 886 in 1977, CEQA did not apply. The court rejected that argument with approximately 19 pages of decision. CDF had never taken the position that CEQA was inapplicable, but the wording of the decision has made it appear otherwise. One outcome of this portion of the decision was a clarification of the meaning of section 4582.75. The court plainly stated that 4582.75 did not preclude CDF from compliance with the mandates of CEQA. Thus, the court stated, CDF is not always limited to rules of the board when reviewing THPs.

The first three points of the court's decision concerned procedural errors that were relatively simple to rectify. Only the cumulative effects decision gave pause. CDF considered appealing certain aspects of the decision, and an appeal might have cleaned up the decision somewhat. The final outcome could not have been substantially altered, however. Therefore, CDF elected not to appeal. The court appeared to find only a failure to demonstrate an assessment, not failure to make an assessment. CDF had, in fact, given strong testimony of its assessment procedure. CDF moved quickly to make sure it provided enough evidence of its assessment. A letter of instruction to that effect was sent to the field units on August 9, 1985.

Then on September 4 the board passed a resolution asking CDF to appoint a task force to review the matter and report back to the board. Director Partain appointed Ted Cobb, an attorney employed by CDF as staff counsel; Fred Landenberger, an RPF with the California Forest Protective Association; Rob Rivet, an attorney with the Pacific Legal Foundation; and Robert Rappleye, an RPF in private practice who was also a member of the Mendocino County Planning Commission. This author served as staff to the task force.

The task force met first on October 18, 1985. The members then visited or consulted with a wide array of county and private industry planners and consultants, federal agencies, and environmental specialists. The task force found a surprising lack of knowledge among these persons about how to make a cumulative effects analysis. Most indicated that they simply follow the CEQA Guidelines, a set of regulations adopted by the State Resources Agency.[8] The Guidelines contained an excellent set of definitions but almost nothing about how to actually make a cumulative impact analysis. The U.S.D.A. Forest Service, especially Region 6, the Trinity County Planner, Mr. Thomas Miller, and Pacific Gas and Electric Company gave especially helpful and useful information.

The task force made four recommendations:

1. CDF forest practice staff should use resources available from county planning staffs to assess a wide array of possibly interactive projects.

2. Board of Forestry and CDF should conduct a study to determine the appropriate geographic and time limits for cumulative effects assessment.

3. Review teams should use a checklist to assist their evaluations of cumulative effects.

4. The Director of Forestry should require preparers of THPs to address cumulative effects.

The task force report was published on December 3, 1985 and presented to the Board of Forestry on the same day.[9] Initial

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[8] CALIFORNIA CODE OF REGULATIONS, TITLE 14, Division 6, Chapter 3, Section 15000, et seq., Appendices A to K, inclusive. CEQA Guidelines.

[9] TED COBB, ROB RIVETT, BOB RAPPLEYE, FRED LANDENBERGER. 1985. Report of the Task Force on Cumulative Impacts. California Department of Forestry, Sacramento, California. 12

reactions were mixed. RPFs didn't like the checklist suggested by the task force. Many industry representatives considered the report to be an over-reaction. Environmental critics thought it didn't go nearly far enough in that it concentrated only on procedure and not on substance.

The board reviewed the report on January 7, 1986 and supported the four recommendations. They recommended further that CDF should add a suitable question to the THP form to encourage RPFs preparing plans to make an analysis of their own. They went still further and recommended use of the checklist by RPFs during THP preparation, as well as by review teams.

The task force report established a new norm for the review of cumulative effects. As requested by the board, CDF made the checklist available in an instruction booklet put out to guide RPFs in the preparation of THPs. The question requiring RPF attention to cumulative effects was made a part of the THP form. Detailed instructions were distributed to CDF field units. By this time, CDF believed itself to be ahead of any other agency governed by CEQA in the evaluation of cumulative effects. Time and the courts would tell.

In this as in many other CEQA questions, the laws are not clear. It has been left up to the courts to say what the law requires. Relying on past court decisions, the agencies simply must try to guess what the courts will demand before the next suit goes to trial. Budgetary limitations preclude going beyond legally justifiable procedures. An agency lacks the authority to interpret the laws as loosely as many persons might wish.

Another kind of "checklist" became available soon after EPIC v. Johnson. A Sierra Club spokesman, Ron Guenther of Fort Bragg, California, published an article in a local newspaper on how to protest cumulative effects. In it, Guenther suggested that opponents of timber harvesting should raise questions about a variety of effects that might possibly accumulate in a way that would be detrimental to the environment. Shortly afterwards, CDF regularly began to face these questions on new THPs in comments made by critics during the public review period. Rarely was any factual evidence offered to support the probability of cumulative effects. To critics, it has seemed sufficient to raise the questions, then seek ways to criticize the answers.

In Sonoma County on April 7, 1986 Helen Libeu, a long-time follower of the activities of the board and CDF, sued to block logging by Louisiana-Pacific Lumber Company under two THPs. The two areas were called "Freeze-out Creek" and "Kolmer Gulch" after

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pages, plus Appendices A through F, inclusive.

the two principle watercourses involved. The only allegation original to this suit was a charge that the company was cutting too rapidly for sustained yield within the county. Mrs. Libeu further alleged that the rapid cutting rate would lead to severe cumulative impacts. The rest of the allegations were virtually the same as in other similar cases. As in all but one such case, the trial judge found in favor of the state. Mrs. Libeu appealed, and the appellate court agreed with Mrs. Libeu that cumulative effects were not adequately addressed.

The Freeze-out/Kolmer Gulch THPs were submitted just after the court issued its EPIC decision. The December 1985 Cumulative Effects Task Force Report had not yet become available, so the check-list was not in use. Nevertheless, CDF had already begun to document its cumulative effects review more completely and thought their bases adequately covered.

The board and the department appealed this decision to the California Supreme Court. That court declined to hear the appeal but did order that the appellate court decision not be certified for publication. This meant that the decision would have no value as a precedent in future cases. Apparently the court felt that the issues were so specific to the area in question that the principles should not have further application to other areas.

About this same time, Rex Timber Co., the timber owning subsidiary of Georgia-Pacific Corporation, submitted a new THP to harvest the same timber area involved in the original EPIC lawsuit. EPIC sued again. This suit never came to trial, however, as the company finally decided to sell the property to The Nature Conservancy in early 1987. The Nature Conservancy has stated an intention to turn portions of the property over to the State Department of Parks and Recreation. Some of the property may go to a form of private or semi-public ownership that will manage for timber production.

Other lawsuits have added to the history of cumulative effects regulation. On June 26, 1984 Santa Cruz County and a property owner named Laupheimer sued CDF and the Board of Forestry to block logging on Lompico Creek. The usual litany of charges was made: failure to comply with CEQA, and especially inadequate review of cumulative effects. In Laupheimer v. State of California the trial judge found for the state. On April 15, 1988 the Sixth District Court of Appeals upheld the trial court decision on all points except the one relating to cumulative effects. On that point, the court applied the requirement in a manner consistent with existing CDF practice. The Supreme Court on June 29, 1988 refused to hear an appeal in Laupheimer, thus finalizing the appellate decision.

On June 3, 1987 EPIC sued CDF and The Pacific Lumber Co./Maxxam Corporation over that company's cutting practices.

Again, a big issue was made of cumulative impacts, particularly as to the effects on wildlife of the continued cutting of old-growth timber. The trial court found against the company and CDF. CDF decided not to appeal the decision. In response to Libeu and this latest EPIC case, CDF has modified its review process. The emphasis is still on process and not on content. This has not pleased the critics, but in view of Laupheimer, seems within the requirements of the law.

By 1985, Region 5 of the USDA Forest Service had begun using a new method for measuring cumulative effects. The Board of Forestry learned about it at the hearing on Soquel Creek. This methodology became popular among environmentalists because it seemed to have a scientific basis and could be used to calculate a numerical index of potential cumulative effects. It is based on assumptions about the relative hydrologic effect of different timber management strategies in comparison with road construction. Roads are considered to have the maximum impact over time. Other activities are rated proportionally against this base. Factors are then added for slope, precipitation, soil type, geology, and other natural conditions. The numbers go into a formula to calculate an index. In Forest Service usage, the index was meant to be the starting point for a further review of conditions that did not permit numerical evaluation.

The Forest Service method has been the subject of much debate among scientists and others, many of whom question its validity. It has also been charged with oversimplification. Other opponents concede that the method might have value as a tool for land managers but question its usefulness as the basis for a regulatory scheme. Its use is limited entirely to watershed impacts. It is not applicable in any sense to other environmental concerns. Despite the debate, it has found many adherents who would like to see the Board of Forestry adopt a version of it for use on non-federal lands. The Forest Service itself has relied upon the method in a few instances to request private timber owners to delay cutting in watersheds having joint private/federal ownerships.

Private timber owners dislike the method because it suggests cutting delays and allocations of cutting rights that seem unjustified in the face of scientific doubts. For the Board of Forestry, the political implications are enormously complicated. To delay cutting by owner "Y" because owner "X" in the same watershed arrived first would require extraordinary justification. For owners to reveal long-range management information to regulators bent on establishment of allocations would mean release of sensitive trade data to competitors. The timber industry is highly competitive, and the U.S. Justice Department Anti-trust Division intends to keep it that way. Therefore, cooperative strategies, even the release of trade data, would likely be viewed as anti-competitive.

In early 1987, CDF and the Forest Service held a number of discussions trying to resolve differences in approach but were not successful. The Board of Forestry was so informed on June 3, 1987. The issue was one of great importance to the State Water Resources Control Board in deciding Best Management Practices Certification. Therefore, the Board of Forestry moved to inform the water board that mutually acceptable means are not obtainable. The forestry board feared that the water board would hold the state to the federal standard. Interestingly, the Forest Service informed the forestry board on July 8, 1987 that it had initiated a peer review of the methodology within the service.

The final chapter on cumulative impacts may never be written.

ARCHEOLOGY

Archeological resources under the Forest Practice Act have had a "touch and go" history. References to cultural resources are missing from the act; only from CEQA does authority come for their protection. The Forest Practice Rules provide for protection of Special Treatment Areas, which by definition includes Recorded Archeological Sites. Non-recorded sites have no formal protection in either the act or the rules. Nevertheless, real progress has been made, thanks in large part to the strong efforts of the archeologists that CDF has been fortunate enough to engage or employ.

Beginning in the latter half of 1977 CDF began to contract with Department of Parks and Recreation for the services of archeologist John Foster. Foster was followed in 1980 by Jim Woodward and in 1981 by Dan Foster. The contractual arrangements ended in 1981, and Dan Foster has since been employed directly by CDF. These three have consulted with CDF on a variety of projects not limited to forest practice regulation. Moreover, they have had statewide responsibility. Despite being spread quite thin, they have accomplished much through an infectious enthusiasm for their profession. Through highly successful training courses and one-on-one contacts with CDF and industry personnel, a corps of more than casually interested lay-archeologists has been developed to aid their efforts.

Soon after functional equivalent certification, CDF worked out an informal arrangement with the Office of Historic Preservation (OHP), attached to the Department of Parks and Recreation. OHP would do a nominal review of THPs to determine if recorded archeological sites existed within a THP area. They would then make generalized recommendations for the protection of the site. The staff archeologist would evaluate the information available, and when able, visit the site. Protection of a site

rarely has meant exclusion of logging. Usually, a site can receive adequate protection merely by avoiding heavy equipment use in the immediate area.

Until 1981 CDF and OHP performed this function with little information from submitters of THPs. That year, a question was added to the THP form asking if the submitter had knowledge of any recorded sites. The answer was usually "No," but affirmative answers helped relieve the workload when they came in.

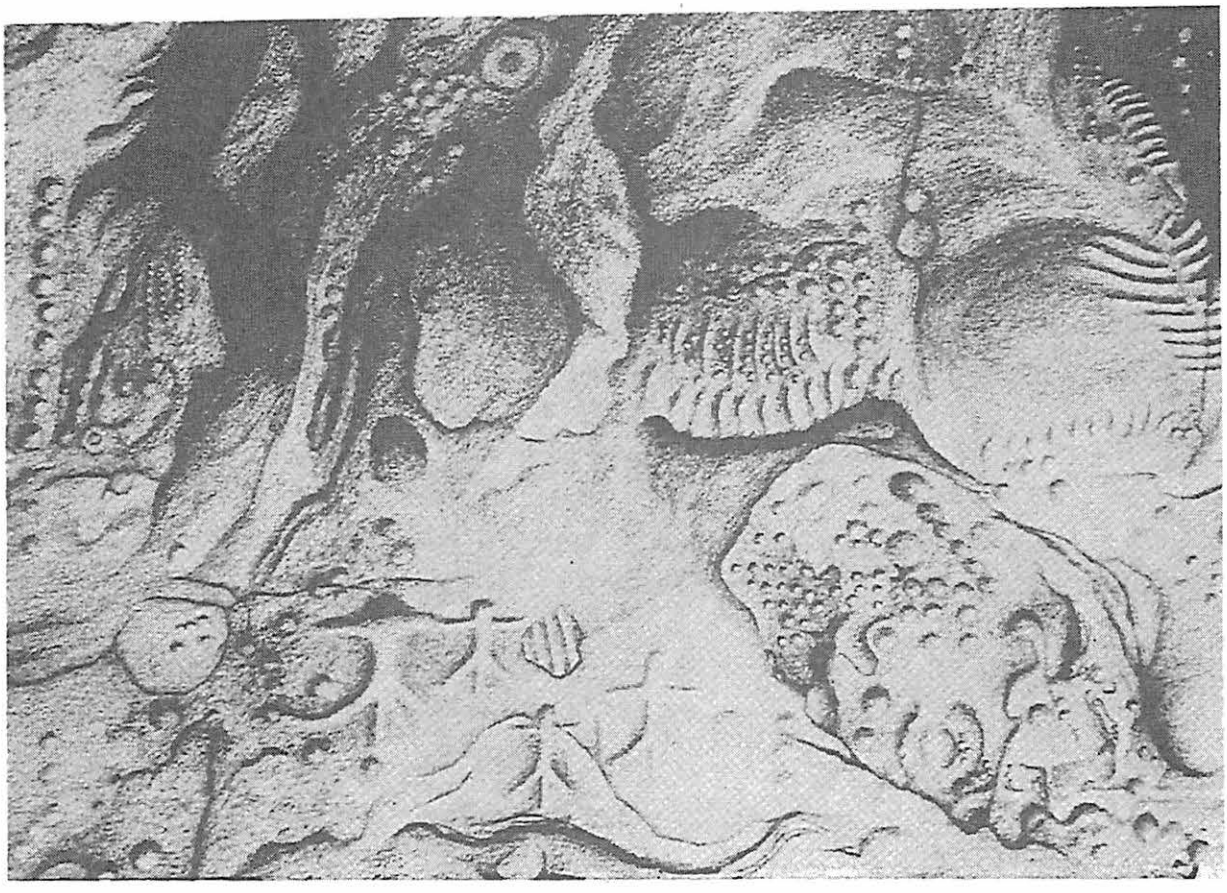
Early in 1984 OHP informed CDF that because of a loss of federal funding, it could no longer do the THP review. Fortunately, computerized record files were nearly completed at this point. CDF moved quickly to obtain a computer which could be connected with a central data source to allow easy access by the staff archeologist. Since then, CDF has been able to perform its own record search.

In August 1985, CDF began to assist RPFs with advance information about recorded sites so that THPs could be designed to protect the sites before they were submitted. Interest in the service expanded so rapidly that by the following spring, the staff archeologist was being swamped.

Almost simultaneously with these events came the EPIC decision. Archeology was prominent in that decision in two ways, one obvious, the other not. The easy one simply told CDF that in its public reports it must not refer to protectional measures located in a confidential report not available to the public. This finding resulted from CDF's references to a confidential report prepared by an archeologist under contract with the landowner. CDF could remedy that deficiency simply by quoting pertinent portions of the report in its memoranda while guarding confidential information. None of the confidential information had any relevance to the protection issues, but only to site location. Keeping site locations secret is of paramount importance as we shall see shortly.

The second item was a spin-off from the long dissertation about compliance with CEQA. Heretofore, the only formal protection accorded sites in the rules was to recorded sites. CEQA, on the other hand, makes no distinction between recorded and unrecorded sites. CDF had not ignored unrecorded sites previously, but neither had the sites received the level of protection intended in CEQA. That clearly had to change. Raising the level of protection required that RPFs who prepare THPs make more effort to ascertain whether unrecorded sites may exist within a plan area. It also required knowing how to protect the sites efficiently.

In 1986, therefore, the THP questions to be answered by RPFs were strengthened, and RPFs were encouraged to obtain information



Example of Native American rock art discovered and protected due to the requirements of the Forest Practice Act.

about recorded sites on a property-wide basis. The Archeological Information Centers located at several State University campuses were induced to provide information more easily. More training sessions to increase awareness and knowledge were conducted and attended by large groups of CDF and industry RPFs.

One problem has sprung up repeatedly throughout the history of archeological site protection: the need to keep the locations confidential. OHP feared for CDF to begin making its own record search because it might mean non-archeological personnel coming in contact with location data. The need for confidentiality led to CDF's obscure references criticized by the court in EPIC. It cropped up again when RPFs began going to the information centers to seek recorded site data. Secrecy is important to both archeologists and Native Americans because of the need to protect sites from pot-hunters and other kinds of vandals. Secrecy, on the other hand, does not accord with CEQA needs for public disclosure. Compromises have been worked out at each step. The archeological community and Native Americans have had to accept some disclosure. CDF and the industry have learned to comply with CEQA without giving away the store.

All of these efforts have paid off. Hundreds of new sites have been discovered and recorded. The awareness and protection of recorded sites has improved many fold. Timber harvesters, having come to realize that protecting these sites doesn't necessarily hamper their businesses, have become less hostile. In some cases, active support has developed. The forested areas of the state contain untold numbers of undiscovered sites. The best way to find and protect them is to win the cooperation, or at least defuse the opposition, of those who know the areas best: the loggers and foresters. The CDF archeological squad has done well.

CHALLENGES TO CERTIFICATION

The THP preparation and review process was certified on January 6, 1976 as a functional equivalent of the usual EIR as required by CEQA. PRC section 21080.5, which established the certification process, provided a way to challenge certification but allowed direct challenges only during the first 30 days afterward. Nevertheless, in recent years certification has been challenged numerous times. The challenges have been couched in terms designed to get around the 30-day limit.

These challenges have, of course, come as parts of the several lawsuits filed to block THPs. Almost invariably among the allegations about cumulative impacts, archeology, unequal protection, due process, and others, has been one stating that certification should be voided. The rationale has been that

despite the many changes made by the Board of Forestry in the rules and regulations, certification has never been reexamined. Attorneys have gone to great lengths to show that nearly every rule ostensibly adopted to strengthen protection has actually weakened it in some way. Therefore, certification should no longer be considered valid, in their view.

Trial judges have without exception ruled against the plaintiffs on this allegation. Several of these cases have gone on to appeal, including EPIC v. Johnson, Libeu v. CDF, Laupheimer v. State of California, Lexington Hills v. State of California. While the appellate courts have sided with the plaintiffs on a few issues, paricularly cumulative effects, they have all rejected the certification claim. Laupheimer and Lexington Hills were appealed to the State Supreme Court, which on June 29, 1988 declined to hear the appeal, allowing the lower court decisions to stand.

At least one challenge has been made to the Secretary for Resources. As noted in the section on Cumulative Effects, attorney Joseph Brecher in a letter dated July 31, 1979 petitioned Secretary Huey Johnson to hold a hearing to consider decertification. He cited lack of attention to cumulative effects, improper analysis of alternatives, inadequate notice and time for meaningful public review and participation, inadequate interdisciplinary review, and public appeal rights not equal to those of a plan submitter. Brecher's letter gave the Board of Forestry grave concern. The board considered the letter and its implications in depth on August 29 and again on September 26, 1979. At one point, the board even talked of holding its own full hearing on the allegations.

Secretary Johnson answered Brecher's letter with one of his own dated November 28, 1979. In it, the Secretary observed that many of Brecher's allegations appeared to have merit, but that the board was aware of the deficiencies. He explained that the board already had a process in motion to correct the problems, and he did not see any advantage in disturbing that process until it had run its course. He was referring mainly to the adoption of Best Management Practices under Section 208 of PL 92-500, the Federal Clean Water Act.

The board did not complete its adoption of revised rules until 1984, well after Secretary Johnson left office at the end of 1982. The board approved its final report for submission to the State Water Resources Control Board on June 1, 1983. How Secretary Johnson might have received that report must remain a mystery. Its guarded reception at the water board and the long delays in receiving certification as Best Management Practices suggests that Secretary Johnson might have granted attorney Brecher's request.

At this point, the program remains safely certified. In the short run, the courts have settled the issue. Politics may well play a part in the long-run because key officials will be appointed by future governors. Still, there is room for optimism for those who seek stability in the timber industry. Despite allegations to the contrary, most observers agree that the program has been considerably strengthened in the years since certification. The evidence can be seen in the forest and in the water. The main question that remains is whether the program is as good as it can be. The remaining chapters will examine specific aspects of the program to see how and when specific improvements were made and where the controversies lie.

Chapter 2

THE BOARD OF FORESTRY AND THE DEPARTMENT OF FORESTRY AND FIRE PROTECTION

The precise relationship between the Board of Forestry and the Department of Forestry and Fire Protection often puzzles many observers, including sometimes members of both. As we shall see, the relationship in may ways is not so very precise, and it has changed in subtle ways from time to time. The nature of the relationship and the changes that have occurred are important to an understanding of the history of the Forest Practice Act. Some matters affecting that relationship have already been touched upon. More will be coming.

To begin with, the board and the department are two distinct entities having what might be termed a symbiotic relationship. Although separate and distinct life-forms, neither could easily exist without the other. Most of the confusion arises from the fact that within the California State Government, there are many different kinds of board/department/staff arrangements. Some boards are made up of members who serve full time and are paid full-time salaries. Members of boards are usually appointed by the governor for fixed terms, subject to confirmation by the State Senate, but other arrangements exist.

Many boards have large staffs which carry out the mandates of the boards. There may or may not be departments or divisions of government associated with these boards and their staffs. Usually, however, the staffs of these boards are in themselves a functional arm of government somewhat like a "department". The chief-of-staff for such boards becomes in many ways the functional equivalent of a department head. A key difference is that these chiefs-of-staff are appointed by their boards, not by the governor in the way that departmental directors are appointed.

The Board and the Department of Forestry and Fire Protection in some ways are like the boards and staffs just described, but in most ways they're different. The Board of Forestry is a part-time board whose members are appointed by the governor for four-year terms, subject to senate confirmation. The chairperson of the board is appointed by the governor and holds the chair at the governor's pleasure. The chairperson's term as a board member is fixed, however.

Board membership is set by law at nine members: three from the forest products industry, one from the range livestock industry, and five from the general public. The latter five may have no pecuniary interest in forest lands or the timber industry. Members serve four-year terms. Two terms expire each

January 15, except that every fourth year three terms expire. The fourth year coincides with the inauguration of governors. Thus, an incoming governor, by appointing three new members plus the chairperson, may immediately and substantially alter Board of Forestry outlook.

The Board of Forestry has a small staff consisting of an Executive Officer and an assistant appointed by the board, along with clerical support drawn from the civil service. The Assistant Executive Officer has a dual role as Executive Officer for Foresters Licensing. With such a small staff of its own, the board must depend upon the Department of Forestry for much of its staff support.

The Department of Forestry and Fire Protection is headed by a director who is appointed by and serves at the pleasure of the governor. The State Senate must confirm the appointment. The director, in turn, is the appointing power for all employees of the Department of Forestry and Fire Protection. In this history and in common usage, the department's name is abbreviated "CDF." Incidentally, the Director of Forestry may be identified completely with the Department of Forestry and Fire Protection since the department is merely an extension of the director. For that reason, throughout this history, "CDF" and "Director" have been used interchangeably.

It can be seen, then, that in terms of appointment, employment, and command structure, the board and CDF are entirely separate. The board, however, has authority to set policy for CDF. Moreover, it has authority to adopt rules affecting forestry and fire protection that the CDF must then enforce. Conversely, the board would be hard put to perform most of its functions with its own small staff. CDF, therefore, augments the board's staff in substantial ways. In principle, the board's requests for staff assistance are channelled through the director. In practice, a fluid and easy-going relationship exists most of the time. These close working ties are to some extent the cause of misunderstandings among observers about the true relationship since working boundaries are not always clear.

Both the board and the department have far ranging responsibilities relative to many aspects of forest management and fire protection. These include service forestry, range improvement, pest control, urban forestry, state demonstration forests, fire prevention, fire control on state responsibility lands, and many other related programs. This history is limited almost exclusively to forest practice regulation and will only touch on the other programs where they relate closely. Interestingly enough, by far the largest portion of the departmental budget each year goes to fire protection. The board, on the other hand, spends a disproportionally large amount of time on forest practices. The latter program clearly

engenders the most controversy.

FOREST PRACTICE ACT RESPONSIBILITIES

The Forest Practice Act grants specific authority and duties to the board and to CDF. For example, the board adopts the Forest Practice Rules as specified in the act. The board hears appeals from decisions by the director to deny THPs and from certain law enforcement actions of the director. Conversely, the act designates the director as the one who reviews THPs and decides whether they conform to the Forest Practice Rules and other regulations. The director must provide for inspections of timber harvesting operations to ascertain compliance with the THPs, and he or she must carry out any necessary enforcement actions. Some of these actions are appealable to the board, but others are not.

In a third category of duties, the act designates primary responsibility to the board but allows the board to delegate the function to the director. In this way, for example, CDF issues Timber Operator Licenses and approves permits for timberland conversion.

One very important function is carried out entirely by the board and its own staff: registration and licensing of Professional Foresters (RPFs) and any necessary discipline of licensees. This distinction is vital, for many of the director's staff and perhaps even the director in person are also RPFs. In terms of their professional activities as foresters, these persons have exactly the same standing before the board as all other RPFs.

Although the Professional Foresters Law is not part of the Forest Practice Act, the act by law and the board in practice depend heavily upon RPFs to make the act work. More will be found throughout this history about the role of RPFs in the forest practice program. At the end of this chapter some specific incidents relating to RPFs and the board are described.

FROM DIVISION TO DEPARTMENT

The arrangement between the board and CDF has not always existed in its present form. In 1976, CDF was a division within the Department of Conservation. The division was headed by a State Forester who was nominated by the board and appointed by the Director of Conservation. In those days, the board had no separate Executive Officer. The State Forester served as Executive Secretary to the board, and CDF was the board's only staff, with one exception. Starting in 1973, when registration and licensing of foresters first began, the Executive Officer,

Foresters Licensing, was assigned to the board by the director. That person worked under the State Forester, but only in the latter's capacity as Executive Secretary. The distinction was sometimes rather blurred at first because the person assigned was a CDF employee. This writer was the first person in that job. It has since been made an exempt position appointed by the board.

CDF became a department on January 1, 1977, when SB 78 authored by Senator John Nejedly became law. Lewis A. Moran, who previously had been Director of Conservation, and before that the State Forester, became the new Director of Forestry. Larry E. Richey, the State Forester when SB 78 went into effect, became one of two Deputy Directors. SB 78 required at least one Deputy Director to be an RPF. Larry Richey filled that slot. Director Moran was also an RPF. Mr. Richey also temporarily continued to serve as Executive Secretary for the board.

No substantive changes with respect to the Forest Practice Act occurred at this point. All of the responsibilities of the State Forester in the act automatically became responsibilities of the director. Moreover, because of Lewis Moran's long connection with CDF, continuity under established patterns was maintained. This stability at the top of CDF provided for a relatively smooth transition, fortunate in view of other forces at work at the time.

Differences did appear later as the effects of the method of appointment of the director came into play. The State Forester typically had been a career professional from CDF ranks. He was a civil servant with career tenure. Appointed by the governor, the director rather immediately reflects the political philosophy of the administration in office at the time. Unquestionably, CDF has become much more politically sensitive and subject to wider philosophical swings as administrations come and go.

Lewis Moran stayed on as director until March 31, 1979. Controversies over Redwood Creek and Redwood National Park erupted during his tenure. Adoption of the Coastal Act in 1976 led to special Forest Practice Rules that did not come without contention. Differences with industry about CEQA responsibilities boiled over. The board began its long ordeal with Best Management Practices (BMPs) under Section 208.

The board philosophy during 1975-82 gradually evolved into one that reflected the priorities of Governor Jerry Brown as his new appointees came on board two by two. Always meticulous and slow about making new appointments, Governor Brown did not rush to take advantage of the opportunities for quick changes. A new chairperson, Dr. Henry Vaux, did not take the helm of the board until mid-1976. Other members retained their seats on the board long after their terms had expired. Still, a much more environmentally sensitive climate began to prevail rather early. It

proved to be a busy and contentious period.

Governor Brown appointed David Pesonen as Director of Forestry starting April 23, 1979. Mr. Pesonen had been a member of the Board of Forestry from May, 1977 until his appointment as director. He had been a practicing attorney active in conservation causes. He was a graduate forester who for a time before entering law school had worked in forestry research. He was not an RPF, however. Under David Pesonen, CDF became much more pro-active in seeking stronger regulation of timber harvesting.

Director Pesonen also made several profound changes in the organization of CDF. He quickly replaced Moran's Deputy Directors with three deputies of his own choosing. Basic to this narrative was his replacement of Larry Richey with Loyd Forrest in the slot that by law required an RPF. He also created a new position for Chief Deputy Director and appointed Robert Connelly.

In the forest practice program, pressures came from Section 208 and the State Water Resources Control Board to adopt BMPs. Almost simultaneously, pressures came from AB 1111 to review and revise existing regulations, even while they were being upgraded to BMPs. Legislation was pursued to establish a long-term THP. Public Notice rules for THPs were encouraged. SB 856 passed to eliminate county regulation of timber harvesting.

With the arrival of Governor Deukmejian came a new Director of Forestry, Dr. Jerry Partain. Dr. Partain didn't take over, however, until March 7, 1983. In the interim, Mr. Al Owyoung, who had been Mr. Pesonen's Deputy Director for Business Affairs was Acting Director. Dr. Partain's confirmation was delayed until January, 1984, partly because the Democrats controlling the legislature saw a chance to tweak a Republican governor, and partly because of conservationist concerns over the slant of the new administration. Dr. Partain is an RPF, a graduate of Oregon State University. He earned his PhD in forest economics at the New York State College of Forestry at Syracuse University. He had been a Professor of Forest Economics at Humboldt State University from 1954 to 1983.

As might be expected, Dr. Partain made several changes in his top administrative team. Don Petersen became Chief Deputy Director. Ken Delfino replaced Loyd Forrest as Deputy Director for Resources. Jerry Letson became Deputy Director for Fire Protection. These appointments were notable because they were made entirely from CDF ranks. Subsequent retirements have seen Dick Day replace Jerry Letson and Richard Ernest become the Chief Deputy Director, again from the ranks. Dr. Partain retired at the end of 1988, and the governor appointed Richard Ernest, a longtime career employee of CDF, in his place.

The new administration had to contend with adoption of county Forest Practice Rules under SB 856 and a spate of lawsuits by county governments upset over their loss of regulatory power. Conservationists, who no longer felt that they had a friendly administration, brought on numerous lawsuits. All the legal battles were played out against the background of a drawn-out effort to obtain BMP certification from the water board.

A different sort of change occurred when 1986 legislation expanded the full name of CDF to "California Department of Forestry and Fire Protection." The California Department of Forestry Employees' Association had for many years sponsored legislation to rename the department to better emphasize its fire protection role. Every year, the name-change bill made it through both houses of the legislature despite routine opposition from the administration and the board. The governor would then routinely veto the bill. For reasons never made public, in 1986 the governor agreed to sign the bill. The change has had small effect on the Forest Practice Program -- mainly, the extra time and room it takes to spell out the name.

HENRY VAUX ASSUMES BOARD CHAIR

As might be expected, the board has undergone substantial changes in philosophy over the years. In 1976, the board still had a significant number of members appointed by Governor Ronald Reagan. Although each new incoming governor may immediately appoint three new board members as well as the chairperson, Governor Brown moved slowly to replace prior appointees. He named two new members during 1975. Ray Nelson, a labor union official from Humboldt County, replaced William Holmes early in 1975. Thomas Lipman's term had expired in January, along with that of Holmes, but he continued to serve until he resigned in July 1975. His replacement, Dr. Clyde Wahrhaftig, a Professor of Geology at the University of California, did not begin until November, 1975. Howard Nakae's term in the chair also expired in January, 1975, but he held on at the governor's request until June 23, 1976.

CDF personnel will long hold Mr. Nakae in the highest regard because of the way he stood with the department and State Forester Lewis Moran in 1973-74 during a time of crisis brought on by efforts of the Director of Conservation to substantially reorganize CDF. It was those efforts that led eventually to the passage of SB 78 and creation of the Department of Forestry. Over and above these issues, Mr. Nakae served with great distinction and personal sacrifice as board chairman during a trying period. His accomplishments are detailed by Arvola.[1]

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1 T.F. ARVOLA, 1976. Ibid.

Dr. Henry Vaux assumed the board chair on June 24, 1976 on the second day of a two-day meeting. A Professor of Forestry at the University of California, Dr. Vaux had long studied and taught forest policy. He made significant contributions to the 1972 report of the Institute of Ecology at U.C. Davis entitled "Public Policy for California Forest Lands."[2] Many elements of the present Forest Practice Act were drawn from that report.

One of Dr. Vaux' first moves was to begin an overhaul of the Board of Forestry policy statements. Many of these had gone badly out of date when the new Forest Practice Act went into effect. There had been little time for repair work during the numerous crises of 1974-75. Then too, Dr. Vaux hoped in this way to develop more of a spirit of cohesiveness among board members. Perhaps there would be less contention over relatively generalized policy statements, and a "board spirit" might result.

Whether or not his purpose succeeded observers may judge by the results of the first effort. Dr. Vaux first suggested the need for a policy on timber supply at the meeting in Chester on July 22, 1976. He presented the first draft on October 1 in Fort Bragg. Board members worked on adjustments at the next three meetings. The policy then came on for hearing on January 18, 1977. The board held further hearings on April 5, May 11, June 21, and July 19. On July 19, 1977 the board at last adopted the policy unanimously. Members debated their many disagreements openly, but all members did come to agree on the final product. Most subsequent policy debates were more harmonious. The timber supply policy itself came in for frequent use subsequently as a means to focus debate on many forest practice issues.

Dr. Vaux led the way in developing an independent staff for the board. By law the board may appoint its own executive officer, independent of CDF and civil service. Up to this point, however, the board had not chosen to exercise this right. CDF unquestionably had resisted, perhaps dreading the possibility of friction between staffs. The board approved the hiring of an exempt executive officer at its October 1, 1976 meeting and moved quickly to develop a job description and to advertise for candidates. Not surprisingly, applications came in from all over the nation. After a review of applications narrowed the field to four and interviews reduced the number to two, Dean Cromwell was appointed by board vote on April 5, 1977. He took office on May 1. Mr. Cromwell has weathered well, still occupying the seat as of this writing.

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[2] INSTITUTE OF ECOLOGY. Public Policy for California Forest Lands. University of California, Davis, California, 1972. 122 pages.

One may observe in passing that friction between staffs has been rare and minor. In truth, having a specific point of contact with the board has facilitated interchange between CDF and board. This writer has served on both sides of the fence and speaks with first-hand knowledge.

DISTRICT TECHNICAL ADVISORY COMMITTEES

Dr. Vaux also moved quickly to give structure to other functions of the board, particularly the appointment of members of the three District Technical Advisory Committees (popularly called "DTACs," pronounced Dee-tacks). DTACs have the responsibility to advise the board on the adoption of Forest Practice Rules. By law, the board must consult the DTACs before adopting any of these rules. In practice, the board has consulted the DTACs on a wide range of topics. DTAC membership categories coincide with those of the board, and the board appoints the members. Terms run four years, just as board members, except that three terms expire on each January 15 of three years out of four. Off-years when no new appointments were made have occurred in 1975, 1979, 1983, and 1987. The board appoints a CDF representative as DTAC Secretary who may vote in case of a tie.

The three DTACs represent the three forest districts into which the board has divided the state, as provided in the Forest Practice Act. The Coast District includes the redwood and the pure douglas-fir belts that run south to north near the coast from Santa Cruz and Santa Clara Counties to the Oregon state line. The Northern District lies inland from the Coast district, north of the Sacramento-San Joaquin River Delta, and north of Sacramento and El Dorado counties. The Southern District takes in the rest of the state, including the latter two counties.

The board made its original DTAC appointments in 1974. The first new openings occurred in 1976. The board almost overlooked the 1976 appointments in the fury of debate over functional equivalency in late 1975. The appointments didn't get made until just before the terms expired. This gave the board under Dr. Vaux an opportunity and incentive to establish regular procedures for receiving nominations and making appointments. The board adopted a set of rules on December 10, 1977 but still didn't get around to appointing the next set of new members until the following January 18.

Organizing DTAC elections didn't stop there. The board had conducted its first three elections by secret written ballot. Then on August 12, 1977 the board's counsel advised them that they could no longer use secret ballots. At that same meeting, the DTACs requested the board to move the elections up at least one month to give new members an opportunity to prepare themselves for their first meetings. By law each DTAC must meet

in January every year. January elections had caused more than a little difficulty for some persons who were newly appointed one day and possibly expected to attend a DTAC meeting the next. Eventually, the board came around to making appointments even earlier.

Obviously, as the board philosophy shifts with the changing of time and governors, the philosophies of the three DTACs will shift also. Without going into detail or naming individuals, a few generalities may safely be stated. During the Republican administrations of Governors Reagan and Deukmejian, the public members appointed to the DTACs have tended to be businessmen who had an interest but no direct investment in the timber industry. During the Jerry Brown administration, such appointees were more apt to be active members of the Sierra Club, the Audubon Society, the Native Plant Society, and other similarly oriented groups. Exceptions to these generalities have existed. A number of college instructors and retired U.S. Forest Service specialists have been among the appointees of both types of administrations. Timber industry representatives have not varied so much in style.

One point has tended to unite all DTAC members, regardless of philosophy: they have believed that the board did not pay enough attention to their recommendations. One of the reasons for this has been that many organizations, realizing that the board makes the final decisions anyway, have not spent any time with the DTACs. They then have given the board the information that the DTACs should have had to make informed recommendations. The board might have corrected these habits by referring matters back to the DTACs for more complete resolution. Unfortunately, despite the boards oft expressed desire to do so, legal pressures and deadlines often precluded such action.

BOARD SUBCOMMITTEES

Another new development in board structure occurred early in Dr. Vaux' chairmanship. Sensing a need to streamline discussion and enable more penetrating review of difficult matters reaching the board, he proposed dividing the board into subcommittees. The subcommittees would meet separately in sessions more informal than meetings of the full board. Discussion would flow more freely among members, public and staff. The subcommittees would report to the full board with recommendations. The board could thus cover more issues and do a more thorough job. The board accepted this idea at its August 1977 meeting, and five subcommittees were formed: (1) Legislation and Policy Development, (2) Forest Practice, (3) Resource Protection, (4) Budgets and Program Review, and (5) Information, Government Relations and Taxation.

The subcommittee structure has been well received and

effective, although cumbersome at first with overlapping memberships and difficulty arranging for meetings. During 1979 when many board vacancies occurred, subcommittees were reduced to four. Later, the number of subcommittees was reduced to the first three named above. The responsibilities of the three were broadened to cover all pertinent subjects previously covered by five. With three members per subcommittee, a most efficient structure has evolved. Subcommittees usually meet at a time set aside in the course of regular board meetings, but on occasion, they have met separately at other times and locations. Special subcommittees have on other occasions been formed for special purposes. The board has, for example, used such subcommittees to hear appeals of THP approvals requested by certain counties.

MORE APPOINTMENTS BY GOVERNOR BROWN

Gradually, as previously noted, changes in board membership led to significant changes in board philosophy during the years of the Jerry Brown Governorship. In 1976 the governor appointed Sierra Club activist Cecile Rosenthal from Southern California as a public member, and rancher-timber owner Dwight May from Humboldt County. Mr. May had belonged to the Coastal Commission previously. In 1977 the governor appointed public member David Pesonen who later became Director of Forestry, and Virginia Harwood, part-owner of Harwood Lumber Co. With Mr. Pesonen's appointment, the board had four members who belonged to the Sierra Club.

Board membership then remained relatively stable in style, if not in personnel, for the next four years. In 1978 the governor reappointed industry stalwart Henry K. Trobitz, an RPF, and Sierra Clubber Phillip S. Berry, an attorney. Both had been originally appointed by Governor Reagan. In 1979 Drs. Vaux and Wahrhaftig were reappointed. That same year Mr. May died. He was replaced in 1980 with Mr. Richard Wilson, a rancher-timber owner from Mendocino County. As previously noted, Mr. Pesonen became Director of Forestry in 1979, leaving a vacancy on the board. The governor appointed retired television newsman Mr. George Dusheck, also a Sierra Club member, to take his place. Mr. Nelson resigned in 1979. Never in a hurry to make appointments, Governor Brown replaced him with contract timber operator Jim McCollum in 1980. Sierra Club representation remained constant, and no more faces changed through 1982.

THE BOARD AND GOVERNOR DEUKMEJIAN

Then, beginning in 1983 after the election of Governor George Deukmejian, the board began to change again. Dr. Vaux stayed in the chair until April 6, 1983. Newly appointed Harold R. Walt from Woodside in San Mateo County assumed the chair on

May 3. Mr. Walt currently teaches business management at the University of San Francisco. He has a strong background in the construction industry and in finance, and holds degrees in Forestry and Business Administration from the University of California. Dr. Carlton Yee, Professor of Forest Engineering at Humboldt State University and an RPF, was appointed a public member, replacing Dr. Wahrhaftig. Roy D. Berridge, an RPF and timber manager for Diamond International Corporation, joined the board as a forest products industry member. Mr. Berridge was Chairman of the Northern DTAC at the time of his appointment. He replaced Mr. McCollum.

In 1984 Mrs. Jean E. Atkisson from Big Bear Lake was appointed a public member, and Jack Shannon, a cattleman from Porterville was appointed to represent the range livestock industry. Both were previously members of the Southern DTAC. They replaced Mrs. Rosenthal and Mr. Wilson, respectively. In 1985, the governor appointed Clarence W. Rose, an RPF, Consulting Forester, and Licensed Timber Operator from Weaverville to replace Virginia Harwood. The governor then appointed Ted Waddell, Retired State Forest Ranger and RPF from San Luis Obispo, to replace public member George Dusheck. Mr. Waddell's confirmation ran into difficulty in the senate, however, and he resigned after serving only a few months. Mr. Waddell's problem typifies many of a similar nature that Republican Governor Deukmejian had in dealing with a majority of Democrats in the legislature.

In 1986, with the public member position left over from Mr. Waddell's resignation, the governor had three vacancies to fill. At first, he chose Mr. Joseph Russ, IV, a rancher from Humboldt County to take the public seat vacated by Mr. Waddell. It soon became apparent that the Russ interests included timberlands, making him ineligible to become a public member. He was then moved over to fill the seat left by retiring forest products industry member Hank Trobitz. Franklin L. "Woody" Barnes, Jr., a fruit-grower from Julian and a former Board of Forestry member from 1971 through 1973 was appointed public member. Most recently, Mr. Barnes had served on the Southern DTAC. Mr. Clyde Small, an attorney and former Judge of the Superior Court, was appointed to replace Mr. Phillip Berry as the fifth public member.

With these latter three appointments, the changeover to a Governor Deukmejian appointed board was complete. 1987 saw the reappointment of Messrs. Walt and Berridge and Dr. Yee. In April 1988, Mrs. Atkisson retired from the board, and the governor appointed Elizabeth A. Penaat, a management consultant from Santa Cruz. The term of Clyde Small expired in 1989, and he requested not to be reappointed. The governor has made no new appointment as of this writing. As might be expected, this membership reflects the conservative views of a governor who prefers less

government. That none of the members belong to the Sierra Club is one indicator. Three members are RPFs, and a fourth, Mr. Walt, is a graduate forester, though not an RPF. For a brief period during Mr. Waddell's time, and before Mr. Trobitz' term ended, the board had five RPFs in addition to Mr. Walt.

TIMBER HARVESTING PLANS ON APPEAL

A number of occurrences over the years illustrates how the board and CDF have worked together, mostly in harmony, to accomplish their respective responsibilities. Many will be described more fully in other chapters, but a few fit especially well in this chapter.

One responsibility in particular which required the board and CDF to develop mutual understanding concerned appeals to the board by submitters of THPs denied by the department. Incidentally, throughout this narrative, the terms "deny" and "approve" are used to describe CDF's decisions on THPs. Technically speaking, neither term is correct. The Forest Practice Act uses the more complex terminology of "to determine conformance" and "not in conformance." Industry over the years has made much of using the correct terms. Originally, the wording was thought to indicate that the State Forester, and later the Director of Forestry, had only ministerial responsibility for THP review. Industry believed fervently that the legal terms implied lack of authority to approve or deny, making THPs immune from CEQA. As we have seen, Judge Broaddus eliminated that argument in NRDC v. Arcata National. Therefore, while "deny" and "approve" are not quite correct, they are in common usage and are much simpler terms. The differences today are immaterial.

When CDF denies a plan, the plan submitter may appeal to the board. Contrary to the accusations of many of its critics, CDF has denied a substantial number of plans. Many plan submitters have appealed those denials. Questions have arisen from time to time during the process of appeals about the relative responsibilities of board and CDF. The first such appeal is described on page 89 of Tobe Arvola's book, "Regulation of Logging in California, 1945 - 1975."[3] In that case, the board overruled the CDF and approved the plan.

The second THP to be denied by CDF was one submitted by Paul Bunyan Lumber Co. early in 1976. CDF denied it for vagueness and incompleteness because it did not adequately describe silvicultural methods, omitted boundaries of Site I areas, left off certain required erosion control measures and cutting area

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[3] T.F. ARVOLA, 1976. Ibid.

boundaries, and was generally incomplete. CDF hoped, too, to establish that a THP should cover only the amount of area that could be reasonably logged in one year. Bunyan has had the policy of preparing plans for large areas and logging whatever portions are needed to meet market needs. This made it hard for CDF to find the loggers when making inspections and to locate areas to check for restocking. While the board upheld the denial on all the other grounds, the limitation of the THP to one year's logging was rejected.

A THP of Georgia-Pacific Corporation at Big River and one submitted by Louisiana-Pacific Corporation at Rockport were denied because they lay partly within proposed Coastal Zone Special Treatment Areas. The coastal Act required special protection for such areas. The rub was that the Coastal Commission had not yet established the Special treatment Areas, nor had they developed proposed special rules for the protection of such areas. Both companies appealed to the board in February 1977. Appellants believed CDF lacked authority to deny a plan for failure to comply with rules that did not yet exist.

During the hearing on the GP plan, RPF Jere Melo offered to amend his plan to remove the area in the coastal zone so the board could approve the rest. Counsel advised that the board could not allow this because the plan approved by the board would then be a different plan from the one under appeal. Counsel further advised that original review of THPs belonged to the Director of Forestry, not to the board. The board upheld the denials.

The issue of how much area a THP should properly cover came up again for discussion during the May 1977 meeting of the board. The board at that time expressed concern about proper appeal procedures. Questions centered on whether the board could base a decision on information outside the plan record and whether CDF could base a denial on matters outside the board rules. CEQA requirements that went beyond Forest Practice Act requirements were the main issues. At that same meeting, the board heard appeals of the denial of several plans in the Redwood Creek basin, upstream from the then national park boundary. The board upheld the denials, but not without controversy.

1977 was a busy year for THP appeals. Besides several more sets of Redwood Creek plans, two others also came up for appeal. The appeal of Rogue Valley Plywood, Inc., in August, turned on a dispute over whether a portion of the THP area lay on national forest land. The U.S. Forest Service testified that a resurvey had moved the property lines. The questions concerned accuracy of the THP and whether the rules covered this situation. The board agreed with CDF that the plan contained inaccuracies and upheld the denial.

The appeal of Pumpkin Logging Co. in September 1977 was denied with surprisingly little controversy, considering that public notice was at issue. A neighboring Y.M.C.A. camp had been using a portion of the property under permit as an outdoor worship center. Logging would have affected the worship area. The camp had not received notice and had protested. CDF denied the plan, and Pumpkin appealed.

On February 5, 1980 the board heard an appeal by Robert McKee concerning a plan denied by CDF because the U.S. Bureau of Land Management wanted to add the land to the King Range Wilderness Area. Obviously, logging would damage its value as wilderness. Mr. McKee retorted that he had tried to sell the land, but that BLM had not moved to complete the purchase. He would willingly amend the THP to delay start of logging until the end of the year to give BLM more time to act. The board learned once again that it could not review a plan amended during the hearing. Still, while it upheld the denial of the plan in question, the board made it clear to all parties that it would approve a plan worded as suggested. Mr. McKee then resubmitted his plan with the delayed start-up date. CDF approved it, and BLM got busy with the purchase.

Together, all of these appeals established a pattern that, by law, original review of THPs belongs to CDF; the board may decide an appeal only on the record and only on the plan in the form it was denied. Later, in 1979, several persons requested that the board intervene in the approval of certain THPs still under active consideration by CDF. The board's counsel affirmed that it held no authority to do so.

For many years, the only recourse for a plan submitter whose plan had been denied, then appealed and rejected by the board, was to resubmit the plan through the full review process. This was an unnecessary burden if the submitter was willing to amend the plan to conform with CDF's original objections. 1985 legislation carried by Assemblyman Norman Waters (AB 507) corrected this problem. Now such a plan may be amended by the submitter and approved by CDF if done within ten days of the board hearing. It still does not allow amendment of the plan at the time of the hearing, although the hearing process may well help determine what amendments will be acceptable.

TIMBER HARVESTING PLANS ON ICE: PRC 4555 REFERRALS

Chapter One describes SB 886 and its provision for CDF to withhold decision on a plan and to refer policy questions to the board. This process caused more than a little head-scratching at first. After learning that the bill had been signed by Governor Brown in September, 1979 the board perhaps rather belatedly debated whether it was appropriate to base a major policy

decision on a single plan. The board tried valiantly to establish a practice that on such referrals, details about the specific plan would be kept out of the discussion. Board members reasoned was that the plan might still be denied and come to them on appeal, and they wanted to remain free of any preconceptions. The idea rarely worked, however, as it proved nearly impossible to avoid the circumstances of the specific THP. Inevitably, the plan submitter would appear to give the other side of the story, and the debate would soon begin to sound exactly like an appeal.

The 4555 referral procedure has proven clumsy and not highly effective, at least in its original intent. As a means to obtain environmental mitigations in a THP, however, it still has value. As pointed out in Chapter One, most private RPFs usually accede to CDF requests for environmental mitigations, preferring not to test the issues. Regardless, the board has not often looked with favor on requests for emergency rules for individual plans. Even an environmentally sensitive member like George Dusheck criticized it as "ex post facto regulation," at a July 1981 hearing. CDF had referred a question to the board about counting hardwoods for stocking. Mr. Dusheck insisted that CDF had to show strong proof of necessity before he could approve any such rule request.

On more than one occasion, CDF was able to use PRC 4555 to pass a hot potato to the board. In May 1982, CDF came under pressure from the Department of Parks and Recreation to deny a Georgia-Pacific Corporation THP near the proposed coastal trail in northwestern Mendocino County. Lacking any authority, CDF withheld decision on the plan and took the issue to the board, requesting a special rule. The board refused to adopt the requested rule, and Director Pesonen allowed the plan to become approved without a signature. The Soquel Creek and old-growth redwood cutting controversies described in Chapter One were other such examples.

The board didn't always balk, however. In July 1979 CDF faced a THP that lay within a congressionally designated wilderness area. The owner wanted to sell the land to the Forest Service, but the sale had progressed very slowly. The THP was a fairly transparent effort to hurry the purchase. The board approved an emergency rule allowing CDF to deny the plan, but put in an early sunset date, October 1, 1980 to get things moving. It worked. The Forest Service quickly bought the land before it could be logged.

Readers may wonder why this particular rule didn't work in the McKee case described earlier. Application of the board's temporary new rule had required that purchase be funded and imminent, factors not clearly present in that earlier case.

In other instances, the board provided guidance without

necessarily adopting any new rules. Faced with expanded use of the "Modified Shelterwood Silvicultural Method" in July, 1978 CDF requested guidance because the results of logging tended to look a lot like clearcuts. That's approximately what the board told CDF: if it has the same effect as a clearcut, treat it as a clearcut under the rules. The board thought the rules already clear enough on that subject.

On February 2, 1988 the Board of Forestry heard a request by CDF to consider the adequacy of existing Forest Practice Rules to protect wildlife habitat provided by privately owned old growth redwood. Recent court cases, particularly EPIC v. Maxxam, and concerns expressed by Department of Fish and Game made it necessary, CDF believed, for the board to consider the issue. Four THPs had been held up pending board action on the question. Department of Fish and Game identified seven wildlife species of special concern, believed to depend primarily on old-growth habitat.

The board found, however, that inadequate evidence was presented to justify an emergency finding. They further found that, given the information available, the board's existing rules provided adequate protection. The upshot of the hearing was an emergency decision to delete 14CCR 898.1(f), the rule that required the Director to bring such issues to the board. Later, though, on April 6, 1988 the board rethought its earlier action and decided not to make the deletion permanent. Members apparently realized the director needed the discretion afforded by the rule. At the same time, a better, more definitive rule seemed very desirable.

Subsequent developments in the Maxxam case possibly will have broad implications. On April 14, 1988 CDF decided that its only recourse, in view of the demands of the Department of Fish and Game, was to deny two of the plans in question. The company appealed the two plans to the Board of Forestry, which heard the appeals on June 7. The board, in essence, considered the Fish and Game requests to be excessive and voted to overturn CDF's denials. A central issue was whether the wildlife species were sufficiently threatened to justify the information requested. Since Fish and Game could not provide convincing details, the board felt it could not declare that the species deserved special treatment. Readers should not think of this as a confrontation between CDF and the board. Quite the contrary, it seemed the only way to ventilate the issues.

The Sierra Club Environmental Defense Council immediately filed suit to block the THPs. In a decision handed down on June 28, 1988 the Humboldt County Superior Court not only refused to grant the restraining order but went on to compliment the board's decision making process. The court further stated that the petitioners were not likely to succeed with further litigation.

This decision undoubtedly will be appealed. Stay tuned.

DEPARTMENT SUGGESTS RULE AMENDMENTS

On more than one occasion, CDF has offered the board substantial proposals for rule amendments, as authorized by the Forest Practice Act. The offerings have met mixed acceptance. In December, 1976 CDF requested the board to consider rules for cumulative impact review and for continued road maintenance after completion of logging. The DTACs unanimously rejected the cumulative impact rules and seriously questioned the road proposals. A task force appointed to study the road rule could come to no workable conclusion. Again, in October, 1977 CDF proposed a comprehensive set of rule revisions intended to improve enforceability and effectiveness. These suggestions went to the DTACs which received them with little enthusiasm. Some DTAC members criticized CDF for doing what they believed was a job that rightfully belonged to the DTACs.

One of CDF's recommendations was to clean up the rules on silvicultural practices because of a belief that terminology was used incorrectly. CDF believed the selection method especially needed improvement; as described in the rules it seemed to provide very few standards. Although not warmly received by the DTACs, Chairman Vaux agreed with CDF and made it a personal project. Eventually, under his forceful direction, substantial changes were made, as described in detail in Chapter Seven.

In November, 1977, immediately after the governor signed SB 886, Chairman Vaux asked CDF to develop suggested rule revisions to govern the director's use of discretion. He sensed a big job ahead and wanted to get the jump on it. CDF delivered its proposals at the April 1978 board meeting. Again, the proposals made little headway at the time. Nevertheless, the board had begun to move toward almost total rule revision under the twin incentives of Section 208 and AB 1111. Completing the revisions took nearly six years, but many of CDF's ideas eventually found their way into the rules.

By early 1983 it became apparent that the board's many rule revisions at last were all about to go into effect. CDF then saw a need for board guidance on how to implement the new rules on existing plans. PRC Section 4583 in the Forest Practice Act essentially requires that, except for stocking standards, new rules apply to existing THPs. The law makes allowance for plans where "substantial" liabilities have been incurred "in good faith" and adherence to new rules would cause "unreasonable expense."

As with many laws, this one left more questions unanswered

than answered. CDF needed to know how much work under an existing THP amounted to "substantial liability?" How much additional expense to adhere to the new rules would the board see as "unreasonable?" The board adopted a policy on May 4, 1983 that says, in summary, if work has begun, the plan may be completed under the former rules. If no work has begun, the new rules govern. "Work" includes preparation such as marking and flagging. Stocking standards were not at issue.

TRAINING OF FORESTERS AND TIMBER OPERATORS

Early in the development of its rules, the board asked CDF to open its own relevant training programs to company and consulting foresters. Private RPFs often have no ready access to training on forest practice regulations and many had requested such training. Up to 1983, though, not many opportunities occurred to carry out this request. Then with the coming of so many new rules all at once, everyone needed training. Therefore, instead of CDF schools to which outsiders would be invited, cooperative schools were organized in which CDF was merely one of the participants. This seemed to make the training more readily acceptable to many persons.

The California Forest Protective Association, the Associated California Loggers, the Forest Landowners of California, and CDF sponsored a statewide series of seminars in March and April of 1983. Instructors and discussion leaders came from several organizations, including the University of California, Humboldt State University, the Agriculture Extension Service, as well as the sponsoring organizations. The subjects included the new rules on silvicultural methods, stocking sampling, and Erosion Hazard Rating. Several hundred state and private foresters, land owners, and timber operators attended.

Later, in the fall of 1983, another similar series of seminars was conducted to explain the new watercourse and lake protection rules. The Agricultural Extension Service, Dept. of Fish and Game, Water Resources Control Board, Calif. Licensed Foresters Association, and CDF were the primary sponsors of this series. The trainees included many representatives of all the sponsoring agencies, as well as state and private foresters and land owners. This series of seminars grew out of a training program offered by the U.S. Forest Service and the Environmental Protection Agency at Breckenridge, Colorado in 1981.

Robert Doty, a U.S.D.A. Forest Service hydrologist working for CDF on an Interagency Personnel Assignment, developed a pictorial guide to watercourse classification that became a valuable training aid. In connection with these same seminars, Extension Forester Peter Passof developed a video tape and slide-tape show to help explain the complexities of the new rules.

In August, 1984 CDF and the staff of the University of California Blodgett Forest sponsored a three-day field school on THP preparation with emphasis on the new rules. Half of the trainee slots were held open for foresters from private industry and representatives of review team agencies. One water board employee, three Fish and Game biologists, and six industry foresters actually participated. RPF William Snyder of Fiberboard Corporation and Judy Tartaglia, a wildlife biologist with the U.S.D.A. Forest Service, helped conduct the course. Robert Heald and Scott Holmen of the Blodgett Forest staff made invaluable contributions. The school featured teams of three or four persons from diverse backgrounds. Each team made an actual THP in a realistic forest setting, based on simulated scenarios and restraints drawn from life. The THPs were put through a review team analysis using a genuine review team brought in from CDF's Redding office. Then, the review team conducted a "preharvest inspection" with all other trainees in attendance. Each THP team had to justify its plan, not only to the review team but to the other teams.

These field schools proved so successful that they have been repeated every April since then with little change in format.

To help implement the new rules on roads and landings, in 1984 CDF published "A Basic Guide on How to Plan, Construct, and Maintain Small Forest Roads." This book was prepared for CDF, under contract, by a team from Chico State University led by project Director W.A. Gelonek. The CDF Contract Administrator, Forester Harold Slack, made no small contribution to the contents of the Guide.

Another training program was developed by CDF to help timber operators learn more about the Forest Practice Rules. This program consists of an expanding series of video tapes and parallel slide-tape shows that tell why, as well as how, the rules are intended to work. The shows are couched in laymen's terms. They're colorful and full of action. The Associated California Loggers was a full partner in the development of these films, along with a team from Chico State University. ACL and CDF have handled the distribution. Six shows are available at present, and four to five more will be produced as funds become available. They feature practical, on-the-ground, in-the-woods instruction. They avoid "horrible examples," and they stress a positive message. Sample audiences have responded favorably. Production was guided by Forester Douglas Wickizer and Soil Scientist John Munn of CDF and Ed Ehlers, Executive Officer of the Associated California Loggers.

Toward the end of 1986, Dan Foster, CDF's staff archeologist, and his assistant, Richard Jenkins, put on a series of six training sessions. Two more were held in 1987. The

advent of serious concern for the protection of cultural resources has stimulated the interest of professional foresters and other forest personnel. These sessions were attended by several hundred state and private persons in many parts of the state. They featured visits to actual archeological sites with a chance to dig and sift for cultural remains. Again, these classes were very popular, demonstrating that when given adequate guidance, those who work in the woods will strive to protect all resources.

THE FRANCIS H. RAYMOND AWARD

CDF and the Board of Forestry have together recently developed the Francis H. Raymond award to honor individuals or groups who have made outstanding contributions to forestry. Francis Raymond was state forester from 1955 through 1970. He remained active in professional forestry affairs during retirement until his death in 1984. He lobbied the legislature for two years to obtain passage of the Professional Foresters Law and worked hard for departmental status for CDF. He held RPF License Number 1 and occupied the chair of the Professional Foresters Examining Committee for several years.

CDF originally suggested a "Logger of the Year" award for an individual timber operator's outstanding accomplishment. Oregon has a program of this type that has proven quite popular. The program provides an opportunity to give publicity of a positive nature to a group that often receives negative press. Nevertheless, the concept did not catch hold in this state. Instead, at the suggestion of timber operators and foresters, the award was designed to allow recognition to a broad array of individuals and groups. The winners of the first awards were announced on March 7, 1987. Dr. John Zivnuska, Forestry Professor Emeritus at the University of California was named for his energetic efforts to advance professional forestry in California and the nation. A group award was presented to the Trees Are For People Project for its efforts in conservation education.

The award consists of a cash grant to be used for a conservation project of the recipient's choice: educational materials, display, slide tapes, tree planting, etc.

THE BOARD OF FORESTRY AND REGISTERED FORESTERS

The board holds the legal responsibility for registration and licensing of professional foresters. The histories of forester licensing and forest practice regulation in California have been closely connected for several years. Even before the Bayside v. San Mateo County decision in 1971 that voided the 1945 Forest Practice Act, proposals for forest practice act revisions

often suggested a need for forester licensing. Foresters had tried for licensing as early as 1963. Assemblyman Edwin Z'berg's 1972 bill, AB 2346, a forerunner of the eventual Z'berg-Nejedly Forest Practice Act of 1973, included a forester licensing requirement. The bill would have granted even greater legal responsibility to RPFs and Timber Harvesting Plan specialists than the act that was eventually approved.

Nevertheless, as things got under way with the new Forest Practice Act in 1974 and 1975, the board did not take advantage of RPFs as much as they might have. The first real inkling of how the board could use the professional standing of RPFs came with the passage of SB 886 in 1977 as related in the chapter on CEQA and Functional Equivalency. An impasse over review of alternatives was broken by giving the basic responsibility to RPFs. This action, in turn, led to a serious reevaluation of their responsibilities by foresters themselves.

This self-reevaluation among RPFs came about in a rather curious way. Chairman Vaux had spoken to the Redwood Region Logging Conference about the new role for RPFs resulting from the new regulations. He asserted that RPFs would have to bear a greater responsibility for protecting public values as put forth in law and regulation. He suggested, too, that greater responsibility required greater accountability. The board staff, including at the time this writer, sought to give wider distribution to the points made by Dr. Vaux. The staff members wrote a letter dated April 12, 1978 to all RPFs, attempting to convey the essence of Dr. Vaux' speech.

As it turned out, the letter might have been more carefully phrased. Much controversy still surrounded anything related to CEQA, and most of those receiving the letter misunderstood its intent, taking it to mean that their loyalty to their employers would have to be compromised in some way. Ensuing discussions to clarify the intent actually turned out to be quite healthy. (A story about using a two-by-four to gain the attention of a mule comes to mind but will be left untold.)

A benefit that appears to have grown out of the events surrounding the letter of April 12, 1978 was formation of the California Licensed Foresters Association (CLFA). Not in any way affiliated with the board or CDF, the CLFA has assumed an active role in representing the RPFs who prepare THPs before the board, CDF, and the legislature. Theirs has been a professional voice not often heard previously.

One of the early recommendations of CLFA was for the board to form an RPF Liaison Committee. The board did so by resolution on August 6, 1980. The Liaison Committee has made particularly valuable contributions to the THP noticing procedures. It also helped with development of revisions to the rules for

consideration of alternatives under CEQA. This latter assistance demonstrates how events often go in circles. CLFA arose out of a protest over review of alternatives and eventually gave direct aid to that very review process.

The board has, of course, the responsibility to discipline RPFs. The Forest Practice Act and the rules of the board place many duties on RPFs, but the act does not provide many penalties applicable directly to RPFs. Most RPF violations, therefore, must be punished under the Professional Foresters Law. Under that law, licensed foresters may have their licenses suspended or revoked for, among other things, deceit, gross negligence, and incompetence. A number of allegations of such violations have been made against RPFs over the years. Few of these become public, however, because investigations must remain confidential until and unless a decision is made to pursue one of the specified penalties.

The board has not often taken public disciplinary action because most alleged violations either resulted from simple misunderstandings or did not warrant such severe penalties. One license was revoked on February 22, 1979. The charges were centered on incompetence as demonstrated by inability to comply with the Forest Practice Act. A second license was also revoked, but for matters largely unrelated to the Forest Practice Act. That license was later reinstated after a successful appeal of the penalty. Administrative Law Judges found in favor of the licensees in two other attempts in 1979 to have licenses revoked. One of these cases involved the Forest Practice Act in part, but the other did not. The Professional Foresters Examining Committee has sent a number of letters of warning in cases where they have believed the facts warranted.

In January, 1988 the board took action to discipline an RPF for his failure to fulfill conditions written into a THP in 1985. The RPF did not contest the accusations against him. The board suspended his license for one year but allowed him to complete work on two THPs and placed him on probation for nine months of his suspension.

The California Licensed Foresters Association, together with the board and the Society of American Foresters, in 1984 sponsored legislation to strengthen the Professional Foresters Law. The bill was SB 2041 by Senator Henry Mello. It added the crimes of gross negligence and material misstatement of fact to the grounds for disciplinary action. The bill also deleted the troublesome modifier from "gross incompetence" as one item justifying discipline. The statute of limitations was extended from two to five years. RPFs were required for the first time to certify that they or a designee have personally inspected areas covered by THPs that they have prepared.

The bill also required the board to adopt criteria to determine when commission of a felony justifies discipline. Criteria to evaluate rehabilitation to allow reissuance of a license following suspension or denial were also required. The board had long sought several of these improvements. The changes helped bring the Professional Foresters Law into line with the strongest of the professional licensing laws in this or any state.

BOARD OF FORESTRY CENTENNIAL

Under the leadership of Chairman Walt, the board celebrated its 100th birthday in 1985 with a solid effort to establish its own future. It spent 1985 looking to the future of forest and range management in California. The board made a strong effort to facilitate communication between decision makers and persons interested in forestry and range management. The process began with a conference entitled Centennial I held in Yosemite National Park in March of that year. More than 200 key decision makers from a wide variety of backgrounds gathered to discuss their perceptions and concerns for the future. The conferees developed a general vision statement for forestry in the year 2000 and a listing of many related concerns.

The process continued through September, 1985 at task force, advisory committee meetings, and at a fire symposium. Approximately 160 people participated in these groups. They closely examined the vision statement developed earlier, identified the issues that needed resolving to achieve the vision, and suggested strategies for resolution. In all, twenty key issues were identified and grouped into five broad categories. These included: (1) rural economic stability and development; (2) protection and maintenance of the biological base; (3) social pressures on the rural land base; (4) rights and responsibilities of private and public ownership; and (5) coordination and planning.[4]

The board held a second major conference entitled Centennial II in Sacramento during December, 1985. Governor Deukmejian keynoted this conference. Dialogue that began at Yosemite continued, and the conferees produced over 30 suggestions for action. Many of the suggestions relate to or directly affect the forest practice program, including the following: (1) Identification of regulatory costs and benefits, with a goal of distributing costs and benefits more equitably through regulatory

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[4] CALIFORNIA STATE BOARD OF FORESTRY. Forerunners of Forestry's Future, Centennial Anniversary, 1885-1985. Centennial I Conference, March 4 & 5, 1985. California State Board of Forestry, 1985. 27 pages.

adjustments, (2) Development of better harvesting equipment and techniques, (3) Development of better public understanding, (4) Development of policies to discourage fragmentation of ownerships.[5]

Whether the board can accomplish all of these needed actions by the year 2000 remains to be seen. Regardless, the list demonstrates the board's willingness to look ahead and work to solve problems not yet readily apparent.

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[5] CALIFORNIA BOARD OF FORESTRY. Issues and Strategies Document for the Development of the Centennial Action Plan. Centennial II Conference, December 4 & 5, 1985. California State Board of Forestry, 1985. 35 pages.

Chapter 3

REDWOOD NATIONAL PARK

The years immediately following Functional Equivalent certification were dominated by pressures for protection and enlargement of Redwood National Park. The creation in 1968 of a 28,000+ acre Redwood National Park left very few people happy. (Another 28,000 acres in nearby state parks were for a time considered part of the national park. The state parks may yet one day become part of the national park system, but for the time being, that part of the acquisition is on hold.) Perhaps only the timber companies in the region could be considered to have been slightly grateful; they had faced the prospect of having even more of their lands taken for park purposes.

Agitation for enlargement continued without let up. The arguments were based largely on two points, namely that the area simply wasn't big enough to justify national park status, and the area was so small as to be threatened by adjacent timber harvesting.

WORMS AND SLUGS

The original park had simply been a compromise. The size was reduced from earlier proposals because of the cost. (The new park contained some of the most valuable commercial forest land in the world.) The tallest known redwood trees for which acquisition of the park had been a major purpose were not even located within the main part of the park. They were located instead in a grotesque piece of property known far and wide as "the worm." The worm was a narrow strip of land running south from the main park for eight miles one quarter mile wide on either side of Redwood Creek. The whole park on a map looked like nothing so much as a cat sitting on a fence with its tail dangling. Some unsympathetic souls even suggested that the original park acquisition was designed to be unmanageable so as to lend weight to arguments for eventual enlargement. Whether by design or by accident, the result was pretty much the same.

The lands immediately adjacent to the worm belonged to Arcata Lumber Company, Louisiana-Pacific Corporation, and Simpson Timber Company. Louisiana-Pacific owned most of the uncut old-growth timber and most of the land, especially upstream from the park. These lands are quite steep and naturally unstable. The timber owners had committed themselves to a program of clear-cutting, followed with replanting. Since park acquisition, however, the clearcut patches had been small and separated by uncut patches, pending regeneration of the cut areas. Nevertheless, even small, scattered clearcuts engendered hostility.

Obviously, the arrangement was an unhappy one. In the eyes of many observers, the tallest trees in the world were subject to great danger from adjacent timber harvesting. Moreover, the main part of the park located downstream was thought to be at risk from the silt load in the stream bed. This load of silt was frequently described as moving downstream like a slug. This slug was further described as almost certain to harm the grove that contained the world's tallest trees. The trees might be toppled or, at the very least, smothered by a buildup of rocks, rubble and soil over the root zone.

Conservationists tended to blame most if not all of the silt load on timber harvesting, despite evidence showing that a large part had occurred naturally. Geologists studying the Redwood Creek drainage had pronounced it one of the most unstable in the world. The creek itself carried one of the heaviest known silt loads.[1] Though assumed to be important, the part contributed by logging was impossible to measure.[2] Major floods had hit the area three times in 1955, 1964, and 1972 to help add to the confusion over the source of the sediment load.

It should be noted that interest in a Redwood National Park did not begin in the 1960's. The 1919 minutes of the Board of Forestry describe a lengthy debate on the need for such a park. In those days the board had a primary responsibility for recreation in California.[3] Although recreation ceased being a major concern of the board in 1927, the matter did not completely disappear from their agendas after that. Few old-time residents of the redwood region will forget the efforts of Senator Helen Gahagan Douglas in the 1940's to create national parks and forests in that area. The redwoods have long evoked reverence

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[1] ED HELLEY, LUNA LEOPOLD, STEVE VEIRS, GERARD WITUCKI, ROBERT ZIEMER. Status of Natural Resources in Redwood Creek Basin, Redwood National Park. A report to the Director of the National Park Service from a Scientific Evaluation Team. National Park service, 1975. 8 pages.

[2] DR. RICHARD JANDA, quoted by Resources Secretary Claire T. Dedrick at hearing of House Committee on Government Operations, Subcommittee on Conservation, Energy and Natural Resources, San Francisco, California, September 18, 1976, Appendix B, Redwood National Park Expansion Alternatives, Department of Parks and Recreation, State of California, April 1977.

[3] C. R. CLAR. California Government and Forestry from Spanish Days to 1927. California Department of Forestry and Fire Protection, 1959. 623 pages. See page 226.

and awe among observers. While not so large in circumference as their cousins in the Sierras, the coastal redwoods have enormous girth and are unmatched in height. No one should be surprised that the public at large cares about their preservation.

LEGAL MANEUVERING

At the same time that pressures for park enlargement were mounting, demands were building for stronger regulation of logging near the worm. Obviously, while the hope was to obtain protection through enlargement of the park, everything possible would be done to prevent the park from being damaged.

The 1968 Redwood National Park Act contained provisions for the Secretary of the Interior to develop agreements with adjacent landowners to protect the worm. The local park managers and the companies did enter into some agreements, but they were never signed by the secretary. The companies nevertheless respected the agreements.

In 1974 the Sierra Club sued the National Park Service for failing to use the protectional measures in the park act. The club asserted that, as a result, logging had damaged the park. The club won its suit. The park service tried but failed to obtain legislation allowing them to regulate logging next to the park. They then went ahead in March 1976 with a list of land use requirements of their own. The companies countered with a set of requirements that they would agree to follow. The park service asked the U.S. Department of Justice to impose the park service requirements on the companies. Justice did not move on this request.

The Natural Resources Defense Council (NRDC) suit against Arcata National Corporation in 1974 dealt primarily with the threats to the national park. This was the case that led to the famous decision by Judge Broaddus making the Forest Practice Act subject to CEQA. The opening paragraphs of Chapter One of this narrative describes that case. Thus, the park came to affect the state's Forest Practice Program in a profound way. At about the same time, the California Attorney General sought an injunction against the three companies, seeking to require the companies to improve their harvesting practices. The injunction was never granted, but it was part of the total squeeze. Finally, in 1977, the three principal companies signed an agreement permitting the Attorney General to inspect their lands and to review company

THPs. In return, the Attorney General dropped his suit.[4]

While all these legal actions were taking place, the National Park Service and its allies were regularly urging the Board of Forestry to act on its own to protect the park. State Resources Secretary Dedrick had addressed the board in September 1975 about the park's needs. The board had taken a field trip to the park area in the fall of 1975. At its January 14, 1976 meeting, it considered a set of special regulations suggested by State Forester Larry Richey. The board passed a resolution declining to impose new rules or a moratorium on cutting in the area. Governor Brown had appointed few members to the board; the resolution only garnered two negative votes. The Board did, however, direct the state forester to exercise discretionary authority to impose the rule improvements that he had proposed to the board. This would be done on a case by case basis as needed on individual plans.

CDF gave careful consideration to plans submitted thereafter, but few were denied. The companies for the most part went along with extra protectional measures written into their plans. CDF did deny one plan submitted by Simpson Timber Company on August 26, 1976. This denial was not appealed.

The so-called Winsler-Kelly Report[5] came in for a great deal of discussion during this period. The report showed data based among other things on hydrologic data and laboratory analyses of sediment deposits collected near the mouth of Redwood Creek. These data appeared to indicate that the vast preponderance of runoff and sediments had resulted from natural causes unrelated to logging. Dr. Clyde Wahrhaftig, a professor of geology at the University of California and a Board of Forestry member disputed the Winsler-Kelly findings in a letter to the board in June 1976. Eventually, Dr. Wahrhaftig was proven correct when Winsler and Kelly representatives acknowledged the discovery of errors in their data. There is no question that the discrediting of this report did much to undermine industry's case against stiffer regulation in the area. It probably had little to do with the eventual expansion of the park, however.

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[4] C. FRED LANDENBERGER. Gains and Losses, California Forest Protective Association, 1909-1988. CFPA, 1988. 271 pages. See page 221.

[5] WINSLER AND KELLY CONSULTING ENGINEERS. Redwood Creek Sediment Study. Winsler and Kelly Water Laboratory, 1975. 44 pages.

NATIONAL PARK SERVICE PRESSURES THE BOARD

Early in 1976 the Board of Forestry engaged in some unpleasant correspondence with Nathaniel Reed, Assistant Secretary of Interior in charge of the Park Service. On May 24 Mr. Reed wrote a critical letter demanding board action to allow park service inspection teams onto company lands to evaluate proposed THPs. He also demanded access to information concerning plans of the companies for other ecologically related areas. He concluded with a strongly worded request for clarification whether the board or the state forester could deny a THP that endangered the park. He clearly believed that such authority existed.

The Reed letter was personally delivered to the board by Mr. George Von der Lippe, Superintendent of Redwood National Park, at the board's May 25 meeting. Considering the far-reaching effect of Mr. Reed's requests, the board could not answer the letter immediately. The board considered a resolution that day to urge the companies to allow the park service teams onto their lands. At first they approved the resolution by a vote of 4-3, with Chairman Nakae casting a tie-breaking vote. After an apparent change of mind by Mr. Nakae, a motion to table passed by a vote of 4-2, with Mr. Nakae abstaining.

Shortly thereafter, the companies decided to allow the park service to place a single representative on the State Forester's THP Review Team. This was something less than the park service wanted but more than the companies had been willing to allow previously.

On June 4 Chairman Nakae responded to Mr. Reed that the board's power to halt logging was limited under the act, and that they had seen no need for stronger rules. He briefly described the direction given in January to the State Forester to work with the companies to accomplish improved practices. He further urged the park service to accept the offer of the companies to allow a park representative to accompany the state team.

Up to that point, it had been unclear whether the park service wanted to participate cooperatively with the state team or simply to use the state process to accomplish its own program. Mr. Reed's letter certainly implied the latter motive. The park service did accept the offer made by the companies, bringing that aspect of the controversy to a close.

The board on June 23 requested an opinion from the Attorney General concerning the authority of the board to require the State Forester to include a park service representative on a Review Team. That opinion was delivered in a letter dated October 8, 1976 saying, in summary, that the State Forester could appoint all persons needed to carry out his own review

responsibilities. If he needed a park service representative, he had adequate authority to require the companies to allow that person to participate as a team member. If he didn't need one, the board could not require it. Since early in the controversy, the State Forester had taken the position that the state team had sufficient expertise to meet his needs. The value of the park service representative lay mainly in helping to identify specific concerns of park management.

The park service obviously wanted information on which to base an evaluation of cumulative impacts. The service continued to press for long-range planning information including road building plans. They had attempted to obtain the information directly from the companies but had been rebuffed. They hoped the board might have legal authority to obtain the data and give it to them. At the board meeting on July 22, 1976 in Chester, Board Member Phil Berry moved to require CDF to deny THPs if the companies refused to release such information. The motion failed on a vote of three to three with, Chairman Vaux casting the vote to create the tie. Board member Henry Trobitz who was Land and Timber Manager for Simpson Timber Company in California did not vote or participate in the discussion.

In a separate action, the park service sought to obtain company planning documents that the California Attorney General had obtained in connection with his 1974 law suit parallelling NRDC. The Attorney General informed the park service and the board that the information was confidential. Since it was obtained for a state purpose, it could not be released.

PARK EXPANSION LEGISLATION

About that time, several bills were introduced in congress to authorize and fund purchase of the park extension. Following a field trip and hearings in Eureka and San Francisco in April, 1977 Representative Phillip Burton introduced H.R. 3813 that would have added 74,000 acres - virtually the entire watershed of Redwood Creek. Naturally, the Sierra Club preferred this version. A smaller version calling for an extension of only 21,000 acres had been kicked around but never found a sponsor.

The Carter administration version was introduced in the house as H.R. 8641 and in the Senate as S. 1976. It called for 48,000 additional acres. Both of these bills at first had provisions for federal control over adjacent private lands, but these sections were deleted before the bills passed. They both contained unprecedented provisions to assist persons who might suffer displacement from their jobs as a result of park expansion. Organized labor sought and won these concessions. The local economy was depressed, and new jobs created by the park

would probably be at a lower skill and pay level than those lost. These items stayed in the bills.

REDWOOD CREEK TIMBER HARVESTING PLANS DENIED

While the bills wound their way through the federal congress, Arcata Redwood Co. filed one THP and Louisiana-Pacific Corp. filed two THPs that lay within the areas of proposed expansion. CDF denied the plans. The companies appealed to the Board of Forestry which heard them on May 11, 1977. That hearing may well have been one of the longest board meetings on record. The meeting opened at 8:30 A.M. The hearing began at 8:50 A.M. and ended at 10:30 P.M. Obviously, the matter was controversial. The hearing at times became quite emotional.

The very day of the hearing, the Attorney General rendered opinion #77/21 IL to the effect that, because of uncertainty about passage of the expansion legislation, such THPs could not be denied at this point. The opinion meant that the A.G. would not represent CDF, but it arrived too late for CDF to retain private counsel. Therefore, Director Lewis Moran appeared personally before the board to plead CDF's case. Mr. Mark Weinberger, the Deputy Attorney General assigned to work with CDF on this matter, obviously disagreed with his department's opinion, but he had to sit in the audience and watch.

Despite arguments that authority for the denials did not exist and that park expansion was uncertain, the board voted 6-3 to uphold two of the denials and 5-4 to uphold the third. Chairman Vaux voted to approve one plan and to deny the other two, accounting for the vote differences. Dr. Vaux did not think the one plan carried sufficient threat to the park to justify denial. The motions for denial included the statement that there would be no prejudice to resubmission of the plans after 180 days. Presumably, this would give congress enough time to make up its mind about the expansion. Clearly, the Governor Brown appointments had changed the way the board saw things since early 1976.

Subsequent appeals of the board's action were denied in a superior court opinion which ruled contrary to the opinion of the Attorney General. Whether the companies mounted an appeal to higher court is not known. In any event, subsequent passage of the federal legislation mooted the issue.

The next three months saw four more THPs denied and appealed and the denials upheld with the same 180-day clause. During this period, the park legislation at times seemed to grind to a halt in congress. At one point it even appeared dead. In November, the companies resubmitted several of the plans. CDF again denied them for the same reasons. Arcata Redwood Co. appealed one of

the denials which the board heard at a meeting in Ukiah on December 6, 1977.

Viability of the federal legislation was a key issue. Conflicting letters and telegrams from various members of congress provided both amusement and confusion during the hearing. Senators Cranston and Byrd both wrote to the board on November 4, assuring them that the legislation was not only alive but had high priority for passage. Letters from Congressmen Burton, Moss, and O'Neil to the same effect were introduced into evidence by CDF.

Arguing the opposite were wires from several senators. Senator S.I. Hayakawa expressed "...interest in seeing timber cutting plans approved in areas of proposed expansion of the Redwood National Park until such a bill is signed into law. There are some areas, such as Lost Man Creek and Skunk Cabbage, etc., in which timber cutting can have no harmful effect on 'the worm' as they are not in the same watershed." Senators Howard Baker and Ted Stephens wired, "Because legislative action on the Redwood National Park remains tentative we urge your consideration of the position of Senator Hayakawa relative to a limited suspension of the moratorium."

EXPANSION BILL SIGNED

CDF subsequently denied five more plans which were appealed, then heard on January 9 and 10, 1978. On March 27, 1978 President Carter signed The Redwood National Park Act, PL 95-250, which provided a 48,000 acre extension and put the immediate matter to rest. Of course, controversies relative to THPs in the upper watershed have not died out completely. The park service from time to time still expresses concern over certain practices and participates in plan review. Nevertheless, the heated disagreements that characterized the two years 1976 and '77 have ended.

REHABILITATION

A long continuing concern of the National Park Service as well as conservationists in general has been rehabilitation of the upper watershed. Much of the logging in that area took place before the present Forest Practice Rules went into effect. Coupled with the highly unstable terrain, such logging resulted in considerable damage. Then, too, much completely natural erosion exists in the area which might benefit from management efforts. David Burns of the CDF and Perry Amimoto of the California Division of Soil Conservation conducted a year-long field study of the upper drainage. Their comprehensive report

was released on October 14, 1976.[6] The Board of Forestry discussed the report, but since it dealt with rehabilitation, it did not directly affect the board's regulatory responsibilities. The board heard a verbal report from Messrs. Burns and Amimoto at their January, 1977 meeting in Sacramento.

The State Water Resources Control Board became involved directly with the Redwood National Park when it conducted a study of Redwood Creek. The water board decided to study the restoration of the creek's water quality as a part of its overall responsibility under PL 92-500, Section 208. This will be discussed in a later chapter.

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6 DAVID M. BURNS AND PERRY Y. AMIMOTO. Corrective Work Needed for the Rehabilitation of the Headwaters of the Redwood Creek Watershed. California Department of Forestry and Fire Protection, 1977. 22 pages.

Chapter 4

COASTAL PROTECTION

Virtually at the same time that pressures mounted for expansion of Redwood National Park, came a renewed emphasis for protection of the state's coastal strip. Voters had expressed themselves rather clearly when they approved Proposition 20, an initiative measure on the ballot several years earlier. The measure called for strict controls on development of the coastal zone. Public access to the beaches and waterline of the ocean was to be provided. There was a virtual moratorium on new developments within the zone until the legislature acted to establish standards for long term planning for future developments. The legislature had little choice but to act.

COASTAL LEGISLATION

In 1975 Senator Anthony Beilenson introduced two bills, SB 1227 and SB 1579, to carry out the mandates of the voters. The issues were enormously complicated, and the bills did not pass until late in 1976. Finally, on October 1, the coastal act became chapter 1330, and the work began in earnest.

The Board of Forestry, especially Chairman Nakae, took a very active interest in the bills as they wound their way through the legislative process. From Monterey County north to the Oregon border, the coastal zone includes a lot of timber. The Beilenson bills had a lot to say about how that timber would be managed. The bills delegated the responsibility for all coastal zone activities to the Coastal Commission. Thus, the board and the commission could not escape overlapping jurisdictions. Such overlaps inevitably lead to confusion and friction between the various agencies, staffs, and the public. Careful wording is needed. The board found Senator Beilenson in particular and the legislature in general to be responsive to their concerns. The Coastal Act as finally approved allowed the Board of Forestry to remain in charge of forestry. As might be expected, it also required the board to listen to the Coastal Commission.

In summary, the Coastal Act required extremely strict limitations on conversion of coastal timberland to other uses. It also required the commission to establish Special Treatment Areas where timber harvesting would be carefully regulated to protect the values represented in the areas. The Board of Forestry would have to adopt special forest practice rules for these areas upon the recommendation of the Coastal Commission. The areas were designated according to the following criteria:

A. Scenic View Corridors
B. Sites of significant scenic value

C. Wetlands, lagoons, estuaries, and marine environments
D. Significant animal and plant habitat areas
E. Recreation areas

COASTAL SPECIAL TREATMENT AREAS

The Coastal Commission officially designated its Special Treatment Areas on July 5, 1977. The Board of Forestry had an early look at the commission's tentative rule recommendations on February 16, 1977 during an appeal hearing on THPs denied in the coastal zone. The Coastal Commission staff, led by Patti Weesner, made a further presentation to the board the following March 14. The final recommendations were made on July 20 of that same year. The recommendations did not come in regulation format but rather as a series of general principles the commission believed should apply. The commission clearly respected the board's needs and expertise in the actual drafting of the rules. Nevertheless, it left a great deal of work to be done.

The board gave its first consideration to draft rule language on August 12. One question immediately came to the fore: could the Board of Forestry adopt additional Special Treatment Areas beyond those designated by the Coastal Commission? Many proponents for designation of certain favorite areas had been turned down by the commission and hoped to have the board do it for them. The question did not have a ready answer. On the advice of counsel, the board eventually concluded that it had no such power. To be sure, the board has designated other areas for special treatment under the rules. It has limited these, however, to buffer zones in and around special areas designated by other public agencies.

SPECIAL DISTRICT RULES ADOPTED

The Southern and Coastal District Technical Advisory Committees (SDTAC & CDTAC), the two districts having coastal jurisdiction, presented their first rule drafts for board approval on November 11. The board heard public comment at its meeting in Ukiah on December 6 and 7, held at that location specifically to ease participation by citizens of the north coast. The board heard for the first time from the CDF which presented its own version of draft rules that differed considerably from the DTAC versions. Hearing was scheduled for the January, 1978 meeting, and board staff was instructed to facilitate a reconciliation of the two versions. This writer received that assignment.

CDF had prepared its recommendations because the DTACs had ignored many salient features of the Coastal Commission proposals. It was very unlikely that the commission would have

approved anything like the DTAC versions, and at that point, the Coastal Act required commission approval of the Special Treatment Area rules. Several hectic meetings took place with CDF and DTAC representatives, Coastal Commission staff, and others both before and after the January hearing. Compromise versions were finally worked out and approved in principle by the board on February 1, 1978, then adopted on the following March 7.

One point debated heatedly then and many times later concerned the effect of partial timber cuts on whitewood species associated with the redwoods. The Coastal Commission had requested a virtual ban on clearcutting because of its dramatic, albeit temporary, impact on the environment. Timber owners argued that after partial cuts, the whitewoods such as grand fir and Douglas-fir would either blow over or be damaged by increased sunlight. Moreover, redwoods, while better able to resist these effects, would still not grow well. The board's solution was to allow some clearcutting, but under severely limited conditions.

The Coastal Commission approved the rules that the board adopted, but evidence indicates some reluctance on their part. They certainly did not get everything they wanted.

EARLY TIMBER HARVESTING PLANS IN THE COASTAL ZONE

Even before the Coastal Commission had designated its Special Treatment areas or the board could act to adopt rules, the issue of coastal protection came before the board. Late in 1976 Georgia-Pacific Corporation and Louisiana-Pacific Corporation each submitted a THP that included portions of proposed Special Treatment Areas. CDF denied the plans. The companies appealed to the board, arguing that CDF had exceeded its authority in any event, and the Coastal Commission had not even designated the areas yet. The board heard the appeals on February 15, 1977 and upheld the CDF action. The precedent established here was to carry over into Redwood National Park.

Jere Melo, forester for Georgia-Pacific Corporation offered at that hearing to remove the Special Treatment Area portion from his THP. Board counsel ruled that the board had authority only to consider the plan as denied by CDF. A plan amended during hearing would not be the same one denied by CDF, and CDF held original jurisdiction over plan review. This issue was to crop up one or two more times before the principle became ingrained.

TIMBERLAND CONVERSIONS IN THE COASTAL ZONE

The Board of Forestry had seemingly endless problems with its rules on timberland conversions within the coastal zone. Most of the time, it seemed as if the board was being more strict

than the Coastal Commission. More than once, the board rules prevented a conversion that Coastal Commission staff had approved in principle. The details of most of these cases are more tedious than informative and won't be repeated here. Some of the difficulty lay in the legislation. One example involved a sewage disposal plant that the City of McKinleyville wanted to locate in a stand of coastal timber. The board heard the issue at four successive meetings in late 1979 and early 1980. They finally adopted an emergency rule on February 4 to clear the way for the sewage plant. Then, ironically, the Office of Administrative Law rejected the rule as outside board authority. The legislature finally came to the rescue with a special bill to allow construction of the plant.

Matters apparently were settled on July 11, 1984 when the board removed several restrictions. Basically, conversions approved by the Coastal Commission or the local planning agency can now be handled in approximately the same manner as conversions in other areas.

AB 1111 MANDATES

Assembly Bill 1111, authored by Assembly Speaker Leo McCarthy in 1979, had a profound effect on all board activities for the next several years. The board's rules for the coastal zone were the first to feel the bite. The next chapter will discuss the general effects of AB 1111 in more detail. At this point, it is enough to recall that AB 1111 required the board to review all its regulations in the light of strict, new standards.

The board in 1980 requested public comment on needs for rule revision under AB 1111. Most of the responses pertained to the Coastal Special Treatment Area rules. Representatives of companies that owned timber near the coast were chafing under the restrictions. The board decided to conduct a public hearing on these rules in Fort Bragg on March 3, 1981. The full board did not participate. This was one of the first instances where the board used a subcommittee to conduct its business.

The subcommittee, made up of Chairman Henry Vaux and Board Member George Dusheck, heard a variety of complaints. Besides the one concerning clearcutting and whitewoods described previously, industrial foresters complained that preflagging of stream protection zones was time consuming and useless, that 100% slash lopping after cutting redwoods was expensive and of minimal value, and other points. Members of the environmental community wanted loopholes closed and a general tightening of all restrictions.

Over one year later, On April 5, 1982 the board finally got around to a formal hearing for rule revisions. They held further

discussions on the next July 7. The board decided against major revisions at that time because of other pressing issues. Other than relatively minor editorial changes, only the slash lopping rule was relaxed. Coastal Commission staff had agreed that the slash rule required more lopping than was needed. The rule was amended to require treatment only of that slash within view of public roads. The board requested that the DTACs conduct further review of all other issues to be dealt with when other pressing matters allowed more time.

MAJOR RULE REVISIONS STIR CONTROVERSY

Rule revisions next came up for consideration on July 11, 1984, when the board received a set of amendments from the Coast DTAC. The actual hearing was held on January 8 and 9, 1985 and was destined to become one of the more controversial hearings ever held. Many amendments were approved. Henceforth, restocking following rehabilitation cutting would require conifers. Clearcutting restrictions were modified to allow for control of insects and diseases. Wider roads would be allowed to facilitate movement of logging equipment. RPFs preparing plans could propose alternatives to most restrictions where better protection would result. Many other technical changes were made.

Coastal Commission staff members Rick Rayburn and Wayne Woodruff worked closely with CDF and board staff on the rule allowing alternatives. It was strengthened significantly over the DTAC and staff versions. After inclusion of their suggestions, they agreed with the concept and supported the change.

The board made a number of significant changes that were generally misunderstood and often misrepresented. Inspired by Public Law 92-500, Section 208, many of the rules for logging throughout the Coast and Southern Forest Districts previously had been substantially strengthened. In many cases, the districtwide rules had become as strong as or stronger than the rules for the Coastal Commission Special Treatment Areas. Wherever this was the case, the board simply opted to eliminate the special rule and allow the district rule to prevail. This especially held true for rules protecting streams and lakes.

Many of the board's critics considered only the elimination of certain rules and charged that the board had begun to allow the despoiling of coastal streams. More sophisticated critics realized that they could not sustain such charges but tried to argue that the district rules had actually been weakened, not strengthened as the board asserted. Especially objectionable to these critics were the allowances for rule alternatives and flexibility. The critics distrusted CDF's and the industry's application of flexibility and insisted that rigid rules were essential. Another argument was that the board was somehow

obligated to maintain a stronger set of rules for the coastal zone than for other areas, whether needed or not.

One rule not significantly altered at that time was the clearcutting size limitation. The Coast DTAC had recommended a rather substantial increase, to be allowed under special limited circumstances. The board was seen as bowing to environmentalist pressure on this matter. Still, the circumstances under which increases might have occurred were common enough to give pause, considering that many persons find clearcutting so objectionable under any condition. Hearing on this issue was held over until April.

The board adopted the final wording of its amendments on February 5, 1985. Assemblyman Dan Hauser, Chairman of the Forest Practices Subcommittee of the Assembly Natural Resources Committee called a hearing on March 19, 1985 to review the board's actions. Board critics reiterated many of the same comments aired at the board hearings. Dr. Carlton Yee testified for the board. He said, in essence, that the legislature was sending mixed signals to agencies such as the board. On the one hand, AB 1111 with its many amendments had sent a clear message that regulations were to be limited to the bare necessities. On the other hand were pressures to regulate every possible detail of timber harvesting. He suggested that many of the restrictions being demanded would not pass the test of necessity; thus, the Office of Administrative Law would surely not approve them. He argued that the amendments as adopted did meet the test of necessity. He further pointed out that the Coastal Commission staff had worked closely with the board and its staff during the whole process. He concluded with a plea for trust, pointing out that many of the criticisms demonstrated distrust of the board and CDF. He gave evidence why he thought the distrust unfounded.

On April 2, 1985 the board held its hearing on the question of allowing the clearcut size to be increased. Assembly Natural Resources Committee Chairman Byron Sher sent committee consultant Jeff Shellito to testify on his behalf. He repeated the claim cited previously that several rules had been severely weakened. He insisted that the board should have sought legislation to make the changes and that it should not have done so by unilateral action. He especially opposed the flexibility being granted to RPFs and CDF in the preparation and review of THPs. He thought that, at the least, the board should have allowed other members of the Review Teams to vote down any proposed rule alternatives. (He apparently chose to be unaware that the Office of Administrative Law had previously disallowed such measures.) He, of course, thought it terribly unwise to allow any increase in the size of clearcuts. He concluded by recommending that the board send its amendments to the Coastal Commission for review before putting them into effect.

The vote of the board came to three ayes and two noes. Since the Forest Practice Act requires five affirmative votes to adopt any rule, the measure failed.

On May 9, 1985 the board considered still stronger protections against abuse of the procedure allowing rule alternatives. This amendment passed by a vote of 5 to 4. With this amendment, the board sent its new rules to the Coastal Commission for its review. After some discussion, the commission approved the changes. Oddly enough, although the Coastal Act required commission approval of the original rules for coastal special treatment areas, it did not do so for amendments.

PUNITIVE LEGISLATION

Assemblyman Sher introduced AB 3473 to require coastal commission review of amendments. This bill did not pass, but the implication is strong that if the board had not acted as it did, that bill or a stronger one might have succeeded.

Out of this same controversy came AB 2697, also by Assemblyman Sher, that would have greatly changed the way board members are appointed. As originally drafted, the bill would have stripped from the governor the power to appoint the five public members of the board. Two would be appointed by the Speaker of the Assembly, and two would be appointed by the President Pro Tem of the Senate. The fifth public member would have been elected by the other eight and would have been the board chairperson. Assemblyman Sher later amended his bill to allow the Governor to appoint the chairperson. This minor change did little to sweeten the measure. With the administration opposed to the bill, it went nowhere.

COASTAL COMMISSION STAFF

In drawing this chapter to a close, it seems good to mention that of all the sister agencies with which this writer has had the pleasure to work, none has been more reasonable or cooperative than the Coastal Commission staff. These persons have done so without ever neglecting their mission. They have continually exhibited a positive attitude, trying at all times to find reasonable and constructive solutions to disagreements rather than using such issues to block progress.

Chapter 5

AB 1111 REQUIRED RULE REVISIONS

Still another wave broke over the Board of Forestry and the CDF in 1979. The legislature that year passed Assembly Bill 1111 whose principal author was Assembly Speaker Leo McCarthy. AB 1111 grew out of what politicians perceived as a growing dissatisfaction among voters with regulatory proliferation. The popular press often cited horrible examples of ridiculous regulations. The time had come, the story went, to clamp down on power hungry bureaucrats who were bent on regulating the very life out of the country. A new president would be elected the following year partly on the promise of reducing the burden of regulations. The California Legislature was certainly determined not to be last on the latest bandwagon.

In the face of this popular groundswell, the two principle agencies in this narrative could do little but go along. In fact, most persons in forestry, in and out of government, found much to agree with in the general attitude. Few people outside of government realize what a maze of regulations that those on the inside must contend with. The insiders looked forward to relief as much as anyone. Thus, AB 1111 made its way through the legislature with hardly a comment or murmur of dissent from the forestry agencies. For one thing, many of the persons affected were quite sure of the rightness of their rules and their process for adopting them. They could thus see no great effect on them or their favorite programs. That was before the Office of Administrative Law began to let others know what the law allowed them to do.

OFFICE OF ADMINISTRATIVE LAW

The "Office," or OAL as the new agency became generally known, was the instrument created by AB 1111 to carry out the law's mandates. It became a close associate of the board and CDF in the ensuing years. It had more than minimal effect. At times, OAL seemed petty and arbitrary in its own way. It even spawned its own crop of horror stories and ridiculous examples to match some of those it was intended to cure. Few of these "bad" examples affected forestry issues, however, and in retrospect, many benefits have accrued.

AB 1111, in summary, did two basic things. First, it established exacting new processes and strict criteria governing the adoption of new regulations by all state agencies. Second, it required all agencies to review all existing regulations under their scope to ascertain whether they complied with the new criteria.

The legislature amended AB 1111 many times in subsequent years. One such amendment of special concern here was added in 1981 by AB 1041. That bill authorized OAL to initiate its own review of the existing regulations of any agency upon petition of the legislature. If OAL found adequate justification, it could then void an offending regulation.

REVIEW PROCEDURES AND CRITERIA

The new criteria with which all regulations must comply included:

1. Proof of necessity
2. Clarity
3. Consistency with other rules and regulations
4. Authority under the law to adopt the regulation
5. References to pertinent legal authority, including court decisions

Later, a sixth criterion was added: non-duplication with laws and other regulations. This particular criterion proved at times to run somewhat counter to public opinion. It helped to reduce the number of pages in the rule books but often required rule users to carry several references to make sure they had all the rules they needed. The board heard more than one complaint about this issue. In time, OAL relented a little.

Newly strengthened procedures called for adequate public notice of new rule proposals, time for review, and opportunity for public comment. The contents of public notices became especially critical. Notices had to contain a clear description of the problem to be solved with the new rule, how the new rule would solve the problem, and whether the problem needed solving. Costs and impacts on businesses large and small and impacts on housing costs were required. Together with the newest requirements to comply with CEQA -- information on environmental impacts mitigations and alternatives -- the public notice became a very informative document!

OAL would then carefully review all new regulations for compliance with the criteria and procedures. This review proved to be no pro forma, rubber stamp action. OAL did not attempt in any overt way to impose itself over the expertise of the forestry agencies in determining necessity or reasonableness. OAL did, nevertheless, require that the record include good evidence that the adoptions were not done in an arbitrary manner. Moreover, OAL has the power to enforce its demands -- it can cause a noncomplying regulation to be voided.

For existing regulations, OAL was expected to establish by July 1, 1980 a schedule for the agencies to complete their review

and submit a notice of compliance. The Board of Forestry heard details of the new law for the first time on November 27, 1979. OAL didn't quite make its own deadline, but The Office did get its schedule out in a letter to all affected agencies on October 24, 1980. The board saw this letter on November 4. The deadline for the board was to be January 31, 1982.

AB 1111 AND SECTION 208

The primary concern of the board at this juncture was how to meld the AB 1111 review with the review and improvements required by Section 208 of the federal Clean Water Act. The two reviews would be going ahead at approximately the same time but not necessarily on the same schedule. The problem was how to avoid a great deal of duplicated effort. OAL eventually relented and allowed the process to go along with the demands of Section 208. This certainly caused the process to drag out a lot longer than OAL preferred. By this time, however, OAL personnel had become deeply involved with other agencies and apparently didn't much mind the delay.

There were many Forest Practice Rules that did not directly affect water quality and Section 208. The board was not allowed to plead workload stress to postpone indefinitely its review of these other rules. They had to proceed on schedule. The combined pressures did, in fact, create a heavy load for all persons concerned. The overlaps and often conflicting and inconsistent demands led to some difficult rule making. It also resulted in an appearance of continual change, even turmoil, among those to whom the Forest Practice Rules are applied -- the industrial foresters and the timber operators. Foresters employed by CDF and the board were often just as confused.

RULE CHANGES AND CONFUSION

During this period persons from the industry frequently complained in letters and testimony to the board that the rules were in a constant state of change. They begged for stability and an end to rule changes so that they could understand how to get on with their work. At the board meeting on August 4, 1981 Chairman Henry Vaux replied to these many complaints. He sympathized but pointed out that legal requirements facing the board gave it little choice but to make certain changes. He went on to describe changes necessitated by industry sponsored legislation such as SB 886. He concluded, however, that the board had actually made few rule changes up to that time. Endless discussion of change might, of course, have given a different impression. Nevertheless, more changes would become inevitable.

RULE REVISIONS AND OAL AUTHORITY

The first group of rules to be given direct attention under AB 1111 were those for the Coastal Commission Special Treatment Areas of the Coast Forest District. As related in the previous chapter, when the board advertised for comment on their rules under AB 1111, the Coastal Commission Special Treatment Areas Rules received by far the most comment. This prompted the board to hold a special subcommittee hearing in Fort Bragg on March 3, 1981. At the board meeting on the following April 9, the board heard a recommendation from the subcommittee to proceed with a full board hearing on changes. That was begun on April 5, 1982 but the process was not completed until March 1985, with many long gaps enroute.

The board began to hold serious hearings on non-water related rules under AB 1111 on May 5, 1982. On that date, the rules governing fire protection were overhauled with little controversy. At the same time, a very minor rule change to eliminate an Eastside Subdistrict in the Southern Forest District was not adopted because of SDTAC objections. Subsequently, OAL mandated elimination of the subdistrict because the board had no rules pertaining to that area.

On August 3, 1983 the board heard revised insect and disease prevention rules, again with little controversy. At the same meeting, to illustrate the power of OAL, the board was forced to rehear certain fire protection rules. Since 1946, the Forest Practice Rules had required Licensed Timber Operators to make and enforce fire prevention rules on their operations. The board had simply continued this practice on into its current rules. Hold on, OAL demanded! The Board of Forestry cannot delegate to the timber operator or anyone else its own authority to make rules. Therefore, the board itself must adopt the fire prevention rules.

These two situations also exemplify other ways things have changed under OAL restrictions. Little controversy arose over the wording of these groups of rules, and the board quickly and easily made the necessary amendments. The final adoption did not come the same day, however. During the hearings, the board made minute changes in the wording, resulting in small differences from the advertised versions. This meant that board staff had to publish the amended versions and allow 15 more days to pass before final adoption could take place. Thus, the board waited until September 9 to adopt the fire protection rules and until November 4 for the insect/disease rules.

OAL spoke forcefully in still another series of controversies before the board. These had to do with the Watercourse and Lake Protection Rules under consideration as Best Management Practices for Section 208. These rules will be

considered in more detail in the next chapter but will be mentioned here to illustrate the part played by OAL. The staff of the State Water Resources Control Board had urged the board to adopt what was described as a "zero-discharge" requirement for deposition of deleterious materials into streams. In other words, absolutely no amount of such materials would be tolerable. Besides the water board staff, there was strong support from Department of Fish and Game and from many environmental spokespersons. A majority of the board voted to adopt such a restriction.

Timber industry representatives countered that such a restriction was impossible to meet, given the conditions under which timber harvesting must take place. When OAL received the rule package, they rejected the rule in question. OAL staff did not necessarily agree with industry about its practices, but they could not find adequate authority for the board to adopt such a rule. The Forest Practice Act had the effect of limiting the board to "reasonable" restrictions, said OAL. The board was forced to back down and adopt less restrictive wording.

Still another example concerned efforts to give water board and wildlife representatives a veto over final Review Team recommendations on THPs. The board sought repeatedly to grant a stronger voice to non-CDF Review Team members when considering alternatives to rule requirements proposed by the authors of THPs. The board wording would have allowed a majority vote of Review Team members to disallow the use of any proposed alternative. Again, OAL said "No! THP review responsibility belongs solely to the Director of Forestry. The board exceeds its authority when it tries to give some of that responsibility to another agency." The board once more found it necessary to revise its wording.

SLOWER RULE ADOPTION

The total effect of all these rulings by OAL was to greatly slow down the rule adoption process. Many of the situations described in the foregoing section were only slightly controversial, if at all. When serious controversies arose as, for example, with the Road and Landing Construction Rules or the Silvicultural Rules, the process went on much, much longer. Plainly, OAL did cause rule making to become more painstaking. On the whole, however, it probably prevented enough mistakes to justify the pains taken. At least one group of rules - limited exemption of minor timber operations from THP requirements - never became enacted, possibly because of the need to weigh the matters so carefully. (See Chapter One.) That group of rules may never have gone anywhere regardless of OAL, but OAL certainly played a part in the drama.

APPEAL FROM OAL DECISIONS

OAL authority in these and other cases to be cited in this history is sometimes misunderstood by critics of board actions. Critics from opposite ends of the environmental spectrum have more than once counseled the board to defy OAL. The law does provide a way to appeal findings of OAL, but defiance is not possible in the legal sense. The legislature gave OAL the same "Super Agency" status as the Departments of Finance and General Services. These agencies all belong to the executive branch of the state government and have the same boss as the Board of Forestry -- the governor.

The one way established in law to appeal is to the governor, the head of the executive branch. To illustrate how such an appeal works, we must turn to an appeal mounted by CDF rather than the Board of Forestry.

In 1981 the legislature cut nearly $1,000,000 from CDF's enforcement budget and ordered CDF to make up the difference through THP filing fees. Details will be provided in Chapter 11. CDF adopted a fee schedule. OAL rejected it, saying that CDF had no such authority. Director Pesonen, believing that the legislature had given him no other choice, appealed the decision to the governor's legal secretary, as provided in law. The legal secretary supported OAL, ending the matter for CDF. No agency of the executive branch can take another such agency to a higher court for further adjudication. The law makes no exception for the Board of Forestry.

Although OAL holds authority to reject rules adopted by state agencies, it has not often used this ultimate power on the Board of Forestry. Instead, a rather easy relationship developed early between board and OAL staffs that permitted a less painful process. Upon learning that OAL staff may find difficulty with certain proposals, board staff will usually simply withdraw the rule package from OAL and return it to the board for revision. While the process certainly takes longer than in the good old days before OAL, it flows more smoothly than outright rule rejection. In the latter event, the entire hearing process must begin from scratch.

OAL INITIATES REVIEW OF CLEARCUTTING RULE

As pointed out earlier, since January 1, 1982 OAL has had the power to initiate a review of existing regulations upon legislative petition. The forestry agencies have not faced this type of review often, but it did come up once.

Timber industry spokespersons have long objected strenuously to any rule restrictions on the size of clearcut blocks. The original Forest Practice Rules adopted under the Z'berg-Nejedly Forest Practice Act of 1973 had few restrictions. The revisions adopted in 1975 in the aftermath of Judge Broaddus' decision in NRDC v. Arcata National quickly altered that situation, however. In an attempt to mitigate cumulative effects of large continuing clearcuts, the board that year adopted limits on the size of individual blocks. They further mandated delays in clearcutting adjacent blocks until the original ones had regenerated.

Industrial representatives countered by pointing out that this rule would result in more road building and premature harvesting of young-growth timber. In other words, they claimed, it prevented orderly timber management. In addition, they declared that the rule would result in increased erosion because all research agrees that roads cause most of the erosion resulting from logging.

These arguments had little effect on the Board of Forestry during 1981 and 1982 when they were overhauling the rules to comply with Section 208. The silvicultural rules, where the clearcutting restrictions lay, were extensively revised, but the clearcutting rules received only token modification. A few exceptions were allowed where adjacency could have little effect, but the former freedom to clearcut at will remained a memory.

Dr. John Walker of Simpson Timber Company, at the time their manager of California Lands and Timber, decided to hit the issue head on. With the help of the California Forest Protective Association, he persuaded the legislature to request a priority review of the existing regulations. The board had adopted its latest revisions in October, 1982. Dr. Walker launched his attack in December of that year. He had previously testified on the issue before a committee of the legislature which was studying the economic plight of the timber industry. Considering the poor condition of that economy, the time seemed ripe.

OAL, of course, has only legal expertise. They therefore asked the board itself to conduct the review and to present its rationale to OAL. The board contracted with Earl Sechrist to perform the staff work. Mr. Sechrist for many years before retirement had headed the Forest Practice Enforcement program within CDF. He found considerable justification for all points of view on the subject but concluded that a preponderance of the research supported limitations. OAL accepted the rationale and did not order any changes in the rules at that point.

One large factor doomed Dr. Walker's appeal from the start. As pointed out above, the board had already adopted amendments to its silvicultural rules. Perhaps unknown to Dr. Walker, those

new amendments had not yet gone into force because of the routine lengthy review undertaken by OAL. The result of Dr. Walker's timing was to have the priority review conducted on rules that had already become all but obsolete. In its response to the priority review, the board was able to point out to OAL that many, though not all, of Dr. Walker's objections had been resolved.

During the review board chairman Henry Vaux assured industry leaders that he would encourage the board to consider greater flexibility in the rule. As it happened, Dr. Vaux did not have the opportunity to make good on his promise. Then, when the desired change did come about, it did not happen as originally envisioned. Instead, this issue became an important factor in the 1985 adoption of the all purpose, general alternative rule described in Chapter 1. Although not directed at cutting methods specifically, this rule gives maximum flexibility where local conditions justify an override of the normal restrictions. Dr. Walker had finally won his point.

GOVERNOR'S REVIEW TASK FORCE

The revision of regulations did not end with the creation of OAL. Upon the election of Governor Deukmejian in 1982, review began all over again. The new governor called for a new review to further prune out unneeded regulations. Thankfully, he did not create another new agency, but, instead, ordered creation of a review task force within each agency. The Resources Agency Regulation Review Task Force began work on May 3, 1983. It completed its work in 1984. The Board of Forestry received the forest practice recommendations on July 11, 1984 and sent them to the DTACs for implementation.

At first the task force review seemed like an almost needless duplication in view of the OAL process. Nevertheless, it came to be a valuable opportunity to repair some flawed regulations. The crush of business in the preceding years had resulted in more than a few rough spots. Most of the task force recommendations centered on relatively detailed technical changes in wording. Experience had revealed problems in clarity and a number of small duplications. For example, the rules for the three forest districts often contained slightly different definitions for identical terms. The task force suggested standardized definitions, many of which the board adopted.

The task force managed to stir up some controversy with a suggestion to standardize rules pertaining to review team action on alternative practices. In at least one area, it appeared that the rule allowed a review team veto of an alternative, despite OAL's earlier objections. A completely standard version has not been achieved, but progress did occur. As might be expected, the

environmental community wanted a stronger veto, and industry wanted the whole idea eliminated.

The DTACs reacted in a generally positive way to the recommendations and in a few instances came up with additional suggestions of their own. Still, not all of the recommendations were ever enacted. The process was implemented in a piece-meal fashion, interspersed among larger issues as they developed.

BACKLASH

In 1985 during the confrontations over protection of Coastal Commission Special Treatment Areas (See Chapter 4), the board became frustrated over conflicting pressures from members of the legislature. Board Member Dr. Carlton Yee in his address to a legislative subcommittee in March of that year pointed out that legislators were sending conflicting messages to the board. AB 1111 on the one hand stressed a reduction in unnecessary regulation. Continuing amendments to strengthen AB 1111 had reinforced that ideal. On the other hand, individual legislators, and even the whole legislature, seemed to be pressing for more and more coastal regulation. To the board, much of the demanded regulation seemed unneeded and contrary to the intent of AB 1111. The legislators chose not to respond to Dr. Yee's comments. Perhaps the story suggests that deregulation has run its course, at least as a political issue.

Chapter 6

PUBLIC LAW 92-500, SECTION 208

During the period covered by this book, three major sources of legal pressure existed for modification and strengthening of the Forest Practice regulations in California: CEQA, AB 1111, and Section 208 of Public Law 92-500. We have already covered the first two; we now come to the most complicated and elusive of the three.

All of these laws were active and interactive more or less at the same time. The goals and procedures mandated by the three bodies of law were often far from identical, however, and occasionally were contradictory. Many difficulties resulted. Some have already been shown and more will become apparent as the story unfolds.

Despite the difficulties, the Board of Forestry has managed to satisfy most of the claims based on CEQA and AB 1111, at least insofar as the courts are concerned. Neither body of law has gone away, of course. They remain operative and affect nearly every forest practice decision made by the board. Still, a modus vivendi has been worked out, and the board has a better understanding of what it must do to comply with these two laws. Dissatisfied board opponents have been forced into the courts and generally have not fared well, with exceptions as we have noted.

Compliance with Section 208 has as of this writing proven harder to accomplish than the others. The board and the department in their own view have made herculean efforts to comply. In fact, most board members and departmental representatives, past and present, will insist that they have fully complied with the letter and spirit of Section 208. Nevertheless, the forest practice regulations have not as of this writing been certified by the Environmental Protection Agency as meeting the standards of that law.

Many reasons may be suggested: politics, too many levels of government, inconsistent laws, no clear delineation of authority, and perhaps others that are not so readily apparent, singly or in combination. This writing will not attempt to identify any specific reason. It will attempt only to present the facts so that others may draw their own conclusions.

Perhaps in time a solution will be found that will satisfy all parties so that certification can occur. The board wants certification and believes it has earned certification, but at this point feels frustrated at its failure to receive it. The board has continued to carry out certain agreed upon program

improvements, but something close to a stalemate appears to exist. This gets ahead of the story, however. That story is complicated and often confusing, but its telling should help the reader to understand the state of Forest Practice regulation in California in 1989.

FEDERAL WATER POLLUTION CONTROL ACT

Congress in 1972 passed Public Law 92-500, called at the time the Federal Water Pollution Control Act. As the name implies, it was designed to bring about a reduction, if not the elimination, of pollutants entering streams and lakes throughout the country. Fishable, swimmable and drinkable were the stated goals. Two sections of that act became especially important to the timber industry and to forestry: Sections 208 and 404. Section 208 deals with reduction of pollution arising from non-point sources such as agriculture and silviculture. Section 404 was intended to reduce pollution from construction and dredging activities located on or near streams and lakes tributary to navigable streams. The Environmental Protection Agency, better known as EPA, received the assignment to implement the act.

The other sections of P.L. 92-500 dealt primarily with pollution resulting from point sources. This refers to discharges into streams and lakes traceable to a precise source such as a pipe emitting manufacturing effluent. Being relatively easy to define and involving foreign or unnatural pollutants, very specific preventive measures could be written into the legislation.

The pollution sources covered by Sections 208 and 404 are of a different sort. Non-point sources are often so diffuse that their exact origin cannot be located. Moreover, they often involve natural elements such as soil and vegetative matter that can enter the water through natural means. Construction and dredging activities, while easier to pinpoint as to source, also generally produce "natural" pollutants that do not yield to simple preventive measures.

Under Section 208 the states are required to minimize non-point source pollution through the adoption and implementation of "Best Management Practices." Typically, "Best Management Practices" quickly became abbreviated "BMPs." BMPs must be the state of the art to the extent that they are feasible. The concept thus recognizes that non-point source pollutants cannot always be entirely eliminated without undue economic hardship. Moreover, the federal legislation in no way requires that all BMPs be in the form of enforceable regulations; education and other forms of persuasion are recognized as acceptable.

In many states, the state forestry agencies were designated as responsible for adoption of BMPs to govern silvicultural activities. In California, however, the governor designated the State Water Resources Control Board to oversee implementation of all regulations under Section 208. This decision came about because California had moved faster than the federal government in acting to reduce water pollution. In 1969, California adopted the Porter-Cologne Water Quality Control Act. This act created a number of semi-autonomous regional Water Quality Control Boards and gave broad powers to the regional water boards together with the state board to reduce water pollution. Thus, the assignment of PL 92-500 responsibilities to these boards was perfectly logical.

Problems stem from the fact that the water boards have limited authority to regulate specific practices. The Board of Forestry, of course, has authority to regulate timber harvesting. Thus, an additional official layer was inserted.

Section 404 was assigned to the U.S. Army Corps of Engineers because of their overriding responsibilities for maintenance of navigable waters. The Corps, not the states, is to implement regulations in this area. As originally written, Section 404 had the effect of adding the Corps to the list of agencies regulating timber harvesting. Timber harvesters cannot avoid working in or near streams and lakes, and most timber lies in the watersheds of navigable streams. Except for a couple of momentary flare-ups, however, Section 404 has not caused a lot of concern. Virtually all of the PL 92-500 activity has centered on Section 208. The incidents involving Section 404 will be further described in the context of other events.

EARLY ATTEMPTS AT AGREEMENT

Probably because of the time it took EPA to develop its own regulations, the State Water Resources Control Board did not begin immediately to work on forest practice water pollution issues. Then, too, the state water board had many other point and non-point source problems which had taken first priority. At any rate, the state water board and CDF first began exploratory talks in early 1976. Fred Frank of CDF gave the Board of Forestry its first inkling of what lay ahead in a status report at its March 1976 meeting. He followed up with a second report in May of the same year.

At that point, the state water board proposed a joint effort by their staff and CDF to plan the initial study of BMP needs. Two things quickly became apparent. First, the water board staff did not fully understand the relationship between CDF and the Board of Forestry. The water board staff works directly for their board through an Executive Officer appointed by their

board. The more distant separation between CDF and its board caused confusion.

Second, the water board staff clearly did not trust CDF's objectivity in dealing with the timber industry. That staff apparently heeded the oft repeated accusations by many environmental activists that CDF favored the timber industry. The water board staff hesitated to yield to CDF even in areas where CDF had the greater expertise and authority. It thus became impossible to agree upon a separation of overlapping responsibilities. The state water board reported to the Board of Forestry on November 12, 1976 that it was confused on how to proceed.

During this time, the Army Corps of Engineers began to study its responsibilities under Section 404. The corps suggested that Section 404 gave them the power to require permits for logging activities such as the building of roads and stream crossing structures on or near tributaries to navigable streams. The corps interpretation was widely opposed, and by mid-July, 1977 the corps had adopted a blanket permit instead of requiring individual permits. Eventually, the act was amended to assure that Section 208 would solely govern timber harvesting.

On January 18, 1977 the state water board reported to the forestry board that it believed the forest practice regulations would need strengthening. The water board admitted it had made only the most cursory of studies, and it intended to go ahead with its own task force to conduct a statewide program review of regulation needs. It also reported on plans to proceed with a separate study of the special needs in Redwood Creek. (The Redwood National Park issue was hot at the time.) It was still consulting CDF as it developed its plans. It had included Mr. Larry Richey, recently appointed Deputy Director of the new Department of Forestry, as a member of its Program Review Board. Essentially, though, the water board was moving forward on its own.

In progress reports to the Board of Forestry over the next few months, Mr. Richey frequently expressed frustration about the lack of progress. There seemed to be no clear direction. Questions had arisen about Board of Forestry authority over non-harvest silvicultural activities such as pre-commercial thinning and reforestation. The Attorney General stated in an opinion that the Forest Practice Act gave very little such authority. By June, 1977 the regional water boards, especially the North Coast Regional Water Quality Control Board, had become heavily involved.

The state water board staff developed a draft plan for silvicultural BMPs, intending to have the state and regional water board staffs make a detailed BMP study. An obvious lack of forestry expertise on these staffs led the state water board to

reject the idea in favor of further study. CDF offered to conduct the study, but was turned down, apparently for the reasons already cited.

THE BOARD OF FORESTRY MAKES BMP STUDY

On June 21, 1977 the Board of Forestry decided to appoint a subcommittee to monitor the issue. Chairman Vaux appointed David Pesonen as Chair and Dwight May and Henry Trobitz as members. This move evidently encouraged the water board staff to approach the Board of Forestry to suggest that the latter board undertake the needed study. Apparently with Mr. Pesonen's involvement, the water board felt that the forestry board might conduct a more objective study than CDF.

Mr. Pesonen proposed at the Board of Forestry meeting on July 20, 1977 that it take on the job. He suggested that an independent staff, divorced from CDF, be assigned to do the study and make recommendations for rule changes. The state water board would provide oversight and $100,000 of EPA grant funds to finance the work under a Memorandum of Understanding. The Board of Forestry immediately adopted the idea, and presented its first draft Memorandum of Understanding to the water board on August 12, 1977.

Following negotiations between respective staffs, the forestry board on October 28, 1977 authorized Chairman Henry Vaux to sign the completed Memorandum. The memorandum called for the forestry board to establish its own study team to develop proposed BMPs. To ensure an objective study, the board would retain a non-CDF contractor from an agency not connected with Forest Practice Act enforcement to lead the study team.

Reflecting priorities in Section 208, the memorandum strongly emphasized a need to address cumulative impacts. The study would include a review of enforcement and regulatory machinery. Recommendations would include changes needed in both rules and procedures. (In a short time, the distinction between rules and procedures would become a major difficulty for certification of the program as BMPs.) Redwood Creek needs would be studied separately and independently by the water board staff.

The idea of using an outside agency to conduct the study was especially important. The memorandum not only excluded CDF and the water board staffs, it also excluded the Department of Fish and Game which had statutory responsibilities assigned by the Forest Practice Act. Thus, the framers of the memorandum hoped to make the study results more acceptable to the industry. Feuding between the timber industry and Fish and Game went back a long way.

On November 18, 1977 the Board of Forestry appointed a Best Management Practices Advisory Committee with David Pesonen as chair. Members included Fred Landenberger of the California Forest Protective Association representing the timber industry along with persons representing environmental interests, the CDF, the water boards, and others having both interests and knowledge. The committee immediately came to be called "BMPsAC," pronounced "bump-sac."

AMENDMENTS CREATE THE FEDERAL CLEAN WATER ACT

During 1977 Congress amended the Federal Water Pollution Control Act in several substantial ways. The name of the act was changed to the Federal Clean Water Act. Cumulative impacts were given additional prominence in Section 208. Section 404 was amended to clarify that silvicultural activities would be dealt with under BMPs developed through Section 208. This removed the Corps of Engineers from contention for a considerable length of time, but not forever.

In March, 1978 Carl Hauge, a professional geologist employed by the Division of Mines and Geology was engaged to conduct the BMP study. Mr. Hauge had been engaged previously by the CDF to conduct a soil erosion study and was familiar with the issues involved. Dr. Carlton Yee, a Professor of Forest Engineering and Hydrology at Humboldt State University who later became a member of the Board of Forestry, and Dr. Richard Janda, a geologist with the U.S. Geological Survey who had made a study in the Redwood Creek drainage, were originally retained as consultants. Dr. Janda later declined, and Dr. Henry Anderson, a hydrologist, formerly employed by the U.S. Forest Service but by then retired, was retained in his place.

In March, 1978 Mr. Pesonen was appointed Director of Forestry, but Board Chairman Vaux asked him to stay on as BMPsAC Chair.

BMP STUDY BEGINS

The study began quickly. A key provision of Section 208 was a requirement for public participation in the conduct of the study as well as in the review of recommendations. BMPsAC learned of experience in the state of Oregon where the public did not have a chance to take part until late in the game. There, EPA had required the state to restart much of its process, with a considerable loss of time. BMPsAC decided to play it safe in California. The study team prepared detailed questionnaires for distribution to a comprehensive mailing list of over 4000 persons between May and July of 1978. Recipients were asked to identify

any perceived shortcomings of the existing forest practice regulatory system.

By October 19, 1978 over 600 questionnaires had been returned, a return rate of 15%. This rate was exceptional in view of the complexity and length of the forms sent out. Next, to further the public participation phase of the study, twelve public meetings were held in different locations throughout the state, beginning October 23, 1978, in Eureka.

At a meeting of BMPsAC on January 23, 1979 Deane Bennett, Law Enforcement Coordinator with the CDF, stood the committee on its ear with a strong plea for more effective enforcement measures. He actually presented little that was new. CDF had long sought authority to order an immediate work stoppage when irreparable violations were found underway. From early times they had requested civil penalties for violations, asserting that misdemeanor penalties were insufficient to deter violators, indeed, that it was often cheaper to pay the fine than to comply with the rule. Mr. Bennett repeated the need for these measures and also suggested a need for performance bonding of licensed timber operators. Most of these have been provided subsequently, at least in part, but at the time they created a sensation. The difference at this point was that Mr. Bennett provided actual case by case examples to justify the need for these measures.

A couple of related events occurred at about this time that were of interest. EPA on March 9, 1979 finally certified the Oregon Forest Practice program as meeting BMP criteria. It was not the first state to have its program so certified. Then, on March 28, 1979 Senator Ayala introduced his SB 667 that would exempt Timber Harvesting Plans from waste discharge requirements issued by regional water boards, once the California Forest Practice Program was certified by EPA. This bill eventually became law and has had considerable effect on subsequent events affecting certification in this state.

During all of 1979 and early 1980 the BMP study and the subsequent report went around and around in bits and pieces among BMPsAC, the Board of Forestry, the DTACs, the state and regional water boards, and the public. All sides took their shots at it from their differing perspectives. The forestry board and the DTACs received Part I of the completed draft report for official review in September, 1979. Part II arrived a month later.

At a hearing held on February 7, 1980 the Board of Forestry formally received comments on the draft report. Timber industry representatives attacked its findings as unsubstantiated by objective data. Environmental representatives attacked the report as incomplete, especially for its alleged lack of specific language for recommended BMPs. The board referred the draft to an editorial committee made up of board members. After making a

number of substantial changes, the Board of Forestry adopted the final report on June 11, 1980.

The water board staff argued from the beginning that the report failed to meet the terms of the Memorandum of Understanding. They insisted that it omitted many justifiable changes requested by themselves and other environmental representatives. Chairman Vaux defended the report as covering all of the concerns of which he was aware. Differing perceptions about rules and procedures started coming to the surface. Water board spokespersons began to stress a desire to have every matter included in a specific regulation. Dr. Vaux insisted that BMPs involved more than rules, that not every rule demanded by the water board representatives was either justified or feasible, and that many concerns were better addressed by non-regulatory methods.

This clearly was becoming a turf battle over which board would ultimately hold sway over timber harvesting regulation. The water boards lacked specific authority to adopt the regulations that their staffs desired. The Porter-Cologne Water Quality Control Act grants many powers to define water quality standards but little authority over methods to maintain those standards. Enforcement takes place on the basis of violated water quality standards.

Many of the water board staff members apparently believed, however, that Section 208 and the Memorandum of Understanding granted them broad control over the decisions of the forestry board. They often expressed impatience with the legal limitations faced by the Board of Forestry - the limits and obligations conferred by the Forest Practice Act and by AB 1111, for example. On more than one occasion, they suggested that the forestry board should challenge the Office of Administrative Law. They also accused the Board of Forestry of being controlled by the timber industry, despite the fact that four of its members belonged to the Sierra Club!

Early in 1980 Senator Nejedly introduced SB 1361 for the California Forest Protective Association. This bill would have prohibited both the Board of Forestry and the Water Resources Control Board from adopting any rule revisions to comply with Section 208. It came down especially hard on the water board since it would have prevented that board from tampering with the 208 report of the Board of Forestry. Fred Landenberger reports that his association dropped the bill when it appeared that the two boards would take a reasonable approach.[1] Mr. Landenberger indicates, however, that the eventual results disappointed him.

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1 C. FRED. LANDENBERGER. 1988. Ibid. See page 234.

RULE CHANGES BEGIN

The Board of Forestry formally delivered its report to the State Water Resources Control Board on July 1, 1980. The latter board forwarded the report to EPA the following August. The Board of Forestry and CDF began immediately to develop recommended rule revisions to comply with the report.

One thing quickly became apparent, indeed was mentioned prominently in the study report itself. The Board of Forestry would need additional legislation to accomplish many of the report's recommendations. As pointed out by the Attorney General months earlier, the Forest Practice Act did not provide authority over many non-commercial silvicultural practices. These would include such practices as pre-commercial thinning and reforestation of areas denuded by early logging practices and by fire or natural disaster. Neither did the Forest Practice Act provide any authority to govern the long-term maintenance of roads and structures installed to prevent erosion. The board's 208 report emphasized a need to regulate these matters, and it urged stronger enforcement measures than those provided in the act at the time.

As early as March 3, 1981 the state water board expressed impatience with the forestry board's efforts to obtain the needed legislation. On that same date, Dr. Vaux reported that he had begun exploratory talks with State Senator Barry Keene on this issue. The state water board's executive officer wrote to the forestry board on July 7 of that same year to emphasize the differences between the two boards regarding the latter's authority. At this point as well as at many other times, the water board took a much more activist position than did the forestry board. The forestry board preferred to move slowly and carefully wherever authority and need seemed questionable. The water board, and especially the North Coast Regional Water Quality Control Board, preferred to charge ahead and challenge the legal limits. Certainly, the language of AB 1111 favored the forestry board's approach.

For reasons never made entirely clear, the early '80s seemed a bad time for legislation of this type. Perhaps the legislature was heeding the public outcry against proliferating regulations. At any rate, the legislative efforts moved slowly. These efforts will be discussed in more detail in a later chapter.

PROTECTION FOR STREAMS AND LAKES

Protection of streams and lakes from pollution was, as noted, the basic purpose of Section 208. To some extent, all of the Forest Practice Rules will affect the waters lying adjacent to and below timber harvesting operations. Nevertheless, it

should be obvious that certain rules will have more effect than others. The most obvious of these would be rules specifically designed to protect the waters. Such rules could have been scattered among the many rules governing timber harvesting, but the Board of Forestry decided early to dedicate a specific article in the rules for stream and lake protection.

One of the earliest problems to confront the forestry board concerned how to define a stream. Streams come in all sizes from a mere trickle that ceases to flow within minutes after a rain to streams the size of the Mississippi River. The nature of the threats to streams of differing sizes varies greatly. The practices to be avoided and the preventive practices to be required will vary as much.

The earliest attempts at a definition, going back to the rules adopted in 1974, were based on the topographic maps published by the U.S. Geological Survey. These remarkably accurate maps are basic to almost any activity involving land use. The U.S.G.S. maps show streams as blue lines. Major streams wide enough to occupy significant area will have both banks shown with the area between the banks shaded in blue. Lakes will be shown in the same way. Smaller streams will be shown either with solid blue lines or with dot-dash blue lines. Generally speaking, solid blue lines denote streams that are larger than the dot-dash streams. Solid line streams are more likely to be perennial than dot-dash streams, which, in turn, are more likely to be seasonal.

The early rules required more stringent practices on and near solid blue line streams than dot-dash streams.

The problems arose when the many exceptions to the above generalizations occurred. Many "blue-line" streams were found to be seasonal, or even intermittent, whereas, many dot-dash streams were found to be perennial, at least in wet years. Occasionally, even perennial streams would not have any type of line. There was no predictable consistency. Persons familiar with U.S.G.S. mapping techniques reported that the agency had no real standard for delineating streams. Their cartographers were said to use solid blue lines in certain areas simply for artistic effect. No one who loves maps will say that U.S.G.S maps aren't pretty!

Board of Forestry policy urged the persons who prepare and those who regulate Timber Harvesting Plans to make practical adjustments on the ground when exceptions occurred. At the time, the board did not attempt to solve the related problem of how to address the later discovery of streams overlooked during THP preparation and review.

In the early days frequent and sometimes furious arguments occurred among Timber Harvesting Plan submitters and review team members about the correct classification of specific streams. At issue was the level of protection to apply. Industry representatives naturally wanted to minimize costs. Just as naturally, water board and Department of Fish and Game representatives wanted to maximize water protection. CDF team members usually found themselves in the middle having to make unpopular decisions. The teams led by CDF often compromised by ignoring the stream classification and prescribing specific protection for the watercourse. This practice in turn led to charges by industry spokespersons that CDF personnel were abusing their authority by adopting ad hoc rules.

These problems led Senator Keene in 1980 to attempt legislation to define streams. The Board of Forestry opposed this well meaning attempt, believing that it was premature in view of the authority and responsibility to comply with Section 208. The bill did not pass.

The board discussed the subject in May, 1980 then held a hearing the following September. The board continued the matter until two months later in November and combined it with a hearing to revise the intent section of the Stream and Lake Protection rules. A provisional rule was adopted at that time in keeping with earlier board policy, but it was short lived. The entire body of rules was undergoing review, and a new approach to the whole idea was to emerge.

In the meantime, CDF's efforts to live with the ambiguities led to the denial of a THP submitted by Hiatt Logging Company. The THP failed to provide protection to an unmarked stream that supplied a domestic water source. The board recognized the weaknesses in the existing rule but concluded that the plan complied with the rule as it stood and overturned the denial.

WATERCOURSE AND LAKE PROTECTION RULES EMERGE

CDF staff member Jonathan Rea led the team that worked long and diligently to develop effective new rules. Concluding that defining a stream on the basis of channel and bank or map characteristics was nearly impossible, the team approached the problem from the water itself. Section 208 speaks of the beneficial uses of water. Therefore, the team asked, why not prescribe protection in such terms? To get away from the baggage heretofore associated with "stream," the team proposed use of "watercourse." A basic watercourse could be defined in fairly simple terms. Varying levels of protection would then be based on the uses of the water in the watercourse and on the adjacent topography. The idea at first proved unpopular with almost everyone, but it eventually caught hold and prevailed.

The draft rule package incorporating this new concept was first presented to the Board of Forestry at its January 6, 1981 meeting. The board held its first hearing the following month, then continued it to March. All of the issues on which debate would continue right up to the present moment came out early. Water board representatives disliked the watercourse concept because it might allow pollution of waters that have no current beneficial use. These persons also preferred rules that would absolutely prohibit discharges of any type of pollution, the so-called "zero discharge" concept. A system of variances could be devised, but the standard for discharge, in their view, should be absolutely zero.

The new rules prescribed rather strict measures for watercourse protection, but also allowed Registered Professional Foresters who prepare THPs to propose alternative methods. Such alternatives might apply where the standard rules do not fit the physical conditions or where cheaper but equally effective measures exist. Water board and Fish and Game spokespersons generally agreed in concept on the premise that rigid rules might even lead to excessive pollution under some circumstances. These persons did, however, seek a veto within the review team over the use of alternatives. They also argued for enforceable standards, which they saw as lacking definition in the draft.

Industry spokespersons found many flaws in the proposed new rules but especially opposed the idea of using the slope of land adjacent to watercourses instead of Erosion Hazard Rating to determine the width of Watercourse and Lake Protection Zones.

Following the March 1981 hearing, the Board of Forestry instructed its staff to develop a new draft with revised details. The next month, the board heeded a plea from the industry for a field test of proposed new methods. Many board members seriously questioned the workability of zero discharge and requested a review of the concept. Board Member Henry Trobitz continually stressed the need to balance costs with benefits and argued that the new rules were seriously out of balance.

The task force conducting the field test generally found the rules workable, but about twice as expensive as the former rules, in terms of RPF time required. They agreed that the rules complied with Section 208, and they liked the increased flexibility.

The board held further hearings in June, July, and September, 1981, and following the September hearing adopted a revised set of rules. By a close majority, the board included the zero discharge of "deleterious materials" but with a variance for accidents. They also adopted a veto over use of an alternative if two review team members voted against it. They retained virtually all of the new concepts originally proposed by

the staff, although they revised details to minimize costs while meeting what they saw as their legal obligations.

Throughout the hearings, the timber industry kept up a steady drumfire of opposition to the rules, calling them too expensive for the questionable benefits. They stressed the lack of technical data to support the need for new rules and argued that the existing rules already complied with BMP standards. One argument repeatedly put forward was that no other state had rules so strong as the ones being replaced. In some states, such as Oregon, EPA appeared to have certified lesser rules than those already in place in California. Following the board's adoption of the rules, the California Forest Protective Association on October 6, 1981 petitioned the board to reconsider and to rescind its action. The board denied the petition on December 2, 1981.

Some readers may regard industry's action at this point as somewhat quixotic in view of the board membership and the legal constraints. Nevertheless, it was a necessary action if a legal challenge was to be made, as many persons expected at the time. The courts normally insist that all administrative remedies be exhausted before conducting a judicial review.

On December 31, 1981 the board submitted its new rule package to the Office of Administrative Law. After a brief review, OAL staff reported flaws that would lead them to reject the rules. Board staff then withdrew the package, a maneuver that saved the board from having to start the hearing process over again from scratch. The flaws included unclear references to the deleterious materials to be kept out of watercourses, an incomplete list of beneficial uses of water in the definitions, and the zero discharge. On the latter point, OAL said that the Forest Practice Act required reasonable limits, thus barring total prohibitions.

After some careful amendments to satisfy OAL, the board at its May, 1982 meeting approved an amended package. Over objections from the water boards and Department of Fish and Game, the board changed the zero discharge requirement to a prohibition against "quantities deleterious" to beneficial uses. The list of beneficial uses was replaced with a simple reference to a list in the Water Code. The amended package was then resubmitted.

Following further OAL review, board staff again had to withdraw the package in October. This time OAL objected to the two-vote review team veto over THP alternatives. This they said would unlawfully take away from the sole authority granted to the Director of Forestry by the Forest Practice Act to approve THPs. Review team members could advise but they could not overrule the director's discretion.

After still another hearing held on November 3, 1982 the board modified the offending rule. They reduced the veto effect but required the director to give careful attention to negative votes by two review team members. This established a precedent for many future actions when this same concept arose. The board made other changes and adopted the package by a vote of six to three, with the three industry members of the board voting "nay."

The three members who voted "nay" prepared a minority report urging OAL to reject the package on the grounds that the majority had failed to show necessity. They intended for the record of rule adoption to include their report. This action created no little stir. Chairman Vaux and the majority believed that such an addition to the record would be improper. Eventually the board adopted a policy to this effect, but provided a way for the record of rule adoption to adequately reflect minority opinions.

This time, the adoption "took," and OAL certified the package for publication. Interestingly, on the two most controversial points - zero discharge and review team veto - Director of Forestry David Pesonen had from the beginning personally recommended the actions eventually taken by the board. He had recognized early the same legal difficulties that OAL found. This was not widely realized.

These rules actually did not go into effect until October 1, 1983. The delay was requested by the Board of Forestry to enable the entire body of Section 208 related rules to go into effect at the same time and to allow for training of agency and industry personnel. Despite many early misgivings about using the water-course concept and the beneficial uses of water to determine protection to be afforded, the system has worked well. Water use has proven much easier to determine than stream class. Review team discussions have tended to center more on protection than on stream classification, surely a more productive form of argument.

LOGGING ROADS AND LANDINGS

Just as controversial and taking even more time to adopt were new rules governing the planning and construction of logging roads and landings. Almost all literature on the subject points to roads and landings as the primary source of sediment contributed to watercourses by logging. At the same time, no other aspect of timber harvesting costs as much as roads and landings. Even small changes in practices can cause inordinate cost increases. Hence, every proposed new rule received a most careful scrutiny and fierce opposition when seen as too costly for benefits received. At the same time, persons concerned about water quality pressed for every conceivable improvement because of the potential to reduce erosion and sedimentation.

A CDF team led by Harold Slack developed a stringent draft of rules that the Board of Forestry first received on November 6, 1980. The board gave the draft wide dissemination before holding its first hearing on July 7, 1981. Industry representatives immediately, as expected, voiced strong concern over cost implications. Chairman Vaux sympathized with these concerns and pointedly requested industry spokesmen to provide the board with a precise breakdown of existing and projected costs.

Dr. Vaux repeated this request a number of times throughout the long ordeal over these rules. At first, cooperation was indicated, but no such figures were ever forthcoming on the grounds that they involved privileged trade information. This was certainly a valid reason for withholding the desired figures, but the lack of information hampered discussion. Section 208 clearly requires that BMPs be feasible, and even environmentally oriented board members expressed willingness to concede on obviously infeasible rules. Still, in the absence of exact numbers, suspicion lingered that industry claims of excessive costs were inflated.

The board held nine formal hearings on these rules, in addition to many informal discussions at meetings held between the hearings. After the July 1981 hearing, hearings occurred the following September, November and December 1981, then continued to January, April, August, September, and October, 1982.

The issues proving most difficult to resolve included standards for culvert sizes - whether to use 25, 50, or 100-year storms as the basis; mapping and/or preliminary marking of temporary roads; design of drainage methods that would not interfere with normal road use; preliminary flagging of landings in sensitive areas; compaction standards; definition of "excessively wet;" costs to small landowners; prevention of culvert failure; maintenance of roads after completion of logging; and many others.

The maintenance issue was not new. The board had grappled with it from the earliest times without a solution. Upon completion of harvesting operations, if the final inspection revealed no violations, the board's authority, except for restocking requirements, came to an end. Yet road and landing failures subsequent to operations often result in serious earth movement. The ultimate solution lay in amending the Forest Practice Act, finally accomplished in 1987.

At the time of these earlier rule hearings, however, the board found a way to adopt an interim albeit less than complete solution. Finding that it had authority over restocking after completion of harvesting, the board, therefore, could require erosion control maintenance on roads used for restocking work. Chairman Vaux noted that enforcement of maintenance standards

would place a large administrative burden on CDF as well as on timber harvesters. The record simply must stay open longer, and regulators as well as landowners must keep more areas under surveillance.

After the April, 1982 hearing, the board concluded that the draft under consideration would result in excessive costs. Compaction, end-hauling of spoil, and full-bench construction requirements seemed especially costly. They ordered a revised draft. The August, 1982 hearing took up the revised draft. The water boards indicated immediately that they preferred the first draft. Industry, on the other hand, still objected to increased costs and argued that the existing rules were adequate.

A new argument popped up during the September hearing. The California Forest Protective Association forcefully contended that the Forest Practice Act only allowed the board to regulate actual timber harvesting, not preliminary work. Therefore, in their opinion, any rule requiring preliminary flagging, mapping or marking was not enforceable. This argument applied equally well to the Watercourse and Lake Protection Rules then still under consideration.

The water boards again urged adoption of strict standards with exceptions allowed only through variances. The Board of Forestry preferred, however, to trust the Registered Professional Foresters to develop alternative practices when writing THPs. The formula for expression of review team concerns written into the Watercourse and Lake Protection Rules was applied here also.

At the conclusion of the September, 1982 hearing, the board voted 7-1 to approve the revised package. The following month, the vote was 5-3 to adopt. The switch of two votes by industry members did not indicate a change of heart. The earlier vote merely acknowledged that the wording was suitable for a later vote for adoption. This two-stage adoption format became standard, resulting from AB 1111 requirements for formal notice of any late wording changes before final rule adoption.

The three industry members of the board predictably cast the three negative votes. They formalized their opposition in a minority report similar to that proposed for the Watercourse and Lake Protection rules ultimately adopted the following month.

OAL finally approved these rules for publication in August, 1983, firmly rejecting the argument that the board lacked authority to adopt rules requiring evidence of preliminary planning. The board requested a delay until October, 1983 to make these rules effective at the same time as the Watercourse and Lake Protection Rules.

Subsequently, a test of the road rules and the THP review procedures came up in December, 1983. In Santa Cruz County, CDF denied a THP because of a proposed road location too near a stream in unstable terrain. An earlier road built along the same route had failed, causing considerable damage to the stream. Moreover, the stream served several neighboring residents as a source of domestic water. The RPF who prepared the plan argued that he had no other route for the road because neighboring landowners would not grant a right-of-way. The board upheld the denial on a unanimous vote, asserting that the RPF had not considered all possible options.

HARVESTING PRACTICES AND EROSION CONTROL RULES

Also intimately related to water quality protection, the Board of Forestry agreed that the Harvesting Practices and Erosion Control Rules required revision to comply with Section 208 standards. The board held its first hearing on this group of rules on August 4, 1981. To keep this action in context, the Watercourse and Lake Protection Rules had been under consideration since the previous January. The board had received the Road and Landing Rules nine months earlier and had begun hearings the month before. All of these rules were under consideration more or less at the same time, and decisions made on one package affected decisions made on others.

The activities covered by these rules may be harder for some readers to grasp than those previously described. These rules address a miscellaneous group of tasks including felling methods, use of tractors and winch/cable systems to drag logs to landings, (called skidding and yarding, respectively) crossing of watercourses by tractors, servicing of equipment, extra precautions for winter period logging, and the all-important construction of waterbreaks. Waterbreaks, also called water bars, are low dams and/or relatively shallow ditches designed to divert water from running down roads. They should direct the flow onto less erodible ground or vegetation.

As with the other rules, Board Member Henry Trobitz immediately urged a study of cost and benefits. Nevertheless, on the whole, this group of rules did not generate the controversies stirred up by the others.

The board continued its hearing until November, then held it over to December, 1981. One major discussion concerned maintenance of waterbreaks built across tractor roads and skid trails. The board considered whether to require maintenance until restocking was completed. The board had done this for truck roads but declined here because restocking would seldom involve tractor roads and skid trails.

As in the other rule packages, the board included a clause allowing RPFs to suggest alternatives to the standard practices. At first this clause required the Director of Forestry to veto alternatives opposed by more than one review team member. The board approved the package with this wording by a vote of 5-3 at its December, 1981 hearing.

The Licensed Foresters Association and the Forest Protective Association both immediately wrote letters of protest to the board. Both objected to the veto provision. CFPA also objected to the requirement to maintain erosion control structures.

About this time the board heard OAL's negative opinion of the review team veto included in other rules. They immediately rescinded the veto rule in this package and requested a new draft. In March, 1982 the board adopted a revised rule, but one a bit stronger than its parallel in the other rules. It retains the Director's discretion but puts him or her on strong notice to seriously reconsider any alternative opposed by two or more review team members. The rule also includes a clause requiring the timber operator to agree to alternatives, thus limiting imposition of impracticable alternatives. The board did not rescind its rule on maintenance of erosion control structures.

Another inconsistency bothered the board. Both this and the Road and Landing packages limited road construction and use under saturated soil conditions, but the two articles did not use the same standards. The board deleted these provisions from this package, then on May 5, 1982 adopted revised and consistent wording. At the same time the board made other minor adjustments. It then directed that the package be held up and submitted to OAL at the same time as the Road and Landing Rules.

Subsequently, a glitch appeared in this rule package. As originally adopted, the rule strictly limited the use of tractors on ground steep enough to require cable and winch systems. This denied the use of tractors to build layouts to cushion the felling of large, valuable trees which otherwise might shatter upon falling. On June 7, 1984 the Board of Forestry agreed to modify the prohibition if the plan submitter explains and justifies it in the THP.

EROSION HAZARD RATING

Underlying the application of many of the Forest Practice Rules is the need to estimate the erodability of soils in the area to be harvested. Limits on the size of clearcut areas, choice of tractors or cable systems to skid logs, spacing of waterbreaks on truck and tractor roads, and other decisions depend at least in part on the Erosion Hazard Rating. Doubtless, too, RPFs could use the rating to design and justify alternatives

to the standard rules. Since prevention of erosion is vital to the elimination of non-point source water pollution, this rating system played a large role in BMP certification. In addition, the rating controls many important logging cost factors, creating a formula for controversy.

The rules adopted in 1974 did not include a statewide standard. The three districts did not even employ standard terms to describe erosion hazards. The coast district had the most elaborate system of the three districts, and on the surface it appeared the most "scientific." It employed rainfall averages and intensities, soil types, and slopes, among other factors. A team of foresters and hydrologists had drawn up the system. In those hectic early years, however, they did their work rather hurriedly, largely by the seats of their pants. Even scientific members of the team questioned the system's validity from the outset, arguing that it would probably need revision based on actual experience.

Experience showed early that the old coastal system needed overhauling. In practice it produced results little better than the more cursory systems in use in the other two districts. For one thing, it gave too much weight to total rainfall. This sometimes resulted in very gentle slopes having high or even extreme ratings where little erosion actually occurred. On the other hand, the other two districts had systems that amounted to little more than educated guesswork that at times also gave less than satisfactory results. Then, too, the lack of uniform terminology caused problems. Clearly, the situation called for change.

To overcome the existing problems, the board decided to appoint a single statewide committee consisting of representatives of the three DTACs. Included were enough experts to weigh the technicalities involved. The board made its appointments on January 6, 1981 and received the first committee report on August 4, 1981. That report included two fairly predictable conclusions: one, that the systems in use did in fact need an overhaul, and two, that something should be done to measure the potential for mass wasting or landslides. The committee confessed that they might have difficulty with the mass wasting issue, an accurate prediction as it turned out.

On September 2, 1981 the board approved development of the committee's concept for a revised system. The board also discussed the technical difficulties inherent in making measurements to determine when a soil might be saturated or excessively wet. A number of good laboratory methods exist, but all use elaborate equipment not applicable to day by day woods operations. In November the board sent the committee's first draft to the DTACs for review, agreeing that the definition of "excessively wet" needed more work.

The board held its first hearing on the package in March 1982. Discussion focused on an index for mass wasting which the committee had proposed, based on a check-list of geologic factors that might indicate a landslide potential. This discussion brought a new player into the drama, the Board of Registration for Professional Geologists and Geological Engineers. This latter board contended that the check-list required the employment of one of their professionals. Timber industry representatives became alarmed that this change could introduce a significant new cost factor in THP preparation.

After a further hearing in April the Board of Forestry adopted the new Erosion Hazard Rating (EHR) system after making changes in the mass wasting check-list hoping to satisfy the geologists. The latter, however, still harbored suspicions. In May, 1982 the forestry board rescinded its previous action, made a few changes in the surface erosion rating, eliminated the mass wasting check-list, and adopted the rest.

The differences between the two boards caused great concern for Dr. Clyde Wahrhaftig, a member of the Board of Forestry and a Registered Geologist. He wrote several letters to the geology board attempting to find a way around the impasse, but with no immediate results. Relations between the two boards remained cordial throughout negotiations. It must be stated for the record that the geology board and especially its Executive Secretary, John Wolfe, were extremely helpful in the early days of Forester Licensing. The regulations for licensing of geologists provided the format for the regulations governing the licensing of foresters. Mr. Wolfe's counsel on many occasions proved invaluable. This background undoubtedly contributed to the civility that prevailed despite the differences.

A key new item in the new EHR system was the adoption of a rule addendum giving detailed instructions on how to compute the hazard rating. OAL staff suggested this device, which has become known as "Rule Addendum #1," as a way to avoid a lot of explanatory details in the rules.

Later, the following August, the OAL review caused the withdrawal of the package for further revision. OAL staff had disliked the use of the term "winter period" without a definition. With the adoption of a definition, the EHR finally went into effect on January 1, 1983.

Throughout the EHR discussion the new system came in for much criticism from the individuals and groups seeking stronger rules. These included predictably the water board staffs, the Department of Fish and Game, Sierra Club and related representatives, and, most notably, Mrs. Helen Libeu of Sonoma County. Mrs. Libeu often addressed the board about many aspects

of the rules, but the EHR held special concern for her. Critics roasted the new EHR because it tended to result in lower hazard ratings in some north coastal areas than would have existed under the former system. Lower hazard ratings, in turn, might allow larger clearcut areas in some places. On the other hand, other areas would have higher ratings than formerly due to the new system's greater accuracy. Nevertheless, critics have not ceased to charge that the new system provides less protection than the old one.

MASS WASTING CONCERNS

Mrs. Libeu gave particular attention to the mass wasting issue and refused to let it die. She cited research indicating that an overwhelming proportion of the erosion resulting from logging comes from a very small number of areas. Further, most of this erosion evidently comes from mass wasting events.[2] She felt that the rules should not ignore such an important item.

At a September 1983 meeting of the Coast DTAC held in San Rafael, Mrs. Libeu insisted that the DTAC take the lead in formulating a new and acceptable mass wasting index. She was convinced that it could be done without causing undue concern among geologists. CDTAC Chair Robert Dean then appointed a study committee made up of John Sweeley, Mrs. Libeu, Fred Landenberger, and this writer to try its hand at the task. Ms. Trinda Bedrossian, a registered Engineering Geologist, was later added to the committee. Ms. Bedrossian was employed by the California Division of Mines and Geology and assigned to work with CDF to review timber harvesting.

This committee first attempted to add a check-list to the Rule Addendum #1, already adopted for the EHR. This check-list would employ carefully worded definitions based on easily observed phenomena that should not involve professional geological interpretations. The intention was to form a rating system giving persons writing THPs a numerical measure of the risk of mass wasting at any given site.

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[2] RAYMOND M. RICE and P.A. DATZMAN. Erosion Associated with Cable and Tractor Logging in Northwestern California. In: Erosion and sediment transport in Pacific Rim steeplands. I.A.H.S., Publication No. 132, Christchurch, N.Z., 1981.

also

J. MARVIN DODGE, LEVI T. BURCHAM, S. GOLDHABER, B. McCULLEY, and C. SPRINGER. An Investigation of Soil Characteristics and Erosion Rates on California Forest Lands. California Department of Forestry and Fire Protection, 1976. 105 pages.

Without going into tedious detail, probably no draft rule proposal ever went through a greater number of complete overhauls enroute to adoption than this one. The CDTAC cut and repasted the draft at least twice before presenting it to the Board of Forestry on March 7, 1984. The board's Forest Practice Subcommittee reviewed the proposal several times, and finally the board set the matter for hearing. The first hearing was held in January, 1985. The board stumbled over what the members saw as confusing technical wording and continued the hearing for further study. After further discussion the following April it was sent back to committee for further reworking.

The product that emerged for a hearing on January 7, 1986 bore little resemblance to the original proposal. Basically it consisted of additional definitions to terms already in use in the rules such as "slide areas," "slide-prone areas," and "unstable areas." Formation of an index had proven impracticable because potential sites of mass wasting differ from one another in ways that defy numerical rating. The new criteria help persons working with THPs to recognize potential trouble spots more readily and thus to develop better site-specific corrective measures. Throughout these discussions, the board emphasized that foresters should be seeking more education in geology than they have been receiving in the forestry schools.

After two more continuations, the board adopted by a 6-0 vote its final version on June 4, 1986 in Redding. Santa Clara County Geologist Berkland and State Geologist James Davis both suggested that the definitions lacked precision. They feared that the forestry definitions might be applied in other contexts. The board thought otherwise.

WATERSHED HAZARD MAPPING

A little known chapter of the controversies surrounding Section 208 involved two agreements directly between CDF and the State Water Resources Control Board. These agreements were termed the Phase II and Phase III projects to distinguish them from the primary project in cooperation with the Board of Forestry. The latter was called the Phase I project, which is considered elsewhere in this and the next chapter.

The Phase II project was a study of mass wasting problems in the North Fork of the Trinity River and Grouse Creek, in eastern Humboldt County. The area had long been noted as having extremely unstable terrain. The field study was contracted to the Department of Water Resources (DWR), an entity separate and distinct from the state water board. Mr. Ralph Scott, a geologist employed by DWR, was engaged as the project leader for this study. The water board intended the study to produce

recommendations for Forest Practice Rules to alleviate problems in extremely unstable areas.

CDF participated in this project to help guide the study team and to provide liaison with the industrial landowners in the area. The agreement required CDF to review the recommendations and provide constructive advice. Finally, CDF was to seek integration of the proposed rules into the rules, regulations, and procedures of the Board of Forestry. In return for these favors, the water board granted CDF funds for one part-time person, Mr. Jim Denny, for two years to perform the liaison duties.

Mr. Scott presented a full color description of his study to the Board of Forestry in October, 1979. He left no doubt of the enormous problems in the drainages under study. In 1982 Mr. Scott completed his field work and submitted his recommended rules to CDF for comment. CDF found many deficiencies in his report. Primarily, he failed to provide any rationale to support his proposals, and he did not take into consideration the many rule revisions then nearing completion by the forestry board. Nor were the proposals worded as rules, but only as recommended practices. Many of the proposals appeared unnecessary to prevent the types of damage described. CDF pointed out the deficiencies and suggested revisions to help integrate the proposals into the rest of the rules.

DWR revised its proposals slightly to restrict their application to the immediate area of the study, but the wording remained essentially as before. The only rationale supplied in support of the proposals was to document the damage that had occurred. The authors did not explain how the suggested requirements would prevent the damage cited. They seemed not to understand the load of justification demanded by OAL, to say nothing of the requirements by the forestry board. CDF concluded that the rules already adopted by the forestry board addressed most if not all of the problems. CDF thus elected not to pursue the matter further and so informed the water board staff.

In the meantime, in 1981, the water board and CDF began Phase III under a direct two-party agreement without DWR involvement. The agreement called for a pilot study of mass wasting potential. CDF would map all recognizable geologic hazards in sixteen quadrangles of the U.S.G.S. 7-1/2 minute series and develop guidelines to prevent damage from logging. The guidelines would be integrated in some manner into the Forest Practice Rules. A highly unstable portion of the north coast in Humboldt and Mendocino counties was the chosen site. The water board would partially fund the study with federal funds supplied by EPA. CDF would provide the rest.

CDF engaged a team of geologists from the Division of Mines

and Geology under the direction of Engineering Geologist Trinda Bedrossian.[3] The work proceeded with some difficulty. Many of the major companies in the area refused to cooperate and did not allow the team onto their properties to conduct the survey. Much of the mapping was done by necessity from aerial photos and with binoculars from distant viewpoints. This considerably affected the accuracy, and it precluded much hoped for detail.

Industry objections centered on fears that the guidelines would be used by environmental agencies to "dry-lab" restrictions into THPs. Company foresters insisted that the mapping was useless because detailed field work and site specific prescriptions are always essential in working around potential landslides. They feared, too, that the guidelines would lead to still another set of generalized regulations to hamper their operations.

Nevertheless the guidelines were completed and made available for use by all parties.[4] CDF concluded, however, that they would not be suitable for inclusion in the Forest Practice Rules. Their site specific nature and the uncertain data underlying some of the suggestions made such use impracticable. Nevertheless, CDF considered them very useful in many situations and encouraged their use wherever suitable.

CDF related its conclusions about both Phase II and Phase III to the Board of Forestry and also to the water board in July, 1982. CDF had another, unstated, reason. It realized that, under the circumstances, the forestry board would not adopt any rules based on the Phase II findings or the Phase III guidelines. The board likely would have thought the idea frivolous. To have made such suggestions could have damaged CDF's credibility before its own board.0>

Unfortunately, the state water board took exception to CDF's stance and notified CDF it would not be paid for its part in both Phase II and Phase III. The water board took the position that CDF should have followed through with rule recommendations, regardless of their feelings about them. This action caused the funds to revert to the federal treasury. Since no large amount of money was involved, CDF elected not to contest the reversion, expecting the matter to end quietly.

Not so. In February, 1985 the water board had under

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[3] TRINDA L. BEDROSSIAN. Watersheds Mapping in Northern California. California Geology, v. 39, no. 2, pp. 34 -38, 1986.

[4] TRINDA L. BEDROSSIAN. Watersheds Mapping in Northern California. California Geology, v. 36, no. 7, pp. 140-147, 1983.

consideration a motion to authorize return of the funds to EPA.

To explain the refund, the proposed motion contained a "Whereas" charging that CDF had refused to perform its obligations. CDF took exception to the charge, insisting that it had performed its contractual duties to the extent feasible. The water board revised the motion to remove the offensive wording. This small dispute did not outwardly affect the ongoing differences over BMP certification, but it does help to illustrate the general climate that prevailed at the time.

CDF intended to proceed with a mapping project of its own following the completion of Phase III. It would have continued the landslide hazard inventory for much of the north-coastal region of the state. CDF contracted with the Division of Mines and Geology for this continued work. A total of sixty 7-1/2 minute quadrangles were completed. A downturn in revenues that necessitated a budget reduction, coupled with industry's opposition to the project, led to its curtailment at the end of 1985. Bedrossian described this project under footnote three. Curiously, despite earlier opposition, many industrial RPFs have subsequently ordered copies of the maps for their own use.

REENTER THE CORPS OF ENGINEERS

After several years of hearing nothing about Section 404 from the U.S. Army Corps of Engineers, the issue suddenly came to life in February, 1986. Several timber companies received letters from the San Francisco district office of the corps ordering them to obtain permits for their activities. These companies all had timber harvesting operations on various streams tributary to the Klamath River. One of the companies complained to CDF and asked for information about the authority of the corps. Upon telephoning the district office, CDF was informed that the corps had recently adopted new regulations under Section 404. These regulations pertained to activities on or near tributaries to Wild and Scenic Rivers.

A review of the federal register of regulations revealed two startling facts. The first was the almost nightmarish complexity of federal regulations. By comparison, state regulations are models of clarity. The second was that, indeed, the corps had just recently adopted rules requiring the permits described in their letters. The question remained, however, whether any authority existed for such rules. Searching for an explanation, this writer visited the San Francisco office of the corps. Corps officials simply pointed to Section 404. When asked about the silvicultural exemption in the section, they responded that it didn't apply to Wild and Scenic Rivers. No such exception to the exemption was evident, however.

The Board of Forestry reviewed the matter with some alarm at its March, 1986 meeting, and instructed their Executive Officer to write to the corps for a clearer explanation. Before that could be done, the mystery unraveled somewhat. It appeared that the corps had reacted to a report inadvertently sent to them by the Department of Fish and Game. The latter department regularly notifies the corps of activities that appear to require permits pursuant to Section 404. Fish and Game is well aware of the silvicultural exemption and does not normally notify the corps of timber harvesting operations. A personnel change had led to a mistake that would not be repeated. With that news, everyone decided to see if the corps would let the matter drop quietly. So far, the strategy has worked.

In the meantime, the State Attorney General's Office began a search for possible legal authority for the new regulation. None could be found after a preliminary search. Deputy A.G., William Cunningham, did say, however, that given the complexity of federal laws and regulations, something might be hidden away somewhere.

TO BE CONTINUED

Thus began the effort to comply with Section 208 of the Federal Clean Water Act. The story does not end here, however. The next chapter will continue the plot as it goes into other rules less immediately related to water quality than the rules covered in this chapter. The next chapter will also outline the negotiations with the State Water Resources Control Board to achieve BMP certification.

Chapter 7

SILVICULTURAL PRESCRIPTIONS and BMP CERTIFICATION

The previous chapter described the evolution of many Forest Practice Rules that have a direct effect on water quality. Section 208 of the Federal Clean Water Act has had the most profound effect on those rules. Section 208, however, requires more than this. While other timber management activities may have less direct effect on water quality than earth moving and stream crossings, they may nevertheless have considerable influence. Foremost among these activities are the harvesting methods chosen to remove the mature timber. Reforestation practices and intermediate stand treatments such as precommercial thinning are also significant. This chapter will cover these matters. The term silvicultural prescriptions, while not completely accurate from a technical point of view, may serve as a group title.

Section 208 also requires attention to such peripheral details as stocking sampling, program administration, and training of timber operators, as well as many subjects covered by CEQA. This chapter will outline these matters and will conclude with a description of the negotiations to secure BMP certification.

Although the chapter concludes with activity related to Section 208, silvicultural matters occupied the board's attention before 208 came into play. These matters will be described first.

MEANING OF SILVICULTURE

In the beginning there was much confusion about the term "silviculture." In professional forestry practice, the term has a relatively narrow meaning related essentially to the control of forest establishment, composition and growth -- the cultivation of forest crops.[1] Because the purpose of silviculture usually is to produce wood products, and because cutting has such a profound effect on regeneration, the design of a cutting system becomes a silvicultural practice. Thus, in lay terms, silviculture has often come to include almost anything that goes on in the forest connected with timber harvesting.

The Forest Practice Act itself uses the term in a less than

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[1] KARL F. WENGER, Editor. Forestry Handbook, Second Edition. Society of American Foresters. John Wiley and Sons, 1984. 1335 Pages. See page 414.

correct way, technically speaking, when it requires THPs to include, "A description of the silvicultural methods to be applied, including the type of logging equipment to be used." [2] Thus, in the rules adopted in 1974, cutting "systems" and silvicultural "methods" were used almost interchangeably, to the confusion of foresters and laypersons alike. Section 208 also uses "silviculture" in a way suggestive of the looser, less precise definition.

With this background, CDF as early as 1976 suggested a revision of the Forest Practice Rules to clear up confusing terminology. In the wake of SB 886, in October, 1977 CDF again tried to have the DTACs and the board consider wording improvements, to no immediate avail. Chairman Vaux at the time agreed with the need to do something and began to push for change. Creation of BMPs in compliance with Section 208 finally resulted in the desired changes, but we're moving ahead of the story.

Other than the general mix-up of cutting methods and silvicultural systems, CDF saw a need to strengthen the criteria for application of selective cutting. As defined in the 1974-75 rules, minimum leave tree standards for selective cutting did not differ from those for the seed tree method. Board member Phil Berry had repeatedly pointed this out at the time of adoption, to no avail. The definitions made clear distinction between the two methods, and in practice selection cutting rarely was taken to the minimum standards. The problem was that when reviewing a THP there could be no assurance that true selection would take place. The impact of the two methods differs considerably, and no one could ascertain the actual impact at the time of THP approval. This issue proved almost as controversial as clearcutting.

OPPOSITION TO CLEARCUTTING

The single silvicultural practice causing the most public concern is clearcutting. It may well be that foresters themselves are partly to blame for the public's opposition to clearcutting. In the early part of the twentieth century, as the forestry profession was starting to gain recognition in the United States, clearcut logging had become a way of life. The pioneers moving westward across North America viewed the forests as an obstacle. Trees had to be cleared for farming and building of cities.

The deep rich valley soils under the hardwood forests east of the Mississippi yielded many benefits following clearing. Few persons recognized how different were the less fertile mountain

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[2] CALIFORNIA PUBLIC RESOURCES CODE, Section 4582, Paragraph (d).

soils underlying western forests. Technology, too, began to provide loggers with powerful equipment that made the clearing of western timber possible over wider and wider areas. By no means was all logging of that era destructive, but much damage did occur.

The young forestry profession made a crusade to halt the devastating logging practices that they saw. Clearcutting had to stop, and the public was propagandized to that end. It wasn't until sometime later that forestry scientists began to realize the desirability of clearcutting as a silvicultural tool when applied properly. In the meantime, many in the public had become conditioned to think of it in negative terms. Add an ages-old almost religious devotion to trees to the dramatic change that clearcutting makes in the landscape; the sum has produced an antipathy to clearcutting that at times borders on hysteria. Nowhere is that antipathy more powerful than in California. Clearcutting has thus led to much debate before the Board of Forestry.

CLEARCUTTING, PRO AND CON

Foresters have come to recognize a variety of benefits associated with clearcutting. On occasions, economics plays a big part, just as opponents often charge. Under conditions of steep terrain and large timber, a cable system usually costs less than tractors, and cable systems favor clearcutting. In other situations, however, cost factors may work in the opposite direction. Where stands contain several sizes of timber, clear-cutting may result in a high proportion of small logs that are costly to handle.

Even where economics might dictate otherwise, clearcutting can often make good silvicultural and even good environmental sense. For example, many species of trees regenerate best and show best juvenile growth under full sunlight. Diseased and insect infested stands must often be cleared and replanted with pest resistant varieties to stop the spread of the pests. Clear-cutting also allows replacement with seedlings that will grow faster and otherwise outproduce the native trees.

Clearcutting can minimize the impacts of logging on steep terrain because of its connection with the use of cable logging systems. Using tractors on steep slopes requires the construction of tractor roads. These roads often then become the source of much sediment running downhill into streams, making cables preferable to tractors in such areas. The trouble with cables is that they can only with great difficulty be coaxed to pull logs in other than straight lines. This makes it difficult to go around standing trees. Hence, the connection between cables and clearcutting. It's possible to log selectively with

cables, but excessive costs usually rule this out.

To be sure, clearcutting has drawbacks. The impact on any given acre will probably be more severe than with a selective cut. On the other hand, the impact occurs only once in a rotation instead of repeatedly as would be necessary under selective systems. Still, the cumulative impact of clearcutting an entire watershed in a short time can prove excessive. Critics, though, probably cite the aesthetic impact more often than any other. Even then, however, when carefully applied and followed with prompt regeneration, clearcut land soon heals. Many persons find aesthetic pleasure in a stand of young, healthy trees.

Because of the undeniable benefits, the Board of Forestry has consistently supported the right of landowners to use clearcutting. With a growing awareness of the negative impacts, however, the board adopted a number of size and spacing limitations, beginning before Section 208 entered the picture.

CLEARCUTTING UNDER THE FOREST PRACTICE RULES

The rules in existence before 1974 actually did limit clearcutting, but timber owners could have an alternate plan approved by the Board of Forestry. The former board had approved a large number of such plans before the courts voided the old Forest Practice Act in 1971. The principle requirement of these plans was that logged areas be replanted quickly. Few plans contained size or spacing limits on clearcuts. The rules adopted for the Coast Forest District in 1974 allowed clearcutting to continue under conditions similar to the former alternate plans. The Northern and Southern Forest Districts, on the other hand, adopted strict size limits.

As related by Arvola, Resources Secretary Claire Dedrick in 1975 insisted on more restrictions in the Coast District before she would approve functional equivalency under CEQA.[3] The rules for the first time thus came to include size limitations based on slope and erodability. They also included spacing limitations that precluded adjacent clearcuts until three years had passed and the area had regenerated.

The first serious problem under the 1975 rules developed when a THP approved for the Kerr Ranch in Humboldt county expired before completion of logging. The plan had called for clearcutting. Kerr Ranch immediately submitted a new THP to continue clearcutting the remaining area. CDF denied the plan because of the time and adjacency rules. On appeal, the board reluctantly

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[3] TOIVO F. ARVOLA. 1976. Ibid. See pages 80-95.

upheld CDF. Board members made it clear, however, that they wanted the rule changed to prevent what they saw as an injustice.

The board adopted the change in June, 1979. It permits adjacent clearcuts under circumstances like the one in question, if the new THP does not increase the total area to be cut.

In February, 1980 the board amended the Northern and Southern District rules to conform with the Coast District. Although few timber owners practiced clearcutting outside the coast district, more owners had begun to express an interest in doing so.

During this period, another issue related to clearcutting emerged on the north coast. Many areas logged under the less restrictive rules in the 50s and 60s had retained a scattering of "seed trees." These trees frequently failed to regenerate the areas. After new owners acquired these lands, their foresters wished to return the lands to productive condition. To do so required not only harvesting the seed trees, but clearing the underbrush to prepare the sites for replanting. Many foresters took to calling their method "overstory removal." This method corresponds roughly with the "removal step" when using either the shelterwood or the seed tree regeneration method. The difference was that natural regeneration had not taken place as expected when using these methods, and artificial means would be employed.

The net result was that the cutover areas under this method often looked very much like clearcut areas. No rule existed to cover this practice, however. CDF decided to delay approval of several of these plans under Section 4555 of the Forest Practice Act to request policy guidance from the board. The board took a field trip to look at some samples and concluded "if it looks like a clearcut, treat it like a clearcut." Thus, the size and spacing limits of clearcutting would apply. Later, this concept would be codified in the rules adopted to comply with Section 208.

SECTION 208 AND THE SILVICULTURAL RULES

The Board of Forestry included the silvicultural rules in its report on changes needed to comply with the BMP standards of Section 208. The choice of trees to cut or leave does not affect water quality as directly as other activities, but the effects cannot be ignored. Removal of trees can affect the rate of runoff and insolation, which in turn affect runoff, water temperature, and sedimentaion.

As with the rules described in the preceeding chapter, the differences among contending interest groups caused the deliberations on the silvicultural rules to run on for a long

time. The board took its first look at a draft of proposed revisions on July 2, 1980 and didn't finally adopt revised rules until September 7, 1982. In between those dates, the board held eight formal hearings and uncounted informal discussions. As one might expect, clearcutting came in for its share of debate, but two other issues actually stole much of the limelight: the selection regeneration method and alternative prescriptions.

Industry objected strongly to proposed new standards for the selection method that would require more leave trees than under the seed tree method. Industry spokesmen argued at length that they needed flexibility to work with timber stands of widely varying quality. Companies had acquired many of these stands from previous owners who had conducted logging several years earlier under less restrictive rules. Often, stand conditions precluded application of neat, text-book selection cutting. Chairman Vaux, CDF, and many environmental spokespersons countered that the proposed rules allowed the use of alternative prescriptions. The foresters needed only to prescribe their methods in enough detail to allow persons reviewing their plans to estimate the end impact. True selection cutting has a much lighter impact than seed tree cutting. If selection cutting is prescribed, it should mean what it says. This became the board's position, and the stricter standards prevailed.

This position led in turn to disagreements over the amount of detail to require in THPs when using an alternative prescription in place of the standard methods described in the rules. Industry generally opposed the amount of detail preferred by CDF. Chairman Vaux took an active role in this particular controversy and insisted on enough detail that someone not conversant with silvicultural principles could understand the proposal. Industry persons predicted that with stricter standards for the selection method, the alternative prescription would receive more use than any specified method. They saw the writing of detailed prescriptions as burdensome.

Among other issues to emerge, EHR terminology caused controversy because of its use since 1975 to limit clearcutting where high ratings prevailed. Adoption of state-wide EHR standards solved that largely semantic problem. The use of methods such as overstory removal that have impacts similar to clearcutting also came in for further discussion. The board codified the policy decision adopted in 1979 to treat all clearcut look alikes as clearcuts. Still another question arose late in the process. Industry sought and received an amendment allowing sanitation-salvage cutting adjacent to clearcut blocks without regard for the waiting period. This practice had not been permitted under the restrictions adopted in 1975.

A number of rather technical issues popped up. As with other rules under consideration at the time, industry argued that

the Forest Practice Act prohibited rules for preliminary work such as sample tree marking. The board rejected this argument, and OAL upheld the decision.

Much discussion also centered on the need to modify the rules for sampling and for reporting on stocking. This chapter will cover stocking sampling in more detail later. At this point, however, questions arose on how to sample stocking where more than one silvicultural method occurred on a single THP. Industry pleaded for rules allowing partial stocking reports to cover this situation, but CDF countered that the law allowed only one stocking report per THP.

Industry saw difficulty in those cases where they might employ more than one silvicultural method in a single THP. Some areas might immediately comply with stocking standards, but adjacent areas could cause a delay in obtaining a report of satisfactory completion for the whole THP. In the meantime, a fire or other disaster could wipe out the entire area, leading to legal difficulties with the stocking requirements. The board agreed with the logic of this position but accepted the CDF position that the law prevented a change. Eventually the law was amended and the board adopted the necessary rules to alleviate this problem.

The board actually adopted the silvicultural rules twice, first in late 1981, then finally on September 7, 1983. This situation came about in part because of the extremely long time that the board spent on these rules. After the first adoption, OAL returned the package because the adoption had occurred more than one year after the initial Notice of Hearing. AB 1111 required completion of the process within one year, or the process must begin again. OAL also faulted the board for not including guidelines for making alternative prescriptions.

Considering that the board had apparently made up its mind at an early point on what the rules should contain, a surprising number of revisions occurred before the final adoption. Most of these revisions were of details, however, and not of major principles.

In general, with the exceptions noted above, the board did not modify the silvicultural rules to the extent they had other rules. Terminology became more standardized among the three districts. Industry lost out for the time being on the selection issue, but gained somewhat on the ability to make light cuts next to clearcuts. Nevertheless, board members from the industry voted not to approve the amended rules. They then submitted a minority report to OAL opposing the majority action. As they had done with the road and landing and other rules, these members argued that the majority had shown no need for stronger rules. Indeed, the evidence suggested to them a need for some relaxa-

tion. As related in the previous chapter, this argument had no effect on the outcome, and briefly caused a strain in relations among members.

Chairman Vaux celebrated the adoption with the statement, "The rules now make sense!"

SIMPSON TIMBER COMPANY REQUESTS PRIORITY REVIEW

As the final stages of silvicultural rule adoption were taking place, Dr. John Walker, then timber manager for Simpson Timber Company in California, made a strong effort to have the clearcut adjacency rule modified. With the industry in the throes of a depression, the legislature had appointed an interim study committee to review the timber economy. Dr. Walker testified before this committee in Eureka on October 4, 1982 that the rule not only caused undue economic hardship but that it also led to unnecessary environmental damage. He contended that the requirement to leave blocks of timber between clearcut areas forced his company to bypass mature timber to harvest immature, rapidly growing timber. He contended further that this caused his company to build and maintain more roads than they would need otherwise. Since research pointed to roads as the primary culprit in sedimentation of streams, he considered the adjacency rule to be environmentally unsound, as well as bad economics.

Dr. Walker then followed up his testimony with an appeal to OAL through a procedure just recently amended into AB 1111 to have a priority review made of the rule. The appeal came right at the time the board finally submitted its new silvicultural rules to OAL. It may be that Dr. Walker intended his review to apply to the new rules. Only he knows. In any event, OAL made its review with respect to the existing but about to be replaced rules. A priority review of rules still in the approval stage was not necessary because they were already on the OAL agenda.

OAL does not conduct these reviews within its own staff. It requires the agency in charge, the Board of Forestry in this case, to conduct the review. OAL then reviews the review approximately as it would a rule adoption package. The Board of Forestry engaged Mr. Earl Sechrist, the retired former Forest Practice Program Manager with CDF, to conduct the review on its behalf. Mr. Sechrist found a somewhat mixed bag of technical data on the subject. He concluded, however, that research supported the spacing of clearcut blocks over time and distance to reduce cumulative watershed effects. OAL accepted this report as sufficient justification for the rule and allowed it to stand.

Dr. Walker's appeal had one rather unexpected effect. The board had adopted a policy that it would ask OAL to make new rule packages effective only on January 1 or June 1, whichever came

next. By this, they hoped to reduce some of the confusion within the industry caused by rules becoming effective willy-nilly throughout the harvesting season. OAL recognized that the new silvicultural rules to some extent modified the rule under appeal. To reduce confusion over that issue, OAL suggested, and Chairman Vaux agreed to have the package become effective immediately. Thus, the new silvicultural rules went into effect on February 10, 1983 rather than the following June 1. It also happened that for a time, none of the other new rules adhered to the January 1 - June 1 schedule.

During the discussions prior to Dr. Walker's appeal, Dr. Vaux offered to reconsider the rules on clearcut spacing. He thought the board might find a formula to relax the rigidity of the requirements where justification existed. This offer failed to forestall the appeal, but it did not die. The concept came back somewhat later in the form of a general alternative to maximize flexibility throughout the rules. The general alternative will come up later in this chapter.

TRANSITION SILVICULTURAL METHOD

Industry representatives continued to press for modification of the selection method to allow more silvicultural flexibility. Changes in board membership and in the CDF had come with the new administration of Governor Deukmejian in 1983. The time seemed ripe to seek changes in this as well as in other areas of the rules. To industry foresters, the new standards for the selection method contained one particularly onerous feature -- the requirement that significant amounts of basal area per acre be left after logging. This requirement was the biggest difference between the old and the new versions.

Basal area, as the Forest Practice Act defines it, means the sum of the cross-sectional areas at breast height of the tree stems of commercial species. Small trees have little measurable basal area, and seedlings have none. Thus, the rule effectively requires well established trees, and seedlings do not count at all. In contrast, with the application of methods other than selection, all trees over two years in place, regardless of size, will count. The stocking value increases with the size of the trees, but seedlings often outnumber large trees.

The matter comes down to one of definition. Only in a few very limited situations do the rules require any particular method. A forester in almost all areas has the freedom to adopt whichever silvicultural method appears best suited to the area. The classical selection method is intended for application to stands having a well balanced mixture of trees of all ages. It is designed to maintain that mixture. Allowing the point count, as the previous rule permitted, could and often did result in a

severely unbalanced age structure. On occasions, it resulted in stands that approached an even-aged structure.

Moreover, and very importantly from the CDF viewpoint, leaving a stand that complied with only the former minimum standards could have a severe impact. In those few cases where the rules mandate use of the selection method, the level of impact is critical. Also, as already stated, the ability to ascertain the level of impact before cutting is essential.

Throughout 1983 the board heard arguments for and against change, much the same as during the original adoption. Finally, at a meeting of the Coast DTAC held in Fort Bragg in late 1983, this writer and Mr. Fred Landenberger of CFPA engaged in a debate out of which a spirit of compromise emerged. The DTAC agreed that the selection method ought to remain unchanged but that an additional new method might accommodate industrial concerns. The two debaters worked up a proposal which the CDTAC accepted and recommended to the Board of Forestry on March 7, 1984. They suggested naming it the "transition" method.

This name came from the fact that industry representatives had argued basically for a method applicable to cutover stands with poor age structure. They had acquired many of these stands from former owners who had conducted harvests years earlier under less restrictive rules. Now, if they were to practice all-age silviculture, they had to adjust stocking to eventually correct the imbalance. None of the classical methods as defined in the rules would accomplish that. As a result, industry foresters were forced into heavy use of the alternative prescription which, as previously noted, they thought too burdensome. Circumstances suggested the need for a method to help in the transition toward a more silviculturally regulated stand.

On October 3, 1984 the board adopted the new transition method as one of several intermediate treatments allowable under the rules. The method allows a combination of point-count and basal area, much as the selection method once allowed. It quickly became one of the most widely used methods. Whether it leads to stands with improved age structure, the future will show.

RESTOCKING OF DAMAGED LANDS

Restocking of lands damaged by fire or pests had created a number of problems ever since the adoption of strict stocking standards. One special problem concerned the treatment of areas damaged after logging but before submission and approval of stocking reports. Many parts of a logged area might have adequate stocking immediately after logging, while other parts might need the full five years allowed by the act. This

situation could result from application of more than one method in a THP area or simply from the spotty nature of a stand. Either way, the whole area would remain at risk for loss of the stocking until approval of a stocking report. A disaster could make the replanting of an entire THP legally necessary, regardless of prior stocking levels.

One might argue that good stewardship would indicate a need to restock, regardless of the rules. True, and no one objected to restocking, only to the potential for finding oneself labeled a violator because of an accident. Time limits in the rules created an extra burden. A disaster early in the fifth year, for example, could make compliance a mathematical impossibility. Moreover, nursery stock for replanting might be in short supply at the time needed, even if the calendar allowed otherwise.

This problem was not hypothetical. It has happened a number of times. During the fire season of 1977, several large fires did extensive damage to privately owned timber in north-central and northeastern California. Fires hit lands owned by the Kimberly-Clark Company particularly hard. The company had a number of selectively cut areas under THP for which it had not yet submitted stocking reports.

Shortly after the fires occurred, Roseburg Lumber Company acquired the lands. Wanting to restock the land as required, but having insufficient seedlings and too little time, Roseburg asked the Board of Forestry for a time extension. The board in April, 1982 granted a five-year extension under terms of a three-party agreement involving the board, the CDF, and the company. Roseburg not only vigorously went to work to replant the THP areas, they also replanted several thousand acres where no legal compulsion existed. CDF and the company certified on July 2, 1986 that the company had completed restocking a year ahead of time. The results have been excellent.

In the meantime, CDF and the board staff developed a set of rule modifications to ease these kinds of problems. The rule now allows the owner to certify that the area was restocked before the damage occurred. CDF will ascertain compliance based on the first-hand knowledge of its inspectors. Since this rule depends on a large amount of judgement and trust, some members of the board expressed concern about possible abuse. No evidence of abuse has surfaced, however.

At the same time, the board updated the rules for restocking of lands damaged before harvesting began. Since 1975 the board imposed only minimal standards in such cases because they did not want to discourage the salvage of damaged timber. On the better sites only ten seedlings need be planted to replace every live tree harvested. On the lower sites no seedlings need be planted. None need be planted if no live trees are cut.

EXEMPTION FOR EXPERIMENTAL AREAS

About this time Jere Melo, an RPF employed by Georgia- area of cutover land to make provenance studies. These studies entail a test of trees from other areas to see how they will perform away from their native sites. Test trees may include non-native species as well as seedlings of native species grown from seed collected in other parts of the range. Foresters use provenance studies to look for sources of trees with better characteristics such as faster growth or more pest resistance. The idea hardly seems controversial, but it was. Mr. Melo's experiences with this relatively innocuous concept illustrate the legal complications and also the animosities that have come to infuse California forestry in recent years.

Mr. Melo approached this writer early in 1984 to obtain an exemption from the stocking standards for his experimental area. The Forest Practice Act specifies that countable trees must come from a local seed source or from a source that the RPF can certify as suitable to the area. The very nature of a provenance study precludes conformance with these standards, hence the need for an exemption.

Public Resources Code Section 4526 allows the Board of Forestry to exempt land used for experimental purposes from the definition of timberland. The effect is to declare it non-timberland. Since the Forest Practice Rules apply only to timberland, this exemption would seem like a simple way to accommodate a provenance test area. Things seldom run so smoothly, however.

The Forest Practice Act grants the Board of Forestry extensive jurisdiction over timberland. The hitch comes from the fact that once the board loses or yields its jurisdiction, some other agency may assume authority. Functional equivalency under CEQA would disappear, probably leading to full CEQA coverage and an Environmental Impact Report. Mr. Melo wanted to take no chance on these possibilities. An amendment to the law seemed the only way out. Still, surely a provenance study would appear so desirable that obtaining the needed amendment would prove easy. Wrong!

The next act in the drama opened in 1985 with the Board of Forestry agreeing to support the concept. Then, Assemblyman Dan Hauser submitted AB 890 to allow the board to establish and regulate such experimental areas. The idea was to allow any landowner to conduct similar studies but with regulations to prevent abuse.

In the opinion of several observers, AB 890 apparently gave

members of the environmental community an opportunity to punish both the board and Georgia-Pacific Corporation. The board had obviously displeased these activists on several recent occasions, especially with its amendments to the rules for Coastal Commission Special Treatment Areas. Georgia-Pacific had apparently earned a special bashing for its proactive stance in seeking rule amendments favorable to the industry. Partisan differences between a Republican Governor and a Democratic majority in the legislature may well have played a part also.

Led by Sierra Club spokesperson Gail Lucas, AB 890 was fought to a standstill and finally killed. The primary argument against it was that neither the board nor the industry could be trusted with such broad discretion. They might even use it to circumvent the whole Forest Practice Act! Jere Melo then gave up the generalized proposal and narrowed it down to a specific 35 acres on Pudding Creek in a specified portion of Mendocino County. This wording found its way into another bill and passed. Finally, on June 4, 1986 the board could adopt a brief set of special regulations for this tiny area, and the study could begin. Anyone else desiring to do similar studies to improve the forest presumably will have to run the same obstacle course.

STOCKING OF LOW SITE LANDS

As originally passed in 1973, the Forest Practice Act mandated a minimum stocking standard of a 300 point count. Trees from seedling size up to four inches in diameter at breast height count as one point. Trees four to twelve inches count as three. Trees over twelve inches count as six. Many other criteria enter into the countability of individual trees. The board may adopt higher standards but not lower. Industry long had argued that the 300 point count was too high for low site lands, that low sites cannot support a stand so dense.

In 1977 industry sponsored SB 835 to gain lower standards for sites IV and V, but it failed passage. Then, in 1978, CDF sponsored AB 3304 to create the California Forest Improvement Program. To help secure industry cooperation in gaining its passage, CDF agreed to include the desired stocking reduction. With support from the administration of Governor Brown and members of both political parties, the bill passed. It established a minimum 150 point count for the low sites.

The measure only authorized, it did not mandate a lower standard. With many other priorities on its agenda, the board did not get around to consideration of the lower standard until 1983. On January 4 of that year the board asked CDF to make a study. The study results were not conclusive; good reasons were found both to hold the line and to reduce the standard. Lacking a firm technical basis to oppose it, CDF recommended the lower

standard. After a hearing held in Redwood City on April 16, 1984 the board adopted the 150 point count for Sites IV and V.

From time to time individual legislators have attempted to raise the legal stocking standards in special areas. At the same time industry has often argued for lower standards even on high site lands. None of these efforts have ever gone far. The board has adopted even higher standards for a number of specific areas, including high-site lands in Coastal Commission Special Treatment Areas and in certain counties.

STOCKING SAMPLING PROCEDURES

This highly technical subject has caused no little confusion ever since adoption of the 1973 Forest Practice Act. The 1945 act did not have stocking standards, only practice standards designed to encourage natural regeneration. Sometimes they worked, but often they didn't. The 1973 act included two basic provisions to assure restocking of cutover land. The first established the basic standard for stocking to be attained within five years after completion of logging. The second required the Board of Forestry to adopt a sampling method to ascertain whether restocking had occurred. It required a single method to accurately estimate not only the total numbers but also the dispersion of trees throughout the THP areas.

A single method was considered desirable because in cases of dispute, a single standard would make it easier for an arbiter to determine compliance. The single method restriction was subsequently eliminated from the act, but the board has never adopted more than one system (unless the waiver of sampling could be considered a "system" -- more about that later.)

As we have seen, the stocking standards allow stocking to be reported on the basis of either tree count or basal area. When using the tree count, the point value of individual trees varies with the size. Sampling required a way to combine the tally of individual trees with measurements of basal area, not the usual way to make stocking estimates.

It wasn't easy, but with the aid of modern computer technology and statistical science, the difficulties were overcome. The method involves a determination of the stocking in several plots laid out in a grid pattern. Fifty-five percent of the plots must have stocking. Presence of basal area or a tree of the right size within the plot will mean that a plot is stocked. To equate differing point values when making a tree count, small trees must lie closer to the plot center than larger trees. If enough plots have stocking, the entire area may be deemed stocked with a high degree of certainty.

Although statistically valid, the system did not meet with universal good cheer. Industry foresters objected that it did not give them the estimates of stocking that they needed for their own decision making. The system yields a result only in terms of stocked or unstocked, whereas foresters often need comprehensive figures tabulated by size or age class. Critics went so far as to call it a "qualitative" and not a "quantitative" system. This criticism had some validity since it does not yield the numerical results desired. Nevertheless, for the purposes of the act, it yields a valid quantitative result.

Measurement of dispersion presented problems of a different sort. Statisticians could think of no statistically sound method to sample dispersion and rate of stocking at one time. They could suggest only a non-statistical way to do it: set an arbitrary limit on the number of unstocked plots lying adjacent to each other. The limit adopted would amount to a policy determination of the maximum allowable unstocked area. It could have no basis in statistical science. The board ultimately decided that five contiguous unstocked plots would define the limit. More than five such plots indicated an area in need of restocking. This decision and its implementation did not meet with cheerful acclaim. The debate was long and lively.

The debate focused on two points. One dealt with adjacency of unstocked plots. The number of adjacent unstocked plots to be allowed was predictably debated. Even more contentious, however, was the method of determining whether certain plots were adjacent. Two plots side by side did not present any particular problem, but what if two unstocked plots in the grid lay at a diagonal to one another? What if the plots lay in a zig-zag pattern, or in a line, or in a circle? What if the plot had a healthy tree that could not be counted simply because it had too little basal area or lay too far from the plot center? These questions and more occupied the board's attention time and again.

The other point of debate dealt with the basic issue of the single allowable method of measurement. Most forest land managers have pet methods for estimating stocking based on their own needs and experiences. These persons urged the board to allow use of private systems to determine compliance with the act. Otherwise, they argued, they would have to make two different samples when one, their own, ought to be enough.

The basic catch was the legal requirement to estimate dispersion. None of the private methods offered any way to make this estimate except by subjective visual judgement. This method would result in too many differences of opinion to provide an enforceable standard. Then, too, initially the law allowed only one method. The board thus was forced to reject the use of private methods. Debate continued on these points from 1974 through the end of 1982 when the sampling methods received a

final overhaul. The debate still crops up from time to time.

Still another issue arose early: the need to sample areas that obviously comply with stocking standards. To require a measurement of plots and submission of plot data for such areas seemed like a case of bureaucratic overkill. Yet, the act of 1973 allowed no exceptions.

CDF agreed with the need to allow an exception for obviously stocked areas. AB 3304, the California Forest Improvement Program bill, in 1978 became the vehicle to clean up this issue along with stocking on low sites. With CDF support in February, 1979 the board adopted its first regulations to allow a waiver of stocking sampling. At first the new rule allowed only an RPF to submit a waiver. The board reasoned that others might misinterpret the standard. Also, the act provided no way to discipline a land or timber owner who might abuse the rule. In 1984 the board further relaxed this requirement to allow the landowner to submit a waiver. The rules continue to bar persons who own only the timber. The board reasons that since such persons often have little interest in the future productivity of the land, they might use less care in making an observation.

The silvicultural rule alterations of 1983 led to amendment of the stocking sampling procedures. Previously any combination of basal area and point-count in a single sample could qualify for compliance with stocking standards under any silvicultural method. The new silvicultural rules barred use of point-count under both the commercial thinning and the selection methods. This change necessitated some fine-tuning of the sampling rules.

This change also provided an opportunity to amend the sampling rules to correct other problems. Experience had demonstrated many deficiencies with the original rules. One difficulty concerned plot spacing. The earlier rules had not specified the distance between plots, only a minimum number of plots equally spaced. As a result, on large THP areas, a sample plot represented a large acreage. On small areas, a plot represented proportionally smaller acreage. This discrepancy affected the way the sample identified unstocked areas. If, for example, a plot represented five acres, the maximum of five adjacent unstocked plots could indicate an unstocked area as large as twenty-five acres. If a plot represented only one acre, five unstocked plots would suggest an unstocked area of only five acres. Besides, this worked a disproportional hardship on owners of small acreages. They couldn't get away with understocked areas as large as those on the big ownerships.

CDF proposed a standardized sampling intensity with each plot representing one acre. This would result in an equal representation of unstocked portions of most THP areas. An exception had to be made for very small THPs because a minimum of

twenty plots is needed for statistical accuracy. Even there, the new proposal provided for the maximum unstocked area to be no more than five acres. To minimize the workload required for large THPs, the plot sampling would be needed only on the least stocked 40 acre block. Thus, a maximum of 40 plots are needed; the former rules required up to 100 plots.

The hearing process to amend the stocking sampling rules began on April 5, 1982 and continued through three more hearings. All the familiar arguments were heard in favor of pet sampling systems and against various aspects of the adjacency rule. The board rejected, as before, the use of more than one sampling system. Industry did manage to win many concessions on ways to break the contiguity of adjacent unstocked plots. The 40-plot maximum certainly reduced the workload in making a sample. In one of its more Solomon-like decisions, the board added a diagram to the rules to assist in defining adjacency. Up to that point many of the board members themselves had been confused on what the proposed adjacency rule meant.

The board adopted the amended rules on October 6, 1982. Almost as soon as the rules went into effect, critics began to lodge complaints. Criticism centered mainly on industry desires to relax the restrictions on use of the selection method. The board had three new members appointed by Governor Deukmejian, giving rise to hopes for rules less restrictive to industry. The board scheduled a new hearing for November, 1983. After a replay of earlier arguments, they opted to make no changes.

The limit of one stocking sampling report for each THP came to an end in 1985 with the passage of SB 398 authored by Senator Nielsen. It allowed a maximum of one stocking report per year for each THP. Thus, the timber owner could restart the clock on the restocking of each year's cut over the life of a THP. Coincidentally, the same bill allowed up to two one-year extensions on the normal three-year life of a THP. As a result, a THP might have as many as five stocking sampling reports. CDF resisted these changes because of extra work needed to keep accurate records. They feared that the changes would lead to enforcement difficulties. Earlier versions of the bill had called for far more sweeping changes, so the final version represented more compromise than might appear at first glance.

SB 398 included a sunset clause effective January 1, 1990. At that time, the law will allow extension of only a few of the new provisions. The timber owner will still be able to submit a separate report of stocking for those areas stocked at the completion of logging. The rest of the THP area will qualify for no more than one single additional report of stocking. Moreover, unless amended, the two one-year plan extensions will no longer be possible. Prediction: all of the existing provisions will be extended before they actually fade into the sunset.

LEGISLATIVE CONCERNS WITH REFORESTATION

From the beginning the legislature has shown more concern for the restocking requirements of the act than for most of its other provisions. Of the many resource conservation standards written into the act, by far the most detailed are the standards for restocking. From time to time legislative committees have inquired about compliance with stocking requirements. During budget hearings in 1980 legislators roasted the director for allowing stocking reports to become approved by default. They suggested that, since the act allows CDF six months to inspect for compliance, no report ought to go unchecked for accuracy. The situation was used as an opportunity to question staff cuts made to reduce expenditures during a tight budget.

Following this lead the legislative analyst has continually questioned CDF about its backlog of unchecked stocking reports. Using this as ammunition he tried for several years to add inspectors. The 1979 changes in regulation that allowed RPFs to forego sampling of obviously stocked areas began to reduce the workload for the department. The downturn in the timber economy at that time also began to help. With the five-year allowance to accomplish restocking, however, a considerable lag existed from busier years. With legislative goading, though, and with the reduced workload, CDF quickly eliminated the backlog.

Legislative concern picked up again in 1987 with two bills on the subject. Assemblyman Byron Sher introduced AB 1629 calling for a report on reforestation success under the act. The same bill called for the Board of Forestry to adopt rules for site preparation practices and maintenance of erosion control structures. The board sponsored and supported this bill in response to recommendations made by the Forest Practice Rules Assessment Team described later on in this chapter. AB 2071 by Dan Hauser called for a study of reforestation success by silvicultural methods. As of this writing CDF is still conducting the required studies.

BOARD OF FORESTRY SUBMITS FINAL REPORT ON 208 TO WATER BOARD

The water boards have always watched the Forest Practice program with keen interest. Their interest naturally picked up during 1980 through 1983 when the forestry board was at work bringing the program into compliance with Section 208. Staff members from the state board and many of the regional boards frequently testified at hearings on rule changes, passionately giving their perceptions of the needs. The North Coast Regional Water Quality Control Board was particularly active at the state level as well as at the DTAC level.

The water boards took an active role in all the rule-making outlined in this and the previous chapters. This activity included forceful participation in virtually all of the hearings and discussions pertaining to the procedural rules adopted in response to CEQA as described in Chapter One. In fact, the forestry board's decisions regarding some of these matters had perhaps as much to do with subsequent debate over BMP certification as did the logging rules. THP requirements, the feasibility analysis, and the general alternative in particular were items of no little concern to the water boards. Their representatives regularly criticized forestry board decisions on these items.

After the Board of Forestry had acted on most of the BMP issues, it took an unexpected action with long lasting repercussions. The board voted to repeal subsection (e) from Section 898.2 of the California Code of Regulations. That clause had required the Director of Forestry to deny THPs that did not comply with state and federal water quality standards. Bill Winchester representing the state water board strongly objected to this action during the hearing. He charged that it would seriously weaken the entire Forest Practice Program.

The forestry board concluded that AB 1111 required either the repeal of Section 898.2(e) or the addition of a large amount of detail. The section as it stood was too vague to comply with the mandates of the Government Code. After a valiant effort to specify all the necessary state and federal standards, the board decided that the effort was endless and repealed the clause. They concluded further that the rule was not needed because the state Water Code already mandated compliance with all federal and state water quality standards. To repeat all these requirements in the rules would simply take up space. Mr. Winchester was not convinced and said so many times thereafter.

After many drafts and much discussion, the Board of Forestry on June 30, 1983 approved its final 208 report for submission to the state water board. This report outlined the forestry board's fulfillment of the recommendations in its first report submitted in June, 1980. In a cover letter Chairman Harold Walt expressed his board's conviction that the program complied with BMP standards.

The State Water Resources Board responded in a letter dated November 2, 1983 asking for an explanation why the forestry board had overlooked so many of their concerns. They said they had given the forestry board ample testimony and written requests for many items not included in the rules. The Board of Forestry responded in detail the following month. Its letter apologized that the format of the report did not permit a point by point comparison with water board recommendations. The letter then went on to itemize the water board recommendations and described

minutely how the board had dealt with each one.

The letter stressed that the forestry board had not ignored a single item. It had, in fact, enacted most of them and could point to chapter and verse. Frequently, the items appeared in the rules in a form perhaps not recognized by the water board, but real nevertheless. The forestry board explained it could not act on some of the recommendations because of various legal restrictions. On others it had ample evidence that the points were infeasible under the terms of Section 208. The letter concluded with a request for prompt action to certify the program as Best Management Practices and to certify the Board of Forestry as the management agency for silvicultural BMPs.

Harold Walt and Carole Onorato, the respective chairpersons of the state forestry and water boards, met several times during the next few weeks. Ms. Onorato responded to the board's letter in a letter dated January 10, 1984. She made no commitments, referring only to their continuing differences on the effectiveness of the Forest Practice Rules to prevent water pollution.

WATER BOARD STAFF ANALYZES FORESTRY BOARD 208 REPORT

The Board of Forestry next received from the water board its staff's analysis of the forestry board's final 208 report, dated January 20, 1984.[4] This analysis identified sixteen issues describing how in their opinion the forestry board had failed to produce BMPs. These issues are summarized as follows:

1. A number of watercourses were not covered by protection zones.

2. The revised rules relaxed the criteria for maintaining vegetation in the Watercourse and Lake Protection Zones.

3. The rules did not require compliance with state and federal water quality standards.

4. The rules did not provide specific and enforceable standards to prevent logging on wet ground.

5. The new EHR allowed larger clearcut blocks than the old rules.

6. Discharge of deleterious waste was allowed in excess of basin plan prohibitions.

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[4] STAFF OF THE STATE WATER RESOURCES CONTROL BOARD. January 20, 1984. Summary Staff Analysis of Board of Forestry Phase I 208 Final Report. 17 pages.

7. Culvert sizing requirements were inadequate.

8. The new road construction standards were little better than the old ones which were inadequate.

9. Rules were inadequate to prevent roads and landings in Watercourse and Lake Protection Zones.

10. Standards for temporary roads were inadequate.

11. Rules did not protect against cable logging when the ground was wet.

12. Cumulative effects standards were inadequate.

13. The unwritten feasibility analysis didn't provide an adequate analysis of alternatives.

14. The rules did not address the use of pesticides.

15. The vague wording generally was unenforceable and little better than existing rules.

16. The new rules contained some improved concepts but lacked clear standards for implemention.

WATER BOARD CONSIDERS BMP CERTIFICATION

The water board scheduled what it called a "workshop" on the issue of certification for March 8, 1984 and a formal hearing on the matter for June 20, 1984. At the workshop, Dr. Carlton Yee spoke for the Board of Forestry. He refuted the water board staff analysis point by point, elaborating on the same arguments contained in the board's letter of the previous December. He stressed the need for flexibility, not only for practicability but for better protection.[5] Other witnesses repeated essentially the same arguments pro and con that the forestry board had heard many times. Industry testimony supported the forestry board's position on certification while stressing the belief that the rules went too far in many ways.

Before the hearing on June 20, the state water board developed a draft resolution on which the hearing centered. In this proposed resolution the water board indicated a willingness to grant conditional certification for four years. This

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[5] CARLTON S. YEE, Ph.D. March 8, 1984. Request to State Water Resources Control Board for 208 Certification by State Board of Forestry. 50 pages.

conditional certification would be based on the development of a satisfactory Management Agency Agreement between the two boards. The forestry board would have to agree to adoption of several policies to alleviate water board concerns about implementation of the Forest Practice Program. They would have to agree to pursue legislation to allow rules requiring maintenance of roads and erosion control structures after logging. They would also have to seek legislative authority to regulate intermediate silvicultural activities, including pre-commercial thinning and reforestation. Finally, they would have to agree to develop a joint four-year Monitoring and Assessment Plan, abbreviated "MAP."

Certification would automatically terminate after four years. The findings of MAP would then determine whether to continue certification. In all likelihood MAP would indicate needed improvements, and future certification would hinge on whether the forestry board took favorable action at that time.

The Board of Forestry decided, albeit rather reluctantly, to accept the conditions of the proposed resolution. At the water board hearing, the forestry board's testimony primarily addressed clarification of details. The timber industry, as might be expected, urged certification with no conditions. They argued that no state, including many with BMPs already certified, had rules as stringent as even the previous rules in California. The environmental spokespersons countered that even conditional certification was a sell-out to the polluters. The water board adopted the resolution on June 21, 1984.

MONITORING AND ASSESSMENT PLAN NEGOTIATIONS

Board of Forestry, CDF, and water board staffs immediately went to work on MAP. It quickly became apparent that at least two widely differing perceptions existed as to the meaning of the water board's resolution. At the most fundamental level were questions of which agency would control MAP. The water board staff saw their board as completely in charge, while other conferees saw a need for co-equal direction. A sharp disagreement centered on program elements not covered by rules. Water board staff insisted that no practice could qualify as a BMP if not covered by an enforceable regulation. Forestry negotiators rejected this premise.

Still another difference arose over the limits of water board authority to control activities of the forestry board. Water board staff had proposed that MAP oversee the amount of public participation allowed by the forestry during future rule development. They based this on Section 208 requirements for public participation in making the initial study of BMP needs. Dr. Yee suggested at one point that apparently the turf battle

still raged.

Seemingly endless conferences among staff representatives took place over the next twelve months. The numbers of conferees kept growing. First, the timber industry insisted on a right to take part as a condition of cooperation with the study. Certainly, landowner cooperation would be essential in the absence of legal authority to enter private lands to make the study. Moreover, few owners would grant permission for study teams to enter their lands if the study was not properly designed. Industry designated Mr. Matt Anderson from the California Forest Protective Association as its representative. When environmental groups heard of this, they also wanted to participate. Because of its concern with water quality, the Department of Fish and Game sent a representative. EPA sent observers.

Many differences arose over the study design. Drafts flew back and forth among conferees. Finally, by May, 8, 1985 Dr. Yee reported to the forestry board that an acceptable design appeared to have been developed. Work had now begun on the Management Agency Agreement. Still, some timber companies did not care at all for the study design. What finally sank MAP, however, was not these problems, but the cost. Estimates prepared by water board staff indicated a cost approaching $4,000,000. It quickly became apparent that no legislature would appropriate that kind of money for a study that surely would satisfy no one when finished. Moreover, even the need for a study remained in question. These factors made legislative support all but impossible.

MAP ON HOLD - BOARD CHAIRS APPROVE QUALITATIVE STUDY

By this time, Governor Deukmejian had replaced Ms. Onorato with Mr. Raymond Stone as Chair of the State Water Resources Control Board. Forestry board chairman Harold Walt began direct personal negotiations with Mr. Stone over the impasse. They quickly worked up an agreement among the two boards, CDF, the Department of Fish and Game, and the Forest Protective Association. This new agreement called for a one-year qualitative assessment of the Forest Practice Program. Each party to the agreement would have one member on the study team, except that the Board and CDF would together designate only one representative. That person would be someone not connected with Forest Practice Enforcement. The new study would not necessarily replace MAP but would evaluate the need for the more detailed, quantitative study. Perhaps if the qualitative study indicated a real need, MAP would receive a more favorable reception by all parties. The Board of Forestry approved the agreement at Truckee on Sepember 4, 1985.

THE GENERAL ALTERNATIVE

It's necessary, now, to back up and relate an important decision of the Board of Forestry that for a time had a bearing on BMP certification. The dust had barely cleared after the water board hearing on June 21, 1984 when the California Forest Protective Association proposed a major new amendment to the Forest Practice Rules. In its simplest form, the amendment would allow RPFs when submitting a THP to propose an alternative to any rule. RPFs would be expected to show how the alternative could protect the environment at least as well as the rule they wished to replace. The idea grew out of Simpson Timber Company's 1982 effort to change the rules governing clearcut spacing. In fact, Simpson foresters led the way in encouraging adoption of the new rule. This new proposal landed on the forestry board's agenda on July 10, 1984.

The amendment raised doubts for a time in many quarters whether it would torpedo the hard-won conditional BMP certification. Critics of the Board of forestry cited it as an example of bad faith by the industry and strongly urged the board to reject it. These critics were convinced that it would be used to circumvent any difficult rule and that substitute practices would do more harm than good. After all, they pointed out, it had taken a nine member board several years to hammer out even the "weak, ineffective" rules that they had adopted. Now, an RPF and two or three review team members could in just a few days whip out a substitute rule with no public review. The critics went on to marshall arguments to show how CDF could not be trusted with such awesome responsibility.

The board pondered the amendment for a month, then in August, 1984 sent it to the three DTACs for review. At this point CDF was unsure of its own position on the issue. Many staff members feared its effect on BMP certification. The alleged weaknesses of the existing rules had given the water board a great deal of trouble. This amendment CDF staff feared, would make matters much worse. Nevertheless a way was found to let industry have the rule without "giving away the store."

Without question, flexibility in the rules is a virtue. It is absolutely impossible to write rigid rules to cover every possible condition that might be encountered in the forest. In the hands of honorable people who know what they're doing and who respect the environment, the best rules are the ones that allow the most flexibility. The environment will benefit as much as the economy. A rigid rule can as readily serve as an excuse for a bad practice as an incentive for a good practice. This rule would certainly maximize flexibility. The problem lies in all those caveats of "honorable," knowing" and "respectful." Which way would the flexibility be used? The secret lay in providing flexibility, but within strict limits.

Devising the limits became the game. As this book has shown, many of the rules already included clauses to allow alternative practices where justifiable. What could be done here that would improve on what had gone before? Obviously many areas of the rules had to be placed out of bounds for any alternative. These areas included buffers to protect wild and scenic rivers, rule intent sections, standards that were part of the Forest Practice Act, definitions, ratings, rule standards, and, finally, extra sensitive areas such as the Coastal Commission Special Treatment areas, and special county rules. Then, too, the Director of Forestry would have to give very, very careful consideration to review team opposition.

Perhaps most important of all, though, was the requirement that the alternative "be explained and justified by clear and convincing evidence" in the THP. Up 'til now, the alternatives only required something like a clear statement of need and justification. Furthermore, lawyers love this sort of language. The board's legal counsel insisted that this wording placed the burden of proof squarely on the submitter.

Industry proponents bridled at the numerous restrictions placed in the way of flexibility. Environmental opponents distrusted every caveat and predicted that resourceful RPFs would find a way around them all. They would pillage the land, and CDF would fiddle while it happened. Gale Lucas of the Sierra Club contemptuously referred to the amendment as an "exemption from the rules." Assemblyman Byron Sher called it "inconsistent" with the intent of the act.

Despite the rhetoric, the Board of Forestry approved the wording at its meeting in Truckee on September 4, 1985. This meeting was the same one at which the board approved the one-year qualitative review of the Forest Practice Program to break the log-jam over MAP. The next month, the board adopted the rule. The world hasn't fallen apart yet.

QUALITATIVE STUDY BEGINS

Now, back to the qualitative study. Almost immediately after all parties had approved the agreement, they appointed their representatives to the study team. As the water board representative, Mr. Gaylon Lee came to be the principle spokesman for the team. The other three members were Mr. John Popelka for CDF and Board of Forestry, Mr. James Steele for the Department of Fish and Game, and Mr. Scott Warner of Southern Pacific Land Company for the Forest Protective Association.

The study design adopted by the team called for visits to 100 representative THP areas that met the following criteria:

1. Filed and operated under the current rules.

2. A timber harvest area of at least 10 acres.

3. Site harvested before or during winter of 1985/86.

4. Class I, II, or IV waters within or adjacent to harvested area.

Some of the THPs were specially selected because one or another agency had background data useful in making the judgments necessary to complete the study. Most, however, were drawn at random from a larger group that met the stated criteria.

The study objectives were defined as follows:

1. Identify the existing and potential effects on water quality and its beneficial uses resulting from timber operations conducted under the current rules and process.

2. Evaluate the general effectiveness of the current rules and process in protecting water quality and beneficial uses.

3. Provide suggestions for appropriate monitoring programs where potentially significant water quality or beneficial use effects can occur.

4. Provide suggestions for appropriate changes where timber operations conducted under the rules and process do not appear to protect water quality or beneficial uses.

The study team began field work in the early spring of 1986 and finished the following December. CDF and landowner representatives, usually RPFs, accompanied the team on almost every visit. The Board of Forestry and The State Water Resources Control Board held a joint field meeting in Humboldt County in July, 1986 and visited a selected THP with the team. The team documented field observations at each site. They solicited information from persons who could supplement their observations. The field assessment information was compiled in a computer database and analyzed for trends and supportable findings.

The team published its findings in April, 1987.[6] These findings, too lengthy to reproduce here, included a number of problems primarily caused by a need for better enforcement of the existing rules. Where applied properly, the team found the rules generally to be adequate. The team recommended a number of rule changes that went beyond the legal authority of the forestry board. These included rules governing site preparation prior to replanting and rules for maintenance of erosion control structures. Other recommendations urged several relatively minor changes in rules affecting water bar spacing, deeply cut tractor roads, temporary stream crossings, and for road planning, construction and maintenance. Finally, the team urged enforceable performance standards to clearly define rule intent.

Most of the team's recommendations dealt with administration of the program. These included a recommendation for an agreement among the review team agencies to clarify responsibilities. The team went on to suggest that all timber operators pass an examination before receiving a license, better assignment of responsibility on timber operations, improved THP content, more training and education of all parties, and stronger enforcement.

BOARDS RECEIVE REPORT OF ASSESSMENT TEAM

On May 26, 1987 the state water board held a hearing on the report of the assessment team. At the request of the forestry board, the water board agreed to hold open the period for comment until the next July 6. That gave the forestry board time to review the report and to receive public comment before making its response. The forestry board then held its own discussion of the report on June 3 and conducted a hearing on June 25.

At the June 25 hearing, Ross Johnson of the CDF reported that his agency had begun to implement most of the study team's recommendations for enforcement and training. Several recommendations would require legislation. The forestry board could begin to consider a few of the other recommendations immediately. CDF, however, could advise only two changes. One would strengthen standards for use of existing roads and the other would require consultation between RPFs and timber operators.

The Professional Foresters Examining Committee asserted that CDF must share with RPFs who prepare THPs the responsibility for better work. They urged CDF to continue auditing THP quality and

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[6] GAYLON LEE, JOHN POPELKA, JAMES STEELE, SCOTT WARNER. April 24, 1984. Final Report of the Forest Practice Rules Assessment Team to the State Water Resources Control Board. 142 pages.

to report repeated substandard performance to their committee for possible discipline. In the same vein, Gary Rynerson of the California Licensed Foresters Association urged the boards to retain RPFs as the lead persons in decision making on timber harvesting. His organization favored cooperative training programs such as those recommended by the study team.

John Ladd spoke for the water board, and reminded the forestry board that more than certification was at stake. The water board would lose the power to place waste discharge requirements on timber operations once they granted certification. He described the certification options open to his board. The water board could grant it unconditionally, condition it with a management agreement, or delay it until certain conditions had been met.

Industry generally urged the forestry board to go for unconditional certification. Environmental representatives favored delay until the forestry board complied with all recommendations. The forestry board then moved to accept the study report without endorsing all of its comments, to report to the water board on its efforts to work toward improvement of water quality, and to urge full certification. The forestry board would make timely progress reports to the water board, and the water board should reexamine the question of certification again in five years.

LEGISLATION EXPANDS THE FOREST PRACTICE ACT

Two recommendations made by the 208 study team stood out from the rest. These two called for rules to govern site preparation for reforestation and to require continued maintenance of erosion control measures. As noted previously, the board could not act on these recommendations for lack of authority. Both matters had come before the board many times since 1974 and had many supporters. With the impetus of the study team recommendation, the board moved immediately in July, 1988 to seek the needed authority.

The board went to work in harmony with one of its most persistent critics. Assemblyman Byron Sher had previously introduced AB 1629 calling for a study of reforestation success. Assemblyman Sher was more than happy to amend his bill to include the recommended improvements. This measure easily passed, becoming Chapter 987 of the Statutes of 1987. The amendments call for the board to adopt the authorized rules by November 1, 1988.

WATER BOARD CERTIFIES BMPs

The next task for the staffs of the water and forestry boards was the Management Agency Agreement. Ross Johnson, current CDF Manager of the Forest Practice Program, and Gaylon Lee, member of the study team from the water board staff led this effort. That agreement called for conditional certification of the forestry BMPs. The Board of Forestry approved the agreement at its January 5, 1988 meeting. The water board approved the agreement on January 21, 1988. The agreement was finally signed by all parties and made effective as of February 3, 1988.

The agreement requires the Board of Forestry to work toward the improvement of its Forest Practice regulations and other program elements to ensure protection of water quality. The forestry board must follow the recommendations of the study team, adhering to a strict time table for accomplishments. Among the most immediately targeted items were site preparation practices, long-term maintenance of erosion control structures, improved requirements for evaluating cumulative effects, start-up date notification for timber harvesting operations, and mandatory training for timber operator licensees.

The forestry board has made good progress in meeting its obligations. The regulations slated for adoption in 1988 were completed almost on schedule with the final adoption of erosion maintenance and site preparation rules on March 7, 1989. CDF has adopted a more comprehensive set of guidelines for evaluating cumulative effects. A rule requiring notification of the start-up of logging went into effect on January 1, 1989. OAL temporarily stopped the rules requiring training for new timber operator licensees. The board stuck with the issue, however, and new training requirements went into effect January 1, 1989.

The agreement does not require slavish obedience to the study recommendations, only that the forestry board must work diligently toward their accomplishment. The agreement specifically recognizes that many of the goals may be accomplished by other than regulatory means. Still, the forestry board must report regularly to the water board on its progress. The water board will monitor progress and may, of course, withdraw certification at any time it deems progress to have been unsatisfactory.

EPA DELAYS CERTIFICATION

With the agreement signed, the water board submitted its certification to EPA for federal certification. At this point, matters have stalled. EPA apparently questions whether they can certify the program as BMPs with so many uncompleted actions still facing the forestry board. Stay tuned.

Chapter 8

FIRE, INSECTS, DISEASE, WILDLIFE, and the ENVIRONMENT

This chapter gathers together a wide ranging group of rules designed to protect the forest and its natural inhabitants. The title suggests only in a general way the subject matter covered in the next few pages. Besides the items identified in the title, the chapter will include rules touching on recreation, grazing, wilderness protection, desert plants, wild and scenic rivers, aesthetics, and more. Despite their disparity, these rules do have a number of characteristics in common. In the first place, they have little to do with water quality or with Section 208. Consequently the water boards gave them only casual attention. Moreover, with only minor exceptions, the discussions centering on these issues aroused surprisingly little controversy. Debates usually concentrated on details, not on principles.

As a group, the matters covered here greatly affect the quality of the forest as most people view it, perhaps as much as any of the more controversial issues. The Forest Practice Act gives them a high place in the scheme of things. Besides timber and water values, the act specifically lists fisheries and wildlife, range and forage, recreational opportunities, and aesthetic enjoyment as deserving of protection. The act does appear to rate these values slightly below timber. "The maximum sustained production of timber products" is to be achieved while merely "giving consideration to" the other values. Nevertheless, their presence in the act prevents them from being ignored.[1]

Surprisingly the act ranks water related values among those designated for "consideration" only. Regardless, water values have come to occupy a high rank, having received their promotion from other legislation. Many experts have endorsed that view, including former Board of Forestry Members Phillip Berry and David Pesonen. (The latter also later served as CDF Director.) These persons insist that the Porter-Cologne Water Quality Control Act and the Federal Clean Water Act together have made water protection equal to timber production. They have been seldom contradicted. Subsequent events suggest that they may even have understated the case for water. This history recognizes water's priority by the space granted to it in the previous two chapters.

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1 CALIFORNIA PUBLIC RESOURCES CODE, Sections 4512 and 4513.

INTERMIXED GRAZING AND TIMBER

The "miscellaneous" issues began cropping up quite early. In 1976 ranchers whose lands supported a mixture of grass and timber complained that stocking requirements hurt their operations. Their timber had commercial value, and they wanted to continue growing timber. To maintain the required timber stocking, however, led to shrinkage of their intermingled grasslands. They sought a way to have both. Many ranchers simply obtained permits to convert their timberlands to grass, giving them the freedom to do pretty much as they pleased. The complainants considered this dishonest and hoped instead for some kind of relaxation of the stocking requirements.

The board appointed a study group, which they called the Multiple Use Committee, with retired U.S. Forest Service forester Grant Morse as chair. After nearly a year the committee reported back to the board in October, 1977. They could arrive at no clear solution except to urge CDF and those who prepare THPs to carefully delineate between grass and timber lands. This could excuse the true grasslands from having to meet stocking requirements. Since then the board has refined the rules to allow exclusion of areas not normally bearing timber, thus nearly eliminating this problem.

RECREATIONAL TRAILS

Another early issue concerned problems with special treatment areas and recreational trails. The board had adopted a definition for special treatment areas that included buffers around a number of specified types of scenic and historical areas, key habitat areas, ecological reservations, and so forth. The silvicultural rules then required careful application of timber cutting in such areas commensurate with the values under protection. The controversy over standards for selective cutting revolved in part around the need to protect special treatment areas.

The U.S. Forest Service and other federal agencies in the early and mid 1970s were developing recreational trails through the Sierra Nevada Mountains. The Pacific Crest Trail, because of its length, necessarily crossed a lot of private lands. The question was, should such trails be granted special treatment area status? Forester Hal Bowman brought this question to the board in February, 1976, and the board set a hearing to consider a rule amendment for the following April.

Industry foresters, including Mr. Bowman, requested that the trails be excluded from special treatment areas. In the first place, they argued that much of their land could become subject to restrictions seriously hampering timber management. Then,

too, they believed it wrong to try to hide all evidence of timber management from the public. The trails could give them a chance in the long run to demonstrate how proper forest management works. Unless their hands were tied by restrictive rules, they would be happy to cooperate with the trail programs.

The Forest Service agreed with the industry and testified in favor of the exclusion. Their spokespersons had one very practical argument -- they had no power of eminent domain to condemn private land for trail rights-of-way. Lay on too many disincentives, they argued, and landowners would simply withhold permission for the trails to cross their lands.

The original amendment adopted by the board in June of that year specifically excluded the Pacific Crest Trail from special treatment areas . A few years later, as the state got into the trail building business, the board extended the exemption to other recreational trails.

The exclusion became somewhat controversial in 1982 when the state Department of Parks and Recreation sought special treatment for a portion of the Coastal Trail. Georgia-Pacific Corporation had filed a THP to harvest an area south of Sinkyone Wilderness State Park, and a proposed trail easement crossed the THP area. State Parks Director Pete Dangerman requested and CDF withheld approval of the plan as allowed by Section 4555 of the Forest Practice Act. The park department with CDF support suggested a special mini-subdistrict of the Coast Forest District with special rules to protect the view from the trail. The board, noting that the State Recreational Trails Act didn't require such protection, refused to go along with the idea. Forestry Director Pesonen then allowed the plan to become approved by default.

JOSHUA TREE CUTTING

Early in 1976 the board received a request from the San Bernardino County Planning Department to establish restrictions on the harvesting of Joshua Trees near Victorville. It seems that a market had opened up for Joshua Tree lumber. The tree produces wood having several unique and desirable features. Its boards are extremely tough and somewhat flexible. At one time, for example, they were used to make splints for broken bones. Several land developers had started clearcutting the trees to take advantage of the market in anticipation of eventual land development. Since the trees are a valuable part of the desert landscape and take a long time to grow, the county hoped for some regulation. Apparently they considered the Forest Practice Act an appropriate vehicle to regulate the cutting.

The board heard testimony but decided against any state regulation. It would have required a redefinition of timberland

that might have opened a pandora's box of other problems such as regulation of cutting in valley riparian areas. The next chapter will discuss some of these issues in more detail. At this point, the board concluded that the county had all the authority it needed to meet any Joshua Tree needs.

TIMBER HARVESTING IN PROPOSED WILDERNESS AREAS

In the 1970s both the U.S. Forest Service and the Bureau of Land Management became involved in the purchase of private lands to enlarge or round out Wilderness Areas. The Board of Forestry found itself caught up in a number of disputes between the agencies and the owners over delays in negotiations.

In mid-1979 CDF withheld approval of a THP because it lay within an area designated by the second Roadless Area Review study as a probable candidate for wilderness area designation. The U.S. Forest Service had indicated an interest in purchasing the property to prevent its being harvested so as to protect its integrity as a possible wilderness area. Existing rules allowed denial of plans where federal acquisition was authorized, funded and imminent. The area in the plan did not meet these criteria, however, because Congress had not yet acted on the California wilderness bill. CDF believed the issue required a policy decision by the board and requested adoption of a rule to allow the denial of this and similar plans. The board agreed with CDF and on July 25, 1979 adopted the requested measure as an emergency. The next September, the board made the rule permanent, but with limitations.

At the hearing several board members expressed concern about the effect of their action on the price of any properties under consideration for wilderness purchase. They feared that denial of harvesting could drive prices down. They feared, too, that it could cause the federal agencies to dally. To offset these possibilities, they included a sunset clause to kill the measure as of October 1, 1980.

Later in 1979, CDF denied a THP submitted by Harwood Lumber Company for an area in the proposed BLM Kings Range Wilderness Area. Harwood appealed the denial to the board, which then set its hearing for February, 1980. Harwood's representatives testified to their willingness to sell the land to BLM but said BLM had delayed completion of the purchase. Having an investment in timber and land tied up for so long had become costly, and they needed either to harvest the timber or to speed up the purchase. BLM testified to their willingness to buy but pleaded that federal agencies need a lot of time to complete land purchases.

The board upheld CDF's denial but made it plain in its

motion that it would probably approve a plan if the purchase was delayed past January, 1981. Evidently BLM found a way to expedite the purchase because Harwood did not have to submit another THP.

Similarly, pressures came in early 1979 to deny THPs in the vicinity of the then proposed Sinkyone Wilderness State Park in northwestern Mendocino County. The park has since been acquired but at the time nothing was certain. Several board members, including Phil Berry, made a private field trip to the Sinkyone area. The members who went on the trip supported the park in concept. Nevertheless, at the time the board majority opposed the denial of THPs to protect an uncertain park.

In 1984 Assemblyman Bates introduced AB 3934 to declare a moratorium on timber harvesting in the Sinkyone Area. CDF opposed the bill, and it went nowhere. Congressman Bosco made a suggestion in 1985 that Jackson State Demonstration Forest be traded for land in the Sinkyone area to enlarge the park. He thought this might help end the controversy over the EPIC v. Johnson case described in Chapter One. Both the board and CDF opposed the trade, and it never did receive serious consideration.

WILD AND SCENIC RIVERS

State Resources Secretary Huey Johnson kicked off a whirlwind of controversy in early 1978 when he released a set of proposed management plans for several state wild and scenic rivers. The Wild and Scenic Rivers Act required the secretary to develop plans for specified portions of several rivers included in the act. On the Smith River, the act was less specific, referring broadly to the Smith and its tributaries. Most observers believed that the act referred only to the three main forks of the Smith, but Secretary Johnson took his plan well up into the headwaters. The plan covered virtually every minute tributary.

The rub came from the restrictions on timber harvesting called for within the areas visible from the rivers and the many tributaries. The plan would have placed nearly all the timber in Del Norte County within the planning zone. The industry came unglued. The Board of Forestry gave the plan a mixed review in May of that year, but saw no role for itself at that point except to comment. That situation changed in March, 1979 when Secretary Johnson asked the board to adopt a set of interim rules to control timber harvesting in the plan areas.

The board wrestled with wild and scenic rivers at meetings in April and June. CDF formed a task force to consider possible rule development. The task force held a workshop on May 22,

1979 then presented a visual analysis of seven THPs to the board in July. The board considered the matter further in September. The task force presented its visual management report to the board in November, and the board spent the next three months going over it. They never did reach a conclusion.

Secretary Johnson evidently broke his pick on the Smith River proposal. Arousing strong opposition, the issue virtually died during 1980, and the pressure to adopt special regulations came to an end. Toward the end of that year, Secretary Johnson turned his attention toward efforts to have the rivers taken into the federal system. Eventually his effort succeeded, but that story belongs in a different book.

The legislature in 1982 amended the Wild and Scenic Rivers Act to eliminate the preparation of management plans. The amendment had minimal effect on the Forest Practice Rules. It simply established in the law the 200-foot wide special treatment area used by the board in its rules. The same act established a set of severe penalties for forest practice violations within the Wild and Scenic Rivers special treatment areas if the violations led to significant environmental damage. Misdemeanor fines could go as high as $5,000 and penalties for civil damages as high as $10,000 for each violation. The act also created a stop-order procedure to prevent violations. Its inclusion here helped secure adoption of an identical stop-order for violations of the Forest Practice Rules in all other areas.

SNAGS RETAINED FOR WILDLIFE

Snags are standing dead trees. To cut or retain snags became an emotional issue which tended for a time to pit CDF foresters and firefighters against bird and wildlife advocates. Industrial safety inspectors also spoke out on snags. Timber industry representatives had somewhat less at stake and tended to sit back and allow a different set of antagonists engage in this particular tug-of-war.

Foresters in the fire protection agencies have long held a very negative view of snags because of the way they burn in a wildfire. Being dead and usually very dry, groundfires quickly run to the tops where they burn fiercely, throwing sparks for long distances. Moreover, they also tend to attract lightning and to ignite easily when struck. Thus, foresters concerned with fire protection have long preferred to have all snags felled as soon as possible. Since 1945 the Forest Practice Rules generally required the felling of snags over certain diameters and heights that stood within timber harvesting areas.

Safety experts have nearly the same opinion of snags as firefighters because of the hazards they present to woods

workers. Although snags are always dangerous, it's safer to fell them deliberately than to have one fall unexpectedly. Felling of snags is often very hazardous because of their tendency to fall apart piece by piece or to topple over unexpectedly when disturbed. Of course, cutting is not the only way to drop one. Blasting is very effective, provided that care is taken to prevent fires and other hazards caused by blasting.

Bird and wildlife advocates, on the other hand, regard snags as very valuable habitat for many creatures. Many bird species build nests in snags by hollowing out cavities in the decaying wood. These are the primary nesters. Others will occupy the abandoned nests of the primary nesters. Insects thrive in snags and become food for many kinds of birds and animals. Nothing takes the place of snags in this order of things.

The differences over snags came to a head soon after implementation of the 1973 Forest Practice Act. Initially, the Board of Forestry continued almost the same snag felling rules that had existed under the former act but promised to study the need for changes. In the face of the many conflicting views, compromise was in order. Unfortunately, events in the two hectic years of 1974 and 1975 precluded work on snags.[2]

Late in 1975, after dealing with the myriad issues connected with CEQA, the board got around to appointing an ad-hoc committee on snags. That hard-working committee quickly got down to the business of building a workable compromise. Fire fighters had to admit that only certain snags give them real trouble. The trouble makers were those snags near roads and trails suitable for use as fire breaks and those in elevated locations such as ridge tops. On the other side, persons favoring snag retention had to accept the very real risk to fire control inherent in snags standing in critical locations. This part of the compromise came together without great difficulty. Rules proposed for adoption greatly reduced the number of snags that had to be felled and encouraged retention of the rest.

Bird and wildlife advocates have lost out on one aspect, however. Those persons had pressed for a specific requirement to leave certain snags. This demand caught the attention of the timber industry. Snags frequently have commercial value for varying lengths of time after death. Redwood snags may last for a century or more, but other species will decay much more quickly. The value of such snags will quickly deteriorate if left standing very long. A requirement to leave merchantable snags could thus amount to a taking of property without compensation. Industry representatives hold the view that this expressly violates Section 4512 of the Forest Practice Act.

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2 TOIVO F. ARVOLA. 1976. **Ibid.** See page 89.

Lawyers have been less certain of the legal interpretation, but the board has elected not to press the issue.

The board in June, 1976 adopted its first set of rules to relax the snag felling requirements. A year later, in June, 1977 the board at the behest of wildlife and bird advocates requested CDF to add a question to the THP form requiring information about snags being left for wildlife purposes. The board adopted no rule to support this request. This action established a precedent for requesting information in THPs for which there is no specific rule requirement. Both the board and CDF have occasionally since that time used the THP in this manner.

In 1983 the snag disposal and retention rules underwent a revision of wording to comply with AB 1111. Many of the same issues cropped up again, but the board made no substantive changes in the requirements. A question arose about rule requirements for snag felling adjacent to private access roads. The same question applied to slash abatement. A discussion of this question and its solution will follow under the heading FIRE HAZARD REDUCTION.

PROTECTION OF BIRD HABITAT AND NESTING SITES

In 1974-75 the board had adopted several rather generalized rules for the protection of the nests of endangered bird species. Trees used by such birds for nesting were to be retained, but no further habitat protection was provided. The rules merely urged retention of live trees with visible evidence of use by eagles or ospreys. Wildlife and bird advocates considered this protection inadequate. The Coast DTAC began a review of the need for rules to protect nesting sites in April, 1978. The discussion grew out of their earlier work on the Coastal Commission Special Treatment Areas which had demonstrated the inadequacy of the existing rules. The CDTAC recommended that the board consider providing broader protection, but nothing happened for a couple of years.

Then, in late 1980, the board reactivated the Ad Hoc Committee on Snags with an enlarged charge to review all needed protection for birds and their nests. The committee brought its report to the board in December, 1981. After a period of review the board in March, 1983 asked that a set of proposed rules be prepared for their action. Following the routine DTAC study and public debate, the board set its formal hearing for November 4, 1982. That hearing was continued to January 4, 1983 when the board adopted its first comprehensive rules to protect bird habitat and nesting sites.

Issues at the hearings were many, but debate tended to be much less rancorous than on other subjects. The California Forest Protective Association objected in principle to any

requirements for marking of timber in buffer zones prior to THP filing. They believed that the definition of "Timber Operations" in Section 4527 of the Forest Practice Act disallowed adoption of such rules. The board rejected the argument, and OAL subsequently upheld the board.

Private foresters objected to some of the birds that the Department of Fish and Game wanted to include in the list of "Species of Special Concern." These foresters felt that many of the bird species did not merit the special protection contemplated. They thought, too, that the buffers for ospreys and eagles were larger than needed. They cited personal experiences indicating that the birds could tolerate large amounts of disturbance without apparent ill effect. Fish and Game representatives acknowledged that the tolerance of individual birds varies widely. They argued, however, that for endangered species, the standard should protect the less tolerant individuals. Every individual of a rare or threatened species counted, in their opinion.

All parties recognized the probability that endangered species and other species of special concern would occasionally escape detection during THP preparation and review. Some advocates wanted rules requiring immediate cessation of operations until protection criteria could be worked out. Industry argued and the board agreed that cessation would discourage reporting and protection of the birds. The board adopted instead a compromise rule requiring operators to begin protecting the birds as soon as found, to report them, and to amend the THPs to include measures for protection.

THP DENIED FOR FAILURE TO PROTECT BALD EAGLE

Not long after adoption of the bird protection rules, at Department of Fish and Game (DFG) request, CDF denied a THP submitted by Paul Bunyan Lumber Company. DFG alleged that the THP did not adequately protect the nest of a pair of bald eagles. The THP did in fact comply with the basic requirements of the rules. DFG, however, wanted the buffer area enlarged during the nesting season because they believed this pair of birds had exhibited unusual sensitivity to disturbance. The rules permitted the enlargement where deemed necessary but only if the RPF agreed. In this case, the RPF refused, insisting that the enlargement would make it impossible to use the only road available for the operation. He disagreed, too, that the birds were especially sensitive. He then appealed the denial.

During the hearing, held on December 6, 1983, the forester reluctantly agreed that he could without great inconvenience postpone operations until the nesting season had passed. With that admission, the board voted 6-2 to sustain the denial of the

plan. Industry members of the board sided with Bunyan's forester, unconvinced that the birds in question were more sensitive than usual.

In 1986 came an opportunity to test both the bird protection rules and the stop-order law at the same time. An active osprey nest was discovered on Fruit Growers' Supply Company land in Siskiyou County. The nest was in a tree near a logging road in current use. The company refused at first to consider changing their operations to protect the nest from disturbance. CDF began the paper work to issue a stop-order when the company gave up and agreed to protect the nest.

SPOTTED OWL PROTECTION

Protection for spotted owls has become a major issue for the U.S. Forest Service in recent years. It has not affected private industry to the same extent because few of the owls live outside the national forests. At a Board of Forestry meeting in Fresno, DFG testified that only 73 out of a known 1460 nesting areas in California were on private lands. Still, the board could not completely escape the clutches of the predatory little bird.

The existing rules do not afford protection because DFG has not listed it as a species of special concern. The bird has many advocates, however, and it may make the list someday. Because the bird has shown a preference for old-growth timber, rules for its protection would center on establishing longer rotations. No one knows for certain what age of timber would best suit them. Evidence has indicated that they aren't so particular as once thought. In the meantime, a widely held opinion persists that the spotted owl has become a surrogate to block the cutting of old-growth.

SLASH and FIRE HAZARD ABATEMENT

Slash is a term referring to branches, tops, bark, and split products debris left behind after timber harvesting. The stuff is highly flammable, and it burns hot. Slash and snags form a highly hazardous combination following logging. Most snags occur naturally, whereas slash by definition comes from logging, although the natural forest contains varying amounts of debris similar to slash. A main reason for requiring timber harvesters to fell snags is to have them mitigate to some extent the hazards resulting from their slash.

Another hazard comes from injurious insects the breed in fresh slash, at least at certain times of the year. In Southern California particularly, insect hazards are especially important reasons to require prompt slash disposal. It is a factor in most

areas. Slash disposal may be done by piling and burning, burning of concentrations, broadcast burning, lopping and scattering, burying, chipping, or removal. Disposal may be partial, total, or not at all.

To what extent loggers should dispose of their slash has frequently been a hot issue. Under the old forest practice act, slash disposal rules varied widely from one part of the state to another. One district mandated very little except a strip next to public roads. Another district required total lopping. Still another encouraged burning of concentrations. Most required special precautions if burning was to be done, but since so many disposal methods exist, little burning was required.

Some of the differences resulted from differing climates. North coastal areas certainly did not rate the same type of treatment as Southern California. Redwood timber, on the other hand, generates huge amounts of slash, much more than other species. Foresters also tend to differ among themselves as to the best methods, even where conditions are similar. The 1974 rules initially continued about the same requirements with most of the same differences that had existed under the old rules.

The drought years of 1976 and 1977 prompted CDF to suggest additional rules to mitigate the extra insect and fire hazards brought on by dry conditions. A pine bark beetle epidemic was in full sway by the spring of 1978 when the board adopted CDF's temporary slash disposal rules. The special disposal rules were allowed to expire after the emergency passed.

Lopping and scattering is often a preferred disposal method in the sierras. It allows the fresh slash to dry out sooner in the summer, preventing beetles from completing their life cycles. Then, too, in the long run, lopping helps slash to decay faster. In coastal redwood areas, on the other hand, slash deposits are so heavy that lop-and-scatter methods have little value. There, broadcast burning or burning of concentrations in place is most often preferred.

After the initial adoption, the Coast District rules required a considerable amount of fine-tuning to allow land managers to burn their slash. The rules had prohibited burning after April 1 each year, but in northern parts of the coast, the ground remained too damp to burn so early in the season. The board adopted the necessary amendment on September 26, 1979 to allow burning after April 1, if done under a permit.

Industry and CDF foresters had long criticized a rule that required firebreaks next to streams when conducting broadcast burns. The North Coast Regional Water Quality Control Board had sponsored the rule to keep fire out of vegetation bordering streams. CDF and industry contended that firebreak construction

often caused soil disturbance leading to stream sedimentation. With care, fire can be kept away from streamsides without elaborate firebreaks. A rule amendment adopted on March 5, 1980 allowed exceptions when covered by a project burning permit.

AB 1111 led to a major effort to standardize the format of the hazard reduction rules in the three districts. Previously, the rules of the three districts bore little resemblance to each other in arrangement, much less in content. Amended rules adopted in response to this effort remain considerably different as to requirements, reflecting the statewide differences in conditions. The standardized format, on the other hand, reduces confusion when searching for a specific rule. The board completed its work on these rules on July 6, 1983.

A key issue that arose during the AB 1111 review concerned the amount of snag and slash disposal to require adjacent to private access roads into the logging area. Although slash abatement rules vary somewhat among the districts, most districts require some treatment in "fire protection zones" adjacent to certain private roads. The snag disposal rules vary much less, and most require disposal near roads. The board reduced the confusion by specifying more clearly which roads to include on maps required with THPs.

BORROW PITS AND THE BOARD OF MINING AND GEOLOGY

The State Board of Mining and Geology became involved with the Forest Practice Rules in 1978 after the passage of legislation that required reclamation of open pit mining sites. Borrow pits are excavations for rock and other fill materials used in road construction. The legislation defined a borrow pit as an open pit mine. Timber harvesting operators build a lot of roads and dig a lot of borrow pits. For a time it appeared that the mining board would add regulations requiring timber operators to reclaim their borrow pits after they were done with them.

The staffs of both boards met several times. The forestry staff tried to convince the mining board that the Forest Practice Rules covered the matter adequately. Mining board concerns centered on slope instability and the Erosion Hazard Rating (EHR). The lack of a definitive rating for potential land slippages bothered them. As with almost every environmental disagreement that has occurred in recent years, the north coast seemed to worry them the most.

The two boards held a joint meeting on April 27, 1978 with little meeting of the minds. At times it appeared that the two boards were not discussing the same subject. Their differing styles may have contributed to the stalemate. The forestry board tended toward a formal meeting tone, somewhat like a legislative

hearing, while the mining board preferred a casual approach. The meeting ended inconclusively.

The matter rested on the back burner for a year and a half while the mining board continued to ponder their dilemma. Finally, on November 27, 1979 that board concluded that it could classify timber harvesting as an agricultural activity. Since the law exempted agriculture from its provisions, the mining board could leave the matter up to the Board of Forestry.

ECONOMIC EMERGENCIES

The Forest Practice Act allows certain emergency timber harvesting operations to take place under a Notice of Emergency instead of a THP.[3] The law specifies certain emergencies such as the need to remove timber damaged by fire or infested with disease or insects, and for emergency road repairs. It then allows the board to define still other emergencies. A Registered Professional Forester must certify the existence of an emergency. If the operation runs beyond 60 days, it will need a THP.

From the first the rules have recognized that under certain conditions economic necessity might qualify as an emergency. The earliest versions offered examples based mainly on unexpected short-term opportunities to harvest small amounts of timber. Rectangular property boundaries often do not fit the topography. This situation can lead to islands of timber stranded in areas where road costs or potential environmental damage temporarily preclude harvest. If a neighbor unexpectedly begins a harvest, the bypassed timber could become accessible. Then, too, for a species of low value and intermittent merchantability, a sudden market opportunity can offer the chance for a harvest. In these and similar cases, time often does not permit filing a THP. The opportunity might dissolve before THP approval could take place.

For several years the Emergency Notice process worked reasonably well. Environmental critics sometimes complained that notices were subject to abuse, but CDF reported few problems. Then two circumstances conspired to elevate the profile of the Economic Emergency. AB 1111 in 1980 required some alterations in the Emergency Notice rule because it lacked clarity. More importantly in 1982 the Associated California Loggers (ACL) asked the board for help in coping with a depressed timber economy.

Mr. Ed Ehlers, Executive Vice President of ACL, suggested that THP filing requirements were hurting many small timber operators because of the lengthy approval time. Couldn't the board somehow relax the requirements, he asked, to allow small

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[3] California Public Resources Code Section 4592.

timber sales to begin before THPs were filed? The economy was so bad, he argued, that mills had stopped stock-piling logs. Instead they were waiting until they had a lumber order in hand before beginning a timber harvest. A delay might cause the loss of a job opportunity or even cause the order to go to another state.

The board responded in October, 1982 with a policy statement encouraging CDF to extend the Emergency Notice to include unexpected market opportunities of the sort envisioned by Mr. Ehlers. Operations would have to be environmentally non-threatening, and the policy contained criteria for making this determination.

The differences between the unexpected market opportunities covered by the new policy and the economic emergencies described in the rules were subtle, but they proved to be substantial. CDF found itself in more than one bind between timber operators who sought to stretch the policy to the limit and environmental critics who opposed it in principle. Director of Forestry Partain finally, on April 22, 1983, requested the board to reconsider the matter. His letter questioned the legality of the policy, suggesting that the board should use the formal rule amendment procedure to resolve doubts. Deputy Attorney General William Cunningham agreed that the policy amounted to a "rule." The Administrative Procedures Act under AB 1111 didn't allow this type of "rule."

On July 6, 1983 the board heard arguments on both sides. CDF testified that most of the Emergency Notices filed under the policy would have qualified, even without the policy. The few that would not qualify had often contained unacceptable environmental risks. The board reluctantly bowed to CDF's arguments and their attorney's advice and rescinded the policy.

An interesting twist to the issue occurred late in 1986 when CDF received an Emergency Notice that cited an opportunity for greater profits as justification. CDF decided that this reasoning pushed the concept further than the rule intended and cancelled the Notice. It had not always been clear that CDF had any such authority. The act says nothing about authority to terminate an improper notice, but Deputy Attorney General Cunningham assured CDF that the authority was inherent in the law.

MINIMUM ENVIRONMENTAL IMPACT DEFINED

Ever since 1980 when the board had amended the Emergency Notice rules, use of the notice had required that operations have no more than "minimal impact on timberland resources." Other rules provide for exemption from THPs for certain small

operations. These exemptions include harvesting of fuel wood and dead and dying trees where it has only a "minimum impact on the environment." Questions frequently came up as to the meaning of "minimal" or "minimum impact." At the January, 1987 board meeting CDF requested the board to adopt some definitions. The same issue had previously arisen in connection with special rules adopted for individual counties, and the board had adopted specific criteria. CDF asked for the same criteria to help implement the rules on Emergency Notices and Notices of Exemption.

The board took a year to find a solution. Finally, at its January, 1988 meeting the board amended the rules defining exempt operations. This amendment specifically identifies operations that have minimal effects, then eliminates the term from the rules for exempt operations. "Minimal impact" remains, however, without a definition in the rules for Emergency Notices. CDF could not convince the board that a serious problem existed in that area.

TEMPEST OVER THE EASTSIDE

Early rules for the Southern Forest District included special silvicultural rules for the eastern side of the Sierra Nevada Mountains. That area receives less rainfall and has colder temperatures than the western slopes. Jeffrey pine and incense cedar predominate in eastside forests, and growth is generally slower. Because of these differences, the subdistrict at one time had special rules. The silvicultural rules adopted in recent years offered more flexibility and no longer required the special east-side rules. CDF suggested in 1982 that the board abolish the subdistrict. The Southern DTAC demurred, thinking they might yet make use of the subdistrict. Finally, in March, 1984, after some prodding by OAL, SDTAC relented and allowed the board to eliminate the subdistrict.

DECOMPOSED GRANITE IN GRASS VALLEY CREEK

In 1985 a festering problem in Trinity County boiled over and required serious attention by both CDF and the board. Timber harvesting operations had taken place for several years on private lands in the Grass Valley Creek drainage east of the town of Weaverville. The soil in the area is derived from decomposed granite and is highly erodible. Some observers have compared the soil to sugar. Beach sand might be a better comparison. The resulting sediment was harming the waters of the Trinity River and even threatened to eventually fill Claire Engle Lake behind Trinity Dam. The Trinity County Board of Supervisors for a time seriously considered requesting special county Forest Practice Rules to correct the problem. They did ask for a moratorium on

logging in the drainage.

Champion International, the owner of the land, cooperated and temporarily ceased operations to help find a solution. The county sponsored several field trips by soil and erosion experts, including John Munn of the CDF Sacramento staff and Dr. Carlton Yee of the Board of Forestry. An ad-hoc committee of experts and county representatives was formed. This committee developed a comprehensive list of special mitigation measures to reduce the erosion potential. Champion accepted the list with the provision that it could select from among the proposed measures the ones most applicable to each site. Not everything would apply everywhere. CDF would use the same list in conducting preharvest inspections and in granting approval to Champion THPs.

The Board of Forestry received the report on mitigation measures at its January 7, 1986 meeting in Redding. Several industry representatives noted that the suggested mitigations went well beyond any rule requirements. They questioned whether CDF had the right to insist on any of the mitigations. Dr. Yee responded that the board's alternative was to adopt the measures as rules that might apply in far more places than Grass Valley Creek. He suggested it would be better to address this localized problem with site-specific solutions.

Dr. Yee's response exemplified a general attitude assumed by the Board of Forestry since the appointment of Mr. Harold Walt as board chair in 1983. This attitude seems to hold that CDF should have leeway to mitigate problems with solutions that best fit the circumstances. "Ad hoc rule making" it might be, and it might go against the wishes of many observers on both sides. With board oversight, however, it should not lead to serious abuses, either of landowner rights or of the environment.

THE HIGHWAY 50 LANDSLIDE

In the late winter of 1983, a massive landslide fell into the American River between Placerville and Kyburz across from U.S. Highway 50. The slide catapulted across the river and up onto the highway on the other side. Both highway traffic and the river were blocked for several weeks. A sizable lake, which the local press dubbed "Pony Express Lake," formed behind the temporary dam. When state highway crews finally cleared the slide and the river could break through the dam, the damage to the river bed and to water quality was enormous. No logging had taken place. The cause remains debatable, but natural factors played a major part.

Virtually all of the slide originated from a single private property. Timber belonging to the same owners remained standing to the east and west of the slide area. In 1985 the owners

submitted a THP to harvest their timber, including construction of a road directly across the slide itself. A preharvest inspection revealed serious instability of the slopes in the remaining timbered areas. CDF suggested several comprehensive mitigation measures. These measures included helicopter logging as one possibility, and, in any event, much less road building. They would not approve a road across the slide. The owners rejected the CDF plan and offered less restrictive mitigations. CDF then denied the plan because of the landslide potential.

The owners appealed CDF's denial to the Board of Forestry. The hearing was held on February 5, 1986. The owners testified and offered expert testimony that the area would eventually slide again, with or without logging. They also charged CDF with going beyond its authority with the requested mitigations. After hearing CDF's evidence of the dangers, the board unanimously upheld the denial.

To the surprise of many, neither the Department of Fish and Game, nor the Regional Water Quality Control Board showed any great concern over the operation at the time. Later, however, when the owners attempted to file a THP more nearly in accord with CDF's suggestions, Fish and Game balked at allowing a crossing of the American River. That ended the matter for the time.

The U. S. Highway 50 landslide (right) looking east. A harvesting plan for the timber on the slope was submitted in 1988. Photo courtesy of Cal Trans.

Chapter 9

FOREST PRACTICE REGULATION and LAND USE CONTROL

A very common misconception about the Forest Practice Act has been that it can or ought to control land use. The previous chapter described how the San Bernardino County Planning Department sought to restrict the cutting of Joshua trees. Although not presented in land use terms, the attempt clearly was aimed in that direction. That fact did not escape the attention of the Board of Forestry. Other groups have tried similar tactics for similar goals. Wildlife advocates have sought to use the act to retain riparian habitat near valley streams. Several interest groups have looked to the act to either prevent or encourage the conversion of hardwood timber lands to other uses. Even the board itself couldn't escape the confusion when questions about hardwoods arose. Citizen groups and counties have promoted rules to preserve or otherwise control the development of local forest lands. This chapter will cover these and similar issues. Related matters concerning local control over timber harvesting will spill over into the next chapter.

PRESERVATION OF RIPARIAN WILDLIFE HABITAT

As will become evident, the Forest Practice Act does have some marginal effect on land use. Then, too, land use regulations designed for undeveloped areas by other agencies have frequently had little effectiveness. Hence, wildlife advocates interested in the preservation of riparian habitat have often turned to the act to achieve their aims. Not the shyest of these advocates, the California Department of Fish and Game has often led the way. Its objectives have included not just the major timber producing areas but have extended into the lowlands and the central valley. To cite just three incidents, the Board of Forestry considered such requests from DFG in June of 1976, in November of 1980, and again in January, 1981.

Now, to keep matters straight, the Forest Practice Act does not ignore riparian zones. Within commercial timberlands the board has adopted rules to protect these important areas. The water quality protection rules bear significantly on the needs of fish and wildlife. For example, because certain fish require cool water, the rules require retention of trees to shade the borders of streams and lakes. The rules take into account, too, that many insects eaten by fish breed in riparian vegetation. Many land animals and amphibians that use the riparian zone also benefit from this protection. Virtually all of the rules have at least an indirect effect on the riparian zone, and the board has not overlooked that fact.

The board has not, however, applied the rules to the hardwood forests in the central valley and other lowland areas. These forests include many important riparian areas. The board could legally declare as commercial any species that enters the market and thus extend the Forest Practice Rules to many riparian areas not now covered. The board has never done so, and pressures mounted upon the board have stemmed from this fact.

The matter came to a head of sorts during the California Riparian Systems Conference held at the University of California at Davis in the fall of 1981. During this conference, several speakers expressed frustration and annoyance that the Board and CDF had not taken decisive action. The speakers hinted that the forestry agencies had "typically" bowed to timber industry pressures to evade needed conservation practices.

Anticipating the criticism, Forestry Director David Pesonen presented a paper (prepared by this writer) at the conference. That paper summarized the position of the Pesonen administration and the board at the time, but other boards and directors, both before and after, have held essentially the same position. The Pesonen paper did not question the fact that the Board of Forestry could legally regulate cutting in the lowland riparian forests. A limited market for several riparian timber species did exist. This fact would have provided adequate foundation for the board to extend the act to areas not covered.

Mr. Pesonen instead questioned the practicality of that action. He defined it as a land use issue, not a forest practice problem. He saw the difficulties as stemming from pressures to convert the land to other than timber growing uses. Pressures for conversion came from needs for land for crops, recreation, buildings, and many other high value uses. In other words, market pressures for alternative uses of the land caused conversions, not timber values.

He pointed out that only in Timberland Preserve Zones -- later changed to Timberland "Production" Zones -- (TPZ) did CDF or the board have any power to prevent conversion of timberland. TPZ zoning is a county responsibility, and no county had placed any lowland riparian timber or other purely hardwood forestland in TPZ. This timber had only intermittent and usually very low commercial value. Its timber value was rarely high enough to induce owners to keep it in timber production. If the owners couldn't sell the timber, they would cut and waste it if the value of the land for other uses had gone high enough. Since the act does not apply to non-commercial tree cutting, CDF could not use the act to prevent such conversions. Even if a species defined as commercial were being sold, after being cut for conversion, no meaningful criteria existed to deny the conversion permit. The exercise would simply create additional paperwork

and bureaucracy to little avail.

Mr. Pesonen then cited the large number of inspectors that such regulations would require. He felt certain that the legislature would not approve the funds to hire inspectors to enforce rules that had little force. Moreover, he could not justify reassignment of the existing staff because of needs in other parts of the state. He concluded by urging the conferees to consider non-regulatory means such as tax incentives to achieve their goals.

Mr. Pesonen's remarks did little at the time to quell the criticism. Nevertheless, his arguments apply well to many other forest practice and land use issues.

TIMBERLAND CONVERSION

The Forest Practice Act recognizes that it cannot prevent owners of commercial timberland from converting their property to other justifiable uses. It does, however, make sure that the land can be feasibly converted to the uses intended and that conversion is carried to completion.[1] The act requires the Board of Forestry to prescribe the procedures to apply for a conversion permit. It then specifies the criteria for denial of a permit. These include:

1. The applicant is not the real person in interest.

2. Material misrepresentation or false statement in the application.

3. The applicant does not have a bona fide intention to convert the land.

4. Failure or refusal of the applicant to comply with the rules and regulations of the board or with the Forest Practice Act.

5. Failure to comply with requirements governing conversion of TPZ, where applicable. (This item was not added until passage of the Yield Tax Law in 1976.)

The act goes on to allow the board to delegate to the Director of Forestry any of its authority and responsibility for conversions. The board has retained its authority to adopt regulations but has delegated the approval of applications to the director. The board hears appeals from applicants whose permits

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[1] California Public Resources Code Sections 4621 through 4628.

the director has denied. It can, of course, overrule the denial.

Timberland Conversion Permits are not exempt from the requirement for complete CEQA documentation, including an Environmental Impact Report or Negative Declaration, as appropriate.

Basic regulations went into effect soon after the act became effective in 1974. This portion of the act had changed little from its 1945 forest practice act, making it possible initially to continue the previous rules with few adjustments. The board soon had to amend the regulations, however, first to accommodate the vast changes wrought by Timber Preserve Zoning, then to meet the needs of the Coastal Act, and finally , AB 1111. All of these measures created unforeseen complications that led to rather frequent subsequent fine-tuning of the regulations.

TIMBER PRODUCTION ZONING

The legislature's passage of AB 1258, the Z'berg-Warren-Keene-Collier Forest Taxation Reform Act of 1976, led to an entirely new method for collecting property taxes on timber in California. Now called the Timber Yield Tax Law, it changed the method from an annual ad valorem tax to a tax levied at the time of harvest. If the law had stopped there, it would have affected the Forest Practice Act very little. It went on, however, to create also an incentive for timber conservation. In so doing, it gave the Forest Practice Act the small amount of land use control that it now has. It did all this by requiring counties to place certain timber lands into Timber Preserve Zones (TPZ) and by reducing the tax rate for land in TPZ.

The yield tax law required TPZ zoning for all lands whose 1976 assessment was based on the growing and harvesting of timber as the highest and best use. The county tax assessors then had to compile lists of timberland suitable for the growing and harvesting of timber but not previously so assessed. After due notification and a chance for owners to object, these lands could also be zoned TPZ if the county board of supervisors found it in the public interest. The yield tax law went still further and allowed owners of lands not already placed in TPZ to petition for inclusion of their lands. All TPZ lands would then have an assessed land value based on timber growing and harvesting as its highest and best use, a rate generally lower than for other uses.

Once zoned, owners may escape TPZ by two methods. One method allows the owner to petition for rezoning. Then follows a ten-year rollout period during which the taxes will gradually increase to the level for lands in the newly assigned zone. At the end of the ten years, the land owner may use the land as rezoned. Regular zoning procedures apply.

The second method allows immediate rezoning, but only by compliance with strict procedural and factual criteria. Immediate rezoning requires approval by a four-fifths majority of the county board of supervisors. To complete the rezoning, the landowner must obtain a Timberland Conversion Permit from the Director of Forestry. The board of supervisors and the director must be able to make certain specific findings of fact to support their approvals. Essentially, the land must be suitable for the new use, and there must be no other suitable nearby non-TPZ land available for the use. This process definitely dampens interest in immediate rezoning but does not altogether prevent it.

Lands not in TPZ will require a Timberland Conversion Permit from CDF only if commercial timber harvesting operations are to be conducted. Once granted a permit, the owner need not comply with restocking requirements, but he or she must still obey all other forest practice rules. As should be evident from the language of the act cited above, only very unusual circumstances allow denial of a conversion permit on non-TPZ lands. This is a fact very often overlooked.

Historically, the Board of Forestry supported the passage of the yield tax law. It approved a resolution of support at its March, 1976 meeting. The bill passed the legislature in May of the same year, requiring the board to set about amending its conversion rules to accommodate the new law. One vital change was to redefine "timberland conversion" so as to include the immediate rezoning of TPZ, a legal nuance rather than a physical alteration of the land. Then, too, the board had to provide criteria for the Director of Forestry to deny a permit for immediate rezoning of TPZ.

AB 100 in 1977 made several changes in the yield tax law to clean up technical problems. Altered terminology required the board to again bring its regulations into line.

In 1982 the California Forest Protective Association sponsored AB 2552 by Byron Sher to change the term Timber Preserve Zone to Timber Production Zone. The change became desirable after several instances when members of the public mistakenly took the original name to mean that the timber was being preserved from cutting. To remove all doubt, the bill went on to state categorically that timber operations can be expected to occur on lands zoned TPZ. (CFPA originally appeared to hope that the bill would forestall any further rules for notification of timber operations.[2] At CDF insistence, the sponsors had the bill amended to remove any doubt about that intention. The same bill added the stop-order measure to help prevent environmental

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[2] C. FRED. LANDENBERGER. 1988. Ibid. See page 242.

damages from forest practice violations.)

EXEMPTION FROM TIMBERLAND CONVERSION PERMITS

Within CDF a long discussion went on about whether to require conversion permits for legally approved subdivisions on non-TPZ timberland. CEQA documentation required for subdivision approval would satisfy environmental concerns. Since the conversion permit process in such cases was tedious but largely pro forma, it seemed preferable to do away with the requirement. The board took this action at the request of CDF and approved the exemption on January 8, 1985. The regulation now requires little more than proof that the proper authorities have approved the subdivision.

Other proposed exemptions from the conversion permit also gave cause for more than a little debate over the years. One of these proposals would allow owners of timberland to clear small areas to construct buildings, particularly dwellings. In the spring of 1977 the board first considered the proposed exemption, to allow an owner a one time only conversion of less than three acres without permit. The board expressed great concern that the exemption might be abused, hence the limitation to just the one time. The board also agreed that division of timberland into ownerships of less than three acres should be treated as a conversion that would require a permit.

One of the more complex exemption issues to face the board dealt with clearings for utility rights-of-way. Again, the specter of possible abuses greatly concerned board members who insisted on precise criteria for all the many differing kinds of rights-of-way. Two persons deserve the credit for wading through the many engineering and technical requirements for power lines, telephone lines, and microwave sites, for underground electric lines, for gas and oil pipes, for water penstocks, syphons and flumes, and for ditches and access roads. These two were Foresters Robert M. Maclean of CDF and Jack Cameron of Pacific Gas and Electric Company. The board gave its approval to these exemptions at its May 5, 1981 meeting.

CONVERSIONS IN THE COASTAL ZONE

This history has already dealt with the Coastal Zone in a general way in an earlier chapter. Some unique problems concerning the use of lands in coastal areas seemed to fit better in this context, however. The Coastal Act places extra restrictions on timberland conversions within the Coastal Zone. The framers of that act, intending to preserve the natural appearance of coastal scenery, frowned on conversions. The Coastal Act thus limited conversions to those needed for timber

processing and related facilities or to those that would not introduce new or incompatible uses. Further, the area proposed for conversion would have to be a unit of a "non-commercial" size as determined by the Coastal Commission or local coastal plan. The rub came when the commission waited until local plans had been adopted before making its determination of noncommercial size. The delay could have left a number of qualifying conversions in limbo.

To avoid this the Board of Forestry initially used its own three acre minimal operation as the upper limit of a noncommercial area. When in July, 1979 this limit prevented approval of a conversion permit for a project that the Coastal Commission had approved, the board felt some heat. Board members found themselves in the unusual position of being more restrictive than the commission, no mean accomplishment at the time. In December, 1979 the board adopted an emergency rule increasing the limit to fifteen acres, clearing the way for the project in question.

Several members of the board, most notably Cecile Rosenthal and Phillip Berry, believed the Board of Forestry should do more to protect the coast. Thus, by March, 1980, the board reversed itself and backed down to a five-acre limit. These acreage limits, of course, continued to create problems for needed conversions approved by the Coastal Commission. Finally, on July 11, 1984 the board removed its acreage limit and adopted generic language allowing approval of permits for projects that met commission or local plan size criteria.

COUNTIES REFUSE TO COMPLY WITH REZONING REQUIREMENTS

Early in 1979 an owner of a piece of TPZ land in Del Norte County applied to the board of supervisors for immediate rezoning. The supervisors granted the request without making the required findings. Specifically the supervisors did not find that other suitable non-TPZ land was unavailable in the vicinity. CDF could not approve the conversion permit without this finding and believed that the county could not make the finding because of available non-TPZ lands nearby. The landowner was caught in a bind between the two agencies. CDF reported to the Board of Forestry which then consulted the Attorney General about legal action to compel the county to withdraw its rezoning decision. The county eventually arranged a trade of land that made the rezoning unnecessary, ending the matter peaceably.

Similar incidents subsequently occurred in Plumas, Sierra, and Nevada counties. The issue here clearly involved the general rebellion of counties against state mandated activities without state funding. Eventually the counties came to a better understanding of the requirements, and resistance diminished.

A different sort of city/county/state conflict arose in 1979 in Santa Cruz County. CDF found itself caught between the county and the city of Santa Cruz. A piece of land lying in the county adjacent to the city became zoned TPZ. The owner, the non-profit Cowell Foundation, desired to sell the land for development. The county initiated the rezoning process, and the foundation applied for a Timberland Conversion Permit. The city objected because the proposed development posed a threat to the city's water supply. City attorneys discovered that the county had not given proper public notice of the board of supervisors' rezoning hearing and so informed CDF.

CDF then concluded that the legal process had not occurred and that it could not approve the permit. CDF advised the county to go back through the rezoning process. By this time, however, the majority on the board of supervisors had changed. The planning department felt it could not gain the required four-fifths majority. The planners then discovered evidence that possibly the land had been mistakenly zoned TPZ. With this evidence in hand, the planners insisted that they had the right to make a correction without going through the legal rezoning ritual.

CDF found the evidence unconvincing and, regardless, disagreed that a mistake of such magnitude could be corrected merely with an eraser. It insisted that the full rezoning process be followed. The city supported CDF, and a standoff developed. The county and the owner repeatedly petitioned CDF to issue the conversion permit. CDF held out until 1985. Finally, convinced that the city no longer objected, CDF reluctantly conceded to correcting the "mistake" and allowed the conversion. Readers will want to compare this incident with events in Santa Cruz County described in the next chapter.

HARDWOODS and HARD ISSUES

At first glance this subject might seem to belong in the chapter on silviculture. Nevertheless, most of the controversies surrounding the treatment of hardwoods fall at least equally well under the heading of land use. Foresters and timberland owners believe they cannot afford to devote good timber producing land to hardwoods. Wildlife advocates, on the other hand, encourage as much hardwood acreage as possible, especially in riparian areas. Cattle and sheep raisers have a viewpoint similar to the lumbermen and regard hardwoods as competitors for pasture. Conservationists express alarm over dwindling woodlands.

Hardwoods occupy an anomalous position in California forestry. No one seems to know quite what the state's policy on hardwoods ought to be. Although many native hardwood species

have excellent physical characteristics, they have never played a large role in the state's timber economy. Lumber producers have shied away from them because of manufacturing difficulties. A few mills have sprung up from time to time, but currently only Cal Oak in Oroville produces any significant amount of lumber.

Many California species are no worse than eastern U.S. or tropical hardwoods, but the boards are more difficult to handle than softwood lumber. The lumber has a tendency to warp, shrink, and check, and it takes a long time to dry. Then too, the native hardwoods rarely occur in large volumes in any one place. Potential markets avoid them because of uncertainty about supplies. These and many more reasons may be cited for their relative lack of importance. Mostly, though, prejudice and the greater abundance of the native softwoods have led to under-use of the hardwood resource, except as firewood.

Besides their uncertain potential for utilization, hardwoods have a tendency to take over a site following logging of softwoods. Most hardwoods sprout vigorously, and many species also produce copious amounts of seed. If care is not taken to assure softwood regeneration, hardwoods, including brushy species of no potential market value, may soon occupy the site. At best, hardwoods were thought to grow more slowly than conifers. For all of these reasons, foresters have long done everything possible to discourage hardwood regeneration. The Forest Practice Rules have from the outset reflected the view that the highest and best use for timberland was to grow conifers.

Incidentally, throughout this chapter and in most forestry writings, conifers such as pine, fir and redwood are all called softwoods. Broadleaf species such as oak, madrone and cottonwood are called hardwoods, regardless of the relative densities of the woods. Some popular writers will refer to conifers as evergreens and to broadleaf species as deciduous. These terms have little distinguishing value, however, especially in California where a large number of the hardwoods are evergreen. Then too, in other parts of the world grow a number of deciduous conifers.

The Forest Practice Rules have not totally ignored hardwoods. Since 1974 the rules have under special circumstances allowed the counting of hardwoods to meet stocking requirements. The special circumstances were many and strict, however. Certain species having market potential were designated "commercial." These species could be counted for stocking if stipulated in the THP and designated for management or if they occurred naturally in substantially pure stands. The Northern District rules went even further by requiring that, to be counted, such species must be part of the harvest. Moreover, the Northern District Rules allowed counting of hardwoods only to the extent they existed in the stand before harvesting. The Northern District bias also extended to certain low-value softwoods as knobcone and digger

pine.

Hardwoods began to show up as a problem for the Board of Forestry at a meeting in Ukiah in December, 1978. At that meeting, several local citizens complained to the board that timber managers were gradually eliminating hardwoods from the native stands. These citizens especially objected to the use of herbicides. They tried to interest the board in opposing herbicides, always a volatile issue in that region, and they pushed for rules to encourage hardwood management. Ostensibly, their interests centered on the use of hardwood lumber in manufacturing. Many had small shops in which they made excellent furniture and other wooden objects for sale. Their needs were quite small, however, and, since many belonged to counter-culture groups, the suspicion lingered that they grew certain sensitive "vegetables" in their gardens.

BOARD FORMS HARDWOOD STUDY COMMITTEE

In June 1981, using PRC 4555, CDF withheld decision on a THP in Mendocino County because of uncertainty about use of hardwoods for stocking. CDF's questions centered on a lack of definition for "substantially pure" stands of hardwoods. The Registered Professional Forester who prepared the plan intended to count hardwoods as stocking following the harvest. The stand contained a large percentage of hardwoods, but it also had a fair amount of douglas-fir. CDF did not consider the hardwood stand pure enough to qualify and viewed the plan as an attempted evasion of the restocking requirements. CDF proposed that the board adopt for the Coast and Southern Districts a rule similar to the Northern District rule described above. While reflecting an anti-hardwood bias, that rule had the advantage of clarity.

The board refused to go along with CDF. Some members opposed the idea on principal, thinking it unfair to adopt what they called "after the fact" rules. Then, too, several witnesses brought up the same issues heard a couple of years earlier in Ukiah. This issue started the board rethinking its attitudes on the subject but without any clear consensus. That lady of many interests, Mrs. Helen Libeu, then suggested that the board form a task force to examine the hardwood problem.

The board took Mrs. Libeu's suggestion to heart and the following October appointed the Study Committee on Policies for Forest Practice Regulation in California Hardwood Types. The board charged the committee not to deal with bottomland or riparian hardwood types. This committee brought out its report

in December, 1982.[3]

After presenting a formidable array of statistics about the hardwood resource in the state, the committee briefly summarized its findings and recommendations. The committee found, among other things:

1. Hardwoods were an underutilized resource that was increasing in volume and abundance on commercial forest land.

2. "Non-commercial" or rangeland hardwoods have a potential for energy production, conversion, or utilization and management, especially the oaks.

3. Almost nothing was known about their growth and long-term management.

4. Hardwood species vary in their economic potential.

5. Hardwoods and conifers have different ecological relationships.

6. Existing Forest Practice Rules and the act discriminate against hardwoods for restocking and management.

7. The existing rules would not be suitable as a basis for hardwood management.

The committee recommended that the board develop a new scheme for management of hardwoods under the Forest Practice Act and rules. The new scheme should show less bias against hardwoods and should encourage their growth and utilization where appropriate. It would include at least minimal regulation on the cutting of all hardwoods.

The board reviewed this report at its January and April, 1983 meetings. In the meantime, other events began to precipitate further action. A THP for an area in the Northern District was submitted calling essentially for the removal of all black oaks from approximately 1,000 acres. The area lay within a deer migration corridor, leading the Department of Fish and Game to object because of the potential loss of deer habitat. CDF delayed its decision on the plan under PRC 4555 to request a stronger rule to retain more of the oaks. After much discussion, the plan submitter withdrew the plan, but the issue helped

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[3] PAUL COX (CHAIR), et al. Forest Practice Regulation in California Hardwood Types. Report of the Study Committee to the State Board of Forestry. California Department of Forestry and Fire Protection, 1982. 34 pages.

sensitize the board to the needs of wildlife.

At almost the same time, Monterey and Santa Clara counties submitted rule proposals under SB 856, indicating their great concerns about hardwood harvesting. The next chapter will cover in more detail this 1982 legislation that greatly reduced a county's ability to regulate timber harvesting. These two counties quickly took advantage of that act to put the Board of Forestry on notice that hardwood cutting may need regulation.

Simultaneously, the board became aware of the resource impacts of biomass-fueled power plants then planned for establishment across the state. Witnesses urged the board to examine the impacts of hardwood harvesting from both commercial timber areas and hardwood range areas.

THE HARDWOOD TASK FORCE

As a result of these many events, the board immediately appointed a task force to carry forward the recommendations of the hardwood committee. The board charged the new task force to take a large view of hardwood resources, to summarize the location of the existing resource, to describe and evaluate any ecological problems, to evaluate the need for any new forest practice rules or legislation, to describe and evaluate problems in hardwoods related to people, to look at research needs, and to make appropriate recommendations. This task force, under Chairman Dr. Norman Pillsbury, brought its preliminary report to the board in December, 1983.[4]

The preliminary report described the values of various hardwood types, the considerable lack of information, and the need for education. It reached three major conclusions:

1. Lands that grow hardwoods should be designated as either conifer land or hardwood rangeland so as to indicate the differing ecological communities and management objectives.

2. Hardwoods should be considered commercial species on all lands and some form of regulation considered to protect and maintain the resource.

3. Much more information was badly needed before specific regulations could be developed.

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[4] NORMAN PILLSBURY (CHAIR), et al. California's Hardwood Resource. Preliminary report of the Hardwood Task Force. California State Board of Forestry, 1983.

The preliminary report tended to raise more questions than it answered because of the many unknowns.[5] Sound information was lacking on the nature of the resource and on the socio-economic factors involved in its use and management.

In the period that followed the board continued to receive public comment on hardwood issues. Specialists in CDF, the Department of Fish and Game, the University of California Extension Service, and the U.S.D.A. Forest Service began to gather key data. These persons gathered the latest information and presented it to the Board of Forestry in the publication cited in Footnote 5.

Mayer, et al, made a large number of recommendations to the board for further studies including:

1. Assessment of baseline data on the extent and condition of hardwood types and habitats, conversions, management, harvesting, and regeneration.

2. Development of information on system sustainability and regeneration, the role of fire, acorn production, nutrient cycling, and ecological relationships.

3. Methods for multiple-use management including livestock and wildlife production, riparian zone interrelationships, biomass, and hardwood products.

4. Landowner needs and motivations.

5. Institutional relationships including coordination of governmental and research agencies, and use of media and education to improve public understanding.

Based on this report, Board of Forestry and CDF staff prepared a series of policy options for the consideration of the board.[6] The staff identified several strategies available to the board to implement its policies. These included research, monitoring and continued assessment, programs to relieve pressure for hardwood removal, increased management information, regulation, and better coordination and cooperation among

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[5] KENNETH E. MAYER, PETER C. PASSOF, CHARLES BOLSINGER, WILLIAM E. GRENFELL, JR., and HAROLD SLACK. Status of the Hardwood Resource: A report to the Board of Forestry, revised September 8, 1986. California Department of Forestry and Fire Protection. 126 pages.

[6] BOARD OF FORESTRY STAFF. Policy Options for California's Hardwoods. California State Board of Forestry, 1986. 16 pages and 12 tables.

governmental agencies. The various strategies were not mutually exclusive. Any or all parts could have been initiated independently.

The board received these two papers at its meeting at Lake Tahoe on September 3, 1986 and continued to receive testimony the following month in Monterey. Department of Fish and Game viewed the hardwoods issue as critical but could offer no concrete data as to needs. Several witnesses stressed the need to address the problems of conversion of conifers to low-value hardwoods. Landowners, especially ranchers, did not favor either governmental incentives or regulations. This group tended to see hardwoods as competitors for valuable pasture space. The board puzzled whether the Forest Practice Act was the appropriate instrument to encourage hardwood management.

One of the strategies suggested by staff would have used a regulation to monitor hardwood utilization. The proposed regulation would make hardwoods commercial but then would exempt them from cutting regulations. Exempt notices would allow CDF to monitor the location and extent of hardwood operations. The board, however, doubted the wisdom of using the Forest Practice Act in this way. Members also were not sure of their power to exempt hardwoods from the restocking requirements of the act.

Another question that bothered the board concerned its role vis-a-vis local government. Under SB 856, the board could prevent local regulation without establishing any type of cutting regulations of its own. It could do this by declaring hardwoods commercial but adopting minimal or even no regulations. Conversely, if the board took no action, it left the door wide open for local regulations. The ranching community wasn't sure which way it wanted the board to turn. The ranchers basically opposed all regulations, but some feared state regulations more than local, and vice versa.

SYMPOSIUM ON HARDWOODS

While sharing all this uncertainty, the Board of Forestry was busy arranging a Symposium on Multiple-Use Management of California's Hardwood Resources. CDF, the U.S.D.A. Forest Service, the Bureau of Land Management, the University of California Cooperative Extension Service, the Society of American Foresters, and Cal Poly at San Luis Obispo all aided the board in this endeavor. The symposium took place November 12-14, 1986 at the Cal Poly campus in San Luis Obispo. Speakers presented eighty-five papers on as many aspects of the hardwood issues. Although the symposium revealed more information than many persons expected, the level of knowledge remained relatively low.

Following the symposium, the Board of Forestry held a rare

Saturday meeting in San Luis Obispo, centered almost entirely on hardwoods. CDF presented a staff summary that stressed several needs, including:

1. Research about hardwood silviculture.

2. Development of an assessment and strategy for marketing of hardwoods.

3. Information on conversion of conifers to hardwoods.

4. Management guides for use by the Soil Conservation Service, Resource and Conservation Districts, and other advisory services.

5. Clarification of the rules for counting hardwoods for stocking in conifer lands.

6. A decision about central valley riparian areas.

After a searching and sometimes almost heated discussion, the board adopted a resolution to the effect that the board might have to exercise its jurisdiction. Before it could do so, however, it would need clarification of the options. Therefore, staff was instructed to do a study and report to the board again on February 3, 1987. The board had just minutes earlier rejected a stronger resolution that would have immediately committed it to a course of limited regulation. The board indicated to CDF that it would be ready to address the stocking and riparian hardwood issues in January.

On January 7, 1987 CDF presented its proposal to extend the principles of the Northern District rules on counting of hardwood stocking to the other two districts. The board did not act immediately, preferring a different approach to the matter, and requested a new draft. The matter lay on the back burner for a year.

Staff presented its report on hardwood options to the board in February, 1987 as requested. In response to board concerns about its authority to regulate hardwood cutting, the Attorney General's Office assured board members that the Forest Practice Act, together with CEQA, provided all the authority needed. CDF favored a non-regulatory approach, but continued to push for resolution of the questions about hardwood stocking in conifer areas. The Department of Fish and Game pressed for minimum retention standards and monitoring of hardwood harvesting.

The board adopted a resolution that rejected regulation but called for intensive educational efforts by all agencies and groups. It directed CDF to take the following actions:

1. Take the lead in a non-regulatory program that would stress research with an emphasis on solving problems with hardwood regeneration.

2. Work closely with Department of Fish and Game to investigate habitat needs and to draft a policy on these needs for the board's consideration.

3. Report quarterly to the board on progress.

The board directed its Range Management Advisory Committee to investigate rangeland hardwood conversions with a view towards the needs for a healthy range industry.

Assemblyman Byron Sher kept a close watch on the board through these proceedings. He responded by introducing AB 1636 that would have taken away the board's authority to regulate hardwood cutting and given it to the counties. The board opposed this bill, and it eventually was amended into a different form to fund CDF fire protection.

EUCALYPTUS HARVESTING IN THE CENTRAL COAST

While all the general discussions about hardwoods took place, a minor tempest occurred in San Mateo County over a harvest of eucalyptus for pulpwood. The rules of the Coast District recognized Eucalyptus as commercial. It could be counted as regeneration if declared for management in a THP or if it occurred in substantially pure stands. A number of eucalyptus stands qualified on both counts. Descended from millions of trees planted in the early 1900's, eucalyptus has become thoroughly naturalized in this state, particularly in the central coast. Markets for pulpwood and firewood are fairly stable. It reproduces well and grows fast, making management entirely feasible.

Before 1983 and the adoption of SB 856, owners had no incentive to submit a THP for harvesting eucalyptus. The counties regulated all timber harvesting, regardless of state regulation, and submission of a THP would have added the state rules to those of the county. Since SB 856, however, the counties have lost their authority over timber operations regulated by the state. Thus, by declaring eucalyptus for management in a THP, the plan submitter could avoid the more complicated and time consuming county regulations. The next chapter will present more detail.

Despite the advantages, one new problem emerged. While eucalyptus regenerates readily, the best growth occurs in full sunlight. This makes clearcutting desirable, but the rules for

the Southern Subdistrict of the Coast District allowed no clearcuts larger than one half acre. Foresters working with eucalyptus petitioned the Coast DTAC to propose larger clearcuts for the species. The CDTAC met in Half Moon Bay in February, 1986, and took a field trip to review a stand under management. The DTAC then agreed to recommend the requested rule change to the Board of Forestry and did so the following month.

When the board held its formal hearing on the rule, witnesses complained that the DTAC had not advertized its February meeting adequately. The board then asked the DTAC to hold another meeting with better publicity. The DTAC did so in January, 1987. After returning to the board with another favorable recommendation, the board adopted the proposed rule on May 5, 1987.

BOARD OF FORESTRY REDEFINES COMMERCIAL SPECIES

This chapter has in several places referred to the problems resulting from the ambiguous place hardwoods had held in the definition of "commercial species." The problems encountered in counting hardwoods as regeneration following a harvest of softwoods had continued to plague CDF. In January, 1987 the board heard CDF's latest proposal, but put it off for changes. The board finally adopted those changes at its February 3, 1988, meeting. In so doing, it not only satisfied the need for clearer criteria for counting hardwood regeneration, it also settled the issue of riparian hardwoods in the lowlands. OAL filed those rules on September 9, 1988 after a thorough review.

The new rules deleted the criterion of "substantially pure" that had bothered CDF since 1974. Under the old system certain species were declared commercial by the board. Others in a specified list, mainly hardwoods, could be made commercial by the submitter declaring them for management in a THP. The new method established two lists, List A and List B. List A contained the primary species, mainly conifers, while List B contained the secondary species, primarily hardwoods. Commercial timberlands were defined by the presence currently or in the historic past of species in List A.

The presence of only List B species would cause classification of the land as non-commercial timberland for purposes of the Forest Practice Act. Since none of the List A species grows naturally in the central valley lowlands, the definition effectively excludes such lands from the act. Surprisingly, the Department of Fish and Game did not object to this classification.

Reproduction from both lists may be counted toward the restocking requirements of the Forest Practice Act. List B

species may normally be counted only in proportion to their place in the stand before harvesting, based on basal area. List B species may be counted in greater proportion if declared for management and adequately justified in the THP.

LOCAL AREA CONCERNS

Residents and politicians from local areas within the state have frequently sought special treatment for timber harvesting in and near their areas. This history has already described a few of these, such as the San Bernardino County request for Joshua tree regulations and the Monterey/Santa Clara County hardwood dispute. The next chapter will go into much more detail about local control issues, with a primary focus on events since the passage of SB 856 in 1983. At this point, this history will describe some of the events that presaged the passage of SB 856. Most, though not all, of these issues involved land use conflicts.

As more and more timbered areas of the state have become developed for residential use, local opposition to timber harvesting has increased. This opposition has even occurred in parts of the state almost totally dependent on the lumber industry as, for example, in Eureka. The simple fact is that people are uncomfortable with logging if it occurs next door. It doesn't smell as bad as a slaughter house, but it evokes something of the same feeling. Although opponents will raise many varied environmental concerns, their primary discomfort appears to be with the proximity. Planners have labeled it the "NIMBY" (Not In My Back Yard) syndrome, and it applies to many kinds of activities besides logging. Regardless of its source the problems it creates are real and have shown up in many forms.

There were stirrings under the old forest practice act. Unquestionably, some of these feelings lay behind the San Mateo County actions against Bayside Timber Company that resulted in the courts' voiding of the old act in 1971. From early times, San Mateo, Placer, and Riverside Counties all had forest practice regulations of their own. Later, other counties followed suit.[7] Although expressions of concern have come from many parts of the state from time to time, the counties around San Francisco Bay and the region around Lake Tahoe have continually brought the most pressure. As an outgrowth of earlier incidents, the Z'berg-Nejedly Forest Practice Act of 1973 specifically allowed county regulation of logging.

In an effort to forestall more stringent regulations in the Bay Area counties and at Lake Tahoe, the old Board of Forestry

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[7] TOIVO F. ARVOLA. 1976. Ibid. See pages 62 through 67.

had encouraged its District Forest Practice Committees to draw up special rules for those areas. (Arvola describes those efforts; see footnote 7 for documentation.) When the new Forest Practice Act went into effect, John Callaghan of the Forest Protective Association urged the creation of separate Forest Practice Districts for the high use areas of the state, especially for the Bay Area. He clearly hoped to isolate those areas to prevent the outward spread of undesirable restrictions. The board did not heed that advice, but the Coast and the Southern DTACs followed the example of their predecessors and set aside special areas for more restrictive rules. The Coast DTAC created the Southern Subdistrict to cover the Bay Area Counties. The Southern DTAC created a High Use Subdistrict for Southern California, Lake Tahoe, and the Central Coast.

SONOMA COUNTY BECOMES A SPECIAL CASE

Influenced by its proximity to San Francisco, yet close to major timber producing areas, Sonoma County has long had a split personality when it came to logging. South of the Russian River resort area, it has many of the attributes of the counties adjacent to the bay. North of the resort area, it becomes almost totally rural, more nearly resembling Mendocino County to its north. This dichotomy has frequently kept its problems before the board and has even helped to form some important legal precedents.

When CDTAC created the Southern Subdistrict, it gave serious consideration to a CDF request to include the southern portion of Sonoma County. The county board of supervisors did not support the idea, however, and CDTAC dropped the idea. County residents and CDF again prompted the Board of Forestry to reconsider the matter in March, 1976. Later, at the June, 1977 Board of Forestry meeting in Santa Rosa, several local citizens and one supervisor urged the board to move in that direction. The board forwarded the item to the CDTAC which reported in September that it had decided to refer the question to the board of supervisors again. That board again did not support the move.

Again in January and March, 1978 the Board of Forestry studied the matter. The board received several letters and much testimony pro and con. Oddly, many persons of environmentalist persuasion began to oppose placing southern Sonoma in the Southern Subdistrict. These persons objected to certain features of the special rules and wanted individual treatment for Sonoma County. CDTAC considered the matter at several meetings early in 1978. The Board of Forestry took it up again in August, 1979, but without the support of the county board of supervisors, the forestry board did not wish to act. Even after passage of SB 856 when the county could have petitioned the Board of Forestry for special county regulations, Sonoma County did not act.

CAMP MEEKER NOT MEEK ABOUT LOGGING

Camp Meeker lies south of the Russian River resort area and west of Santa Rosa. Many years ago a cluster of summer cabins was built in a logged-over forest area. At the time, the area was relatively remote, and the facilities were primitive. Modern planning for lot size, road widths, access and egress, and so forth, were unheard of. Time and the burgeoning population brought substantial changes, however. While the redwood timber sprouted and grew rapidly, the summer homes were being improved and year-round occupancy became the norm. Chenoweth Lumber Company of Cazadero owned land and timber immediately adjacent to Camp Meeker and in 1976 made plans to log its property.

By not so fortunate coincidence, the Chenoweths also owned the water system that supplied water to the neighboring residents. Their timberland doubled as their own watershed. The delivery system was extremely primitive, with many pipes lying on the surface of the ground and storage tanks vulnerable to damage by logging.

Camp Meeker residents complained to the Board of Forestry in December, 1976 about the Chenoweth plans, but the board held that CDF had sole authority to approve or deny the THP. The board could consider it only upon appeal. The Chenoweths amended their plan at CDF insistence to protect the water system and promised immediate repairs if damage occurred. They even reduced the area of planned harvest. Nevertheless, Lewis Moran, the Director of Forestry at the time, decided to deny the plan because of the risk to the water system. The Chenoweths appealed the denial, and the board held its hearing on March 19, 1977.

Despite heated and emotional testimony from Camp Meeker representatives, the board overturned the denial and approved the plan. Testimony from Department of Water Resources specialists was less than unequivocal, and generally failed to give unqualified support to the director who pleaded his own case to the board. The residents objected to every aspect of the operation besides the water system. They complained about narrow roads, dust, noise, traffic, loss of view, erosion, anything they could think of, but the Chenoweths had already offered mitigations for virtually every impact. The Chenoweth efforts to meet their neighbors' demands obviously influenced the board's decision.

The Camp Meeker residents led by spokesperson Gallegos filed suit to overturn the board's decision. On narrowly technical grounds, the courts vacated the board's approval of the THP. The board, they ruled, had not adequately considered certain environmental issues raised during public testimony, particularly

the "no project alternative" required by CEQA. It seemed relatively simple for the board to correct its findings and once again to approve the THP. At this point, the board specifically requested CDF to make frequent inspections of the area to ascertain compliance with the plan.

The residents appealed once again on the grounds that this time the board had failed to consider changed circumstances since their first action. The courts supported this appeal also. On June 22, 1978 the board heard testimony on possible new circumstances, decided there were none, and once again approved the THP. On July 27, 1978 the court accepted the board's new findings and withdrew its restraining order. The residents did not appeal further.

AMENDMENTS TO THE SOUTHERN SUBDISTRICT RULES

Meanwhile, back at the ranch, events in the Southern Subdistrict of the Coast District had begun to propel the board into another arena. The Coast DTAC had taken under consideration a series of amendments to its special subdistrict rules and reported its intentions to the board on April 26, 1978. This report prompted several cogent remarks from Chairman Henry Vaux. He pointed out that the Forest Practice Act gave the board no authority to solve many of the concerns expressed by local area representatives. He specifically mentioned such items as health and safety, traffic, noise, and the treatment of local variations arising from differing land uses. He asked rhetorically, "What rules must we or can we adopt to address these issues?"

The board scheduled a meeting in Santa Cruz on August 17, 1978 to review the needs of local areas. Santa Cruz County had become the focus of many local area problems. The board heard little that was new at that time. At their meeting the next November, however, board members learned that they would need an Environmental Impact Report to comply with CEQA whenever they adopted new rules. The board debated whether they could attempt to seek a Categorical Exemption or certification as a Functional Equivalent under PRC Section 21080.5 of CEQA. The debate continued through January and February the next year, with a decision made in February to seek Functional Equivalent certification.

The board eventually received the requested certification but not in time for its action on the amendments to the Southern Subdistrict rules. The board went ahead and adopted an EIR for the amendments. Formal adoption of rule amendments occurred on June 27, 1979.

One of the most hotly debated amendments would have allowed

larger clearcuts to take place in the subdistrict. In just the previous few months, the board had adopted rules for the Coastal Commission Special Treatment Areas that allowed as many as fifteen acres in a clearcut. CDTAC thought that the same principle could be applied to the subdistrict. Heated opposition developed, however, and the board adopted a one-half acre limit. Selective cutting coupled with strict reserve tree requirements remained the norm for the subdistrict, but the board adopted a clause allowing alternative methods where justifiable. The limit on clearcutting applied to alternative methods, however.

The board at this time introduced a new concept to allow use of alternative methods. The timber owner would have to engage a Registered Professional Forester to work closely with the timber operator to ascertain compliance with the plan. Industry spokesmen and CDF fought over the precise language of this requirement. CDF had suggested that the RPF "supervise" operations. Opponents took this to mean direct supervision of timber operator employees and argued that it would introduce safety and liability problems. CDF had intended to mean supervision in a broader sense. Compromise was arranged as soon as everyone realized what everyone else was talking about, and the term "work closely with" was substituted for "supervise." This same principle became an issue in the adoption of the general alternative in 1984 as described in Chapter Seven.

Several problems concerning hardwood regeneration came to the surface but remained unsolved at that time. Early logging practices had led to many second-growth stands with heavy hardwood components. CDF and industry foresters were equally baffled by the meaning of "substantially pure hardwood stand."

SETTING THE STAGE FOR SB 856

Through the late '70s and early '80s, County governments to the south of San Francisco became more and more restrictive about timber harvesting. Counties with timber harvesting regulations had generally employed the "Use Permit" to obtain their desired environmental mitigations. Few specific rules existed to govern harvesting practices. Restrictions were worked out on an ad hoc basis for each plan. The county could require a full EIR under CEQA. The process was exceptionally time consuming because the law allowed the counties up to a year, and they usually took all of it.

The one single action that more than any other brought SB 856 down on the counties was taken by the Santa Clara County Board of Supervisors beginning in 1980. Timberland owners Kevin and Phyllis Walsh sought to have their land rezoned TPZ as a preliminary action to conducting a timber harvest. Bloomfield Hereford Ranch wanted to buy some of the firewood on the property

and Big Creek Lumber Company would do the actual logging. The county board of supervisors attempted to require a county special use permit for timber cutting before they would approve the rezoning. The board of supervisors then denied the use permit.

All of the parties, including Bloomfield, sued the county, arguing that the supervisors had exceeded their authority under the Timber Yield Tax Law. The county's action, they pleaded, had become a taking without compensation. The case became known as Bloomfield v. Santa Clara County.

The Board of Forestry considered this a serious breach of state policy and on March 5, 1980 voted to join the suit as an amicus. The county went ahead, despite the suit, and adopted an ordinance banning timber harvesting in the county. Dean Cromwell testified to the supervisors that their actions were in violation of the law, but they passed the ban anyway.

Originally it had appeared that the Attorney General would not represent the board in this case, and the board approved a resolution to engage the Pacific Legal Foundation. Later, on July 17, 1980 Assistant Attorney General Robert Connett wrote to the board that the Attorney General would take whatever action necessary to challenge the board of supervisors. On October 2, 1980, Deputy A.G., Anne Jennings, filed a Complaint for Declaratory Relief on behalf of the Board of Forestry.

On June 2, 1981 Superior Court Judge Bruce F. Allen ruled in Bloomfield that the county could not legally deny the Walsh's rezoning application if it complied with legal requirements under the Timber Yield Tax Law. Shortly thereafter, on September 1, 1981, the appellate court, in Clinton v. Santa Cruz County, ruled that the terms "timber" and "timberland" as used in the yield tax law refer to the resource value of the trees and land for commercial logging. Since Santa Clara County had based its legal argument on a differing interpretation, Clinton forestalled a county appeal of Bloomfield. Nevertheless, county opposition to timber harvesting continued, and the timber industry went to the legislature for relief. SB 856 was the result. The next chapter will describe what happened after that.

Chapter 10

COUNTY FOREST PRACTICE REGULATIONS

The previous chapter describes many of the events leading up to the adoption of SB 856 in 1981, the legislation that ended the counties' right to directly regulate timber harvesting. Although it did not tell the whole story, the lawsuits outlined in those pages provide evidence of the controversies that took place. Santa Clara and Santa Cruz Counties provided most of the fireworks during that period, but other areas also added their sparks from time to time. Many observers felt that the state was headed for regulatory anarchy in the timber harvesting industry. Any county could add its own regulations to those of the State Board of Forestry and thus pile rule upon rule.

Burdensome and variable as they were in their own right, local regulations also brought on the full weight of CEQA. Counties had based their regulatory processes on the granting of operating permits under general police powers. County rules initially had no functional equivalent status exempting their permits from EIRs. Late in the game, the California Resources Agency adopted amendments to the CEQA Guidelines to extend functional equivalency to county forest practice regulations. None of the counties would recognize the validity of the changes, however, and the timber harvesters feared to challenge the counties in the courts. With even some of the major timber producing counties beginning to talk of regulation, the timber industry decided to ask the legislature for relief. SB 856 resulted.

ADOPTION OF SB 856

The concepts eventually embodied in SB 856 had their origins in SB 899 introduced by Senator O'Keefe on April 8, 1981. Senator John Garamendi also participated as a co-author for a short while. The Board of Forestry adopted a resolution of support for SB 899 on May 5, 1981. As introduced, the bill was fairly straightforward. It would simply nullify the counties' authority to regulate timber harvesting and leave the Board of Forestry as the sole regulator of forest practices. Shortly thereafter the authorship and the bill number changed when Senator Barry Keene amended his SB 856 to encompass the measure.

Despite opposition from the counties most directly affected and editorial objections from such newspapers as Palo Alto's Peninsula Times-Tribune, the Sacramento Bee, and the San Francisco Chronicle, the bill fared surprisingly well in the legislature. To be sure, amendments were added to soften some of the features most objectionable to local interests. Changes

empowered the counties to petition the Board of Forestry for rules to take account of local needs. The board's powers were broadened to allow regulation of activities that concerned local citizens, including haul routes and schedules, hours and dates of logging, and performance bonds. Amendments then mandated the board to adopt any rule that the county could show to be necessary and consistent with the intent of the Forest Practice Act. Still other amendments required CDF to hold a public hearing on any THP within the county if the county requested it.

The preconditions to local rule adoption included in the bill led to strained relations between the board and the counties on several occasions. The need to prove necessity became especially contentious. No local government has ever had to deal with an agency such as the Office of Administrative Law. Nor had counties ever had to prove the necessity for any regulation in the terms demanded by that agency. The attitude of county boards of supervisors seemed to be, "If enough voters want a rule, the rule is needed." OAL has a far different standard. Other differences between state and local practices contributed further difficulties, as we shall see.

In fairness, it should be pointed out that the counties have far more leeway under their general police powers than do state agencies such as CDF or the Board of Forestry. Neither the counties nor the state agencies were quick to perceive the critical difference this leeway made.

With few negative votes in the legislature, SB 856 passed on September 7, 1982, was signed by Governor Brown on September 30, and became law on the following January 1. It immediately stopped the counties from adopting forest practice regulations, except for very minor sorts of tree cutting. It did allow the counties to continue enforcement of their existing regulations until July 1, 1983, but from that time forward, only rules of the Board of Forestry would apply. The six-month delay was included to provide a period for the forestry board to act. Unless the board could act within that period, however, matters of local concern would go temporarily unregulated. This so-called "window of vulnerability" came in for much local criticism.

Realistically, the deadlines imposed by SB 856 were impossible for the either the counties or the board to meet. Even if all parties could have acted in harmony, the requirements of the Administrative Procedures Act would have prevented such quick rule adoption. A primary reason for the adoption of AB 1111 was to prevent hurried rule adoptions. The start-up of any drastic procedural change results in a natural inertia, and SB 856 in particular faced unusual resistance from the counties. Also, the divergence of views among citizens groups contributed to a mixture that was sure to impede quick action, which is exactly what happened.

COUNTY RULE ADOPTION BEGINS

The Board of Forestry actually began preparing itself for the expected workload at its November 3, 1982 meeting. The board received reports that the counties were getting ready to present their proposals shortly after the first of the year. It requested additional staff support from CDF. It further recognized a need for more frequent board meetings with a full complement of board members. The hope was expressed that the governor would not delay appointment of new members as terms expired. This need was all the more critical because Chairman Vaux' term was up, and a new occupant for the chair was expected.

The earliest inquiries actually came from Trinity and Napa Counties, two areas that had not previously created much controversy. Napa County was the first county to check in with a formal set of rule proposals, submitted on December 29, 1982. Just one day later, proposals arrived from both Monterey and Santa Clara Counties. These proposals predictably lacked any substantive rationale to show necessity. Moreover, they tended to be vaguely worded in abstract terms only and not in the form of proposed regulations. The proposals all required a formidable amount of staff work, and it proved difficult at times to determine exactly what the counties wanted. Despite the difficulties, negotiations between the state and county staffs proceeded more or less amicably, with varying results.

Finally, on the following April 5, Napa county decided to withdraw its request until it could complete its state mandated general plan. The forest practice effort had drawn county staff away from needed work on the general plan. The county concluded also that it would have a better idea of its forest practice needs with a good general plan in hand.

Trinity County never did formally submit a proposal, although its supervisors talked about it several times. The Trinity Supervisors considered SB 856 seriously during their discussions about Grass Valley Creek described in the preceding chapter. Napa County returned a couple of years later with another rule proposal with better results. That effort will be covered later.

MONTEREY COUNTY MOVES QUICKLY

The next few months became almost a blur of activity with the arrival of county proposals, negotiations between county and state staffs, DTAC meetings, and Board of Forestry Hearings. The board actually considered many counties' requests simultaneously and often held hearings just one day apart in separate

localities. The board had decided at an early point to hold hearings within the affected counties whenever possible.

It would be impossibly confusing to try to give a day by day account of happenings. Therefore, this narrative will consider each county individually. The reader must realize, however, that none of the decisions were made wholly independently of each other. Representatives from most of the concerned counties attended most of the hearings, regardless of where they were held. Decisions made in one county thus became precedents for the others. In a leap-frogging style, a good idea popping up in one hearing quickly became a proposed amendment in another. With OAL limitations on adoption of amendments that had not received several days or weeks of advance notice, the process became incredibly complex and tedious.

Although Napa County withdrew temporarily, negotiations were more successful with Monterey and Santa Clara Counties. The board formally received "finished" proposals from both counties on April 5, the same day that Napa County withdrew its proposal. The board noted, however, that over half of the period allowed by SB 856 for adoption of new county rules had already elapsed. Seven months had gone by since the bill had passed. The Board of Forestry thus had only three months left in which to act before county regulations ended.

The Monterey County proposals became the first to come formally to the attention of the Board of Forestry. On April 20, 1983, an abbreviated forestry board held a hearing in Salinas. Because Chairman Vaux' term had ended and Harold Walt had not yet taken office, Vice-chairman Trobitz convened the meeting. Several surprises led to no little confusion. Monterey County previously had not extensively regulated timber harvesting because little logging had taken place in the county in recent years. The county had concentrated primarily on log hauling and little else. Even that had been done on an ad hoc, case by case basis. With such a limited history, the county had a difficult time convincing the board that it needed its requested regulations. Still, a THP for a substantial old-growth redwood harvest was even then pending and was causing great alarm in the county.

Besides hauling, the county expressed concern about winter operations, asking that they be banned altogether. The effect of SB 856 on a general county erosion control ordinance that applied to more than logging was hotly debated. The county requested extension of the Coastal Commission Special Treatment Area rules throughout the timbered areas of the county. The county believed incorrectly that the forestry board had authority simply to rearrange the CCSTA boundaries.

The liveliest discussion revolved around the status of

hardwoods in the county. County representatives asked the board to either regulate all hardwood cutting or else to declare no interest in hardwood regulation so that the county could do so. The fact that the county had not previously regulated hardwood cutting made their case for necessity rather tenuous. Naturally, the fuelwood cutters in attendance resisted the idea of regulation, as did representatives of the cattle industry.

What made the discussion most interesting, however, was the evidence that not even the county representatives were united on the subject. County Supervisor Petrovic, who represented the inland areas of the county where grazing predominated, protested vehemently. He argued that the entire rule package had not been properly adopted by his board before being presented to the forestry board.

During the long discussions, it eventually became apparent that many of the county's concerns revolved around conversion of land from forest, especially hardwoods, to other uses. That the Forest Practice Act would have only limited effect on conversion was difficult to explain and gave rise to continuing debate.

In the face of the uncertainties and confusion on all sides, the Board of Forestry could do little else than continue the hearing to a later date. A second hearing took place on May 27, 1983. At that hearing, the county neatly solved the hardwood issue for the time being by withdrawing its request for regulation. Obviously, the county had been unable to resolve its own divided opinions. Interestingly, the threat of county regulation if the state did not act on hardwoods led a number of opponents of state regulation to reconsider their position. The state just might be the lesser of two evils.

At this second hearing county versus state jurisdiction over road construction standards came in for sharp debate. An issue not heretofore recognized by the state was the concern of local agencies about possible future use of logging roads. The county feared that once a road was in place, no one could prevent its use for subdivision access. Since logging roads seldom meet the standards for permanent residential or industrial use, a whole network of substandard roads might come into being. The county seemed unmoved by arguments that it had full authority over road design for other than logging use. Their spokespersons believed that once roads were in place, it would be politically impossible to order new routes under higher standards.

In a pattern that became commonplace, county officials demonstrated an unfamiliarity with existing Forest Practice Rules. Proposed new rules often overlapped existing district rules to a great extent. A feeling frequently encountered was that questionable practices would go unregulated unless the county requested appropriate rules, regardless of other

regulations.

Still another question concerned whether to move Monterey County from the Southern to the Coast Forest District. Its primary timber base, though small, was redwood, seemingly making for a closer relation with the counties south of San Francisco in the Coast District. Although discussed frequently with much apparent logic at several meetings, the move never took place.

A third hearing became necessary and was scheduled for July 8, 1983. At that time, the forestry board finally adopted a shortened version of the county's requests. Significant deletions included a request for a bond requirement to guarantee compliance with road protection rules and the extension of the Special Treatment Area rules. After some further delays to make minor revisions to satisfy the Office of Administrative Law, the board gave final approval to the special Monterey County rules on September 15, 1983. Adopted under emergency procedures, they became effective immediately upon filing on September 19, the first special county rules adopted following passage of SB 856.

GUERRILLA WARFARE IS THREATENED

In the meantime, more than a little discussion was going on elsewhere. The "window of vulnerability" received a lot of publicity, based to a large extent on the mistaken belief that all meaningful regulation would end on July 1, 1983. Santa Cruz County officials lobbied their legislators to obtain a longer extension of the period in which county rules would remain in effect. In a statement to the press, one of the county supervisors from the area suggested that feelings had reached such a pitch that "guerrilla warfare" might break out. This remark was seen by some at the time as being rather intemperate. The supervisor was merely reporting, however, on what he perceived as a very resentful attitude by many of his constituents. As time went on, this supervisor came to play a constructive role in helping to bring the various factions together.

Much of the concern in the counties at the time centered on a desire for citizen participation in the review of THPs. Because of CEQA requirements the previous county process had always provided a lot of citizen participation. The local population feared that they would lose these opportunities under the functional equivalent process. At best, it could prove inadequate. CDF promised that until they and the board could adopt rules to create a system of public notice and participation, they would nevertheless continue to hold public meetings whenever requested. This promise did little to quell the concerns. A lack of trust in CDF was apparent.

CDF ADOPTS THP HEARING REGULATIONS

CDF began a somewhat unique rule making action that was little noticed at the time. It was a move that proved to have significant consequences. The department announced that it would adopt regulations of its own to govern hearings on newly filed THPs. SB 856 granted counties the right to call for a public hearing on any THP filed in the county. The act did so in fairly loose terms, however. The vagueness of the hearing provisions were sure to cause misunderstandings and problems for all parties, especially CDF, unless defined more clearly. For one thing, the basic Forest Practice Act had established very narrow time limits. Crowding a hearing into the plan approval process would require very carefully worded rules.

Although CDF has broad rule making powers in many areas, this was only the second time that the department adopted rules under the Forest Practice Act. The legislature had assigned virtually all powers to regulate timber harvesting to the Board of Forestry. Most observers did not realize that CDF had any separate authority of its own in that area. The legislature did, however, directly delegate a single very narrow piece of the action to the Director of Forestry. That small piece was the review of THPs for compliance with the act.

The forestry board itself has sometimes taken advantage of that provision whenever disgruntled parties asked the board to intervene while a plan was under review. It was quite easy to point to the law and say the board could not become involved at that point. This separation of powers came up for a bit of discussion while the board considered THP review regulations to satisfy Section 208 of the Federal Clean Water Act. Industry spokespersons argued then that the board could not create a Review Team because of CDF's authority over THP review. CDF itself considered at that time whether it should assert itself and insist on the power to control the review team. Because of the murky relationship between the forestry agencies and the water boards, CDF elected not to contest the action.

THP review authority formed part of the basis for CDF's attempt to adopt a fee schedule for THPs that will be covered in the next chapter. This attempt was CDF's only other venture into adopting forest practice regulations, and it came a cropper.

CDF held two well advertised hearings on its proposed THP hearing regulations, one in Santa Cruz on April 28, 1983 and the second the following day in San Rafael. Few county spokespersons appeared. Those who did expressed conflicting wishes. Some wanted the hearing to precede the review team meeting and others wanted it to come afterward. In an effort to parallel CEQA, CDF

had proposed that the hearing precede the review team meeting. After hearing the testimony, the draft rule was modified to allow flexibility in the timing. It had not yet become evident that some counties really wanted hearings both before and after. The rules adopted by CDF became effective on August 25, 1983 and are found in sections 1115 through 1115.4 of the California Code of Regulations.

CDF precedence over THP review never did become clear to many persons. The counties have regularly petitioned the Board of Forestry to adopt rules requiring CDF to hold its review hearings in some manner other than the one being followed.

SANTA CLARA COUNTY A CLOSE SECOND TO MONTEREY

Although the formal Santa Clara County proposals reached the Board of Forestry office the same day as those from Monterey County, it took staff longer to get things ready for hearing. The first hearing took place on May 26, 1983, the day before the second Monterey County hearing. A few similarities were immediately noticed. To mention just a couple, Santa Clara also requested regulation of hardwood cutting and a bonding requirement to guarantee compliance.

Differences were especially noteworthy, however. To start with, the county was split by the boundary between the Coast and the Southern Forest Districts. The majority of the hardwood timber lay to the east in the Southern District. The coniferous timber lay in the Coast District. Also, Santa Clara had a more substantial record of having regulated timber harvesting. After all, it had led the way with its efforts to ban all timber harvesting, thus stimulating passage of SB 856!

Prior county regulations had centered on thorough public notice requirements including detailed maps of higher quality than those used in a typical THP. The county wanted a rule for protection of "specimen" trees and for limitations on hours of hauling. Rules to regulate the use of chemicals, especially herbicides, were requested. The Santa Clara County Geologist also insisted on a thorough geologic review of THPs.

A second hearing became necessary and was held on July 7. The request for bonding came in for intensive discussion. Santa Clara had previously bonded quarry operators. It had not needed to bond timber operators, however, because its other restrictions had effectively prevented logging!

In other discussions, it was agreed that if the Board of Forestry did not take regulatory authority over hardwoods, the counties could act. The board agreed with the CDF that it already provided adequate geologic review of THPs. Although, the

Forest Practice Act does not provide authority to regulate the use of chemicals (Such authority belongs to the Department of Food and Agriculture) a compromise was worked out. The THP would have to indicate plans for use of chemicals; otherwise the forestry board would not attempt to regulate use of chemicals.

Dale Holderman, forester for Big Creek Lumber Company of Santa Cruz County, made a move that became precedential for solving many other disputes. He proposed language for a public notice requirement that proved widely acceptable. This proposal became a model for such rules throughout the region. It further demonstrated a desire for good relations that had become a hallmark of Big Creek Lumber Company in general and of Dale Holderman in particular. Frequently, Holderman's voice of constructive compromise broke many a deadlock.

The discussion about public notice served to emphasize several points that became crucial to all the county rule requests as time went on. With some specific exceptions, the counties expressed less concern about regulation of the actual timber harvest than about public participation in the THP approval process. More and more of the requested rules pertained to CDF and its THP review policies than to the conduct of the logging.

Many of the requested rules would have added significant costs to CDF's administration of the Forest Practice Act. These requests frequently forced CDF to defend itself by reminding the Board of Forestry and the counties that the costs had to be made up somewhere. If appropriations could not make up the difference, CDF would have to reallocate its resources. This argument implied that the Department of Finance and CDF held a veto over the rules in question. At the very least, it meant that another part of the state could end up with less protection to provide the county what it wanted. The CDF position was not popular.

On July 8, 1983 the board adopted a set of rules for Santa Clara County, but deleted or modified many of the county's requests. Although the county disagreed, the board majority believed that the deletions and changes were justified. Many of the county requests were deemed unnecessary because of overlap with existing district rules or because the county had failed to show a need. Administrative costs to CDF were another factor. After minor modifications to suit OAL, the rules were published on September 30, 1983. Monterey County had come in first, just eleven days earlier.

Ultimately, the Board of Forestry found a way to write a rule for bonding to guarantee protection of roads. This precedent made it possible for the board to approve such a rule for Santa Clara County in July, 1984.

SANTA CRUZ COUNTY PRESENTS ITS CASE

After intensive work at the local level, Santa Cruz County submitted its rule requests, and the Board of Forestry scheduled its hearings for July 21 and 22, 1983. The forestry board thought it had heard fireworks previously, but this and subsequent hearings in the county were a new experience! Although the county board had designated Supervisor Patton as their liaison with the forestry board, all the other county board members also participated in the hearing. Presentations by supervisors and citizens quite forcefully reminded the forestry board several times that Santa Cruz was a very small county with much timber and many rural residents. Their water supply came entirely from watersheds within the county. These residents liked their forested environment, and they feared the effects of unbridled timber harvesting on their way of life.

County representatives repeatedly pointed out that they wished to maintain a viable forest products industry in the county. They pointed to their past record as one of cooperation with the industry. They insisted that they only wanted reasonable regulation to prevent harm.

A massive landslide had occurred earlier that year on Love Creek, taking two lives. Although logging had not contributed in any way to the slide, speakers reminded the forestry board that the event demonstrated the inherent instability of the land base. They noted their fears that logging would lead to additional destabilization. Many rule requests related to a real fear of erosion and landslides.

Many of the Santa Cruz proposals also reiterated the request for local involvement in the THP review process. A key demand was for two public hearings on all THPs. One hearing would occur upon submission of the plan and a second after the review team analysis and before CDF approval of the plan. Plainly, the county wanted public participation both at plan filing and again later to review the findings of the experts.

This request highlighted not only the desire to maximize public involvement, but also the differences between EIR and THP review. CEQA provides for a single public review of the draft EIR. A draft EIR already has a significant amount of multi-disciplinary expert input. A THP has the input of the RPF who drew it up, but the multi-disciplinary review occurs later. The answer that judicial review is still available was not kindly received. CDF opposed the idea because of the cost. Moreover, CDF insisted that the Forest Practice Act directly delegated THP review to the department and that the board had limited authority to regulate the matter.

Santa Cruz presented several ideas the other counties hadn't thought of. They particularly wanted assurance that private roads would be protected from logging damage. The Board of Forestry and CDF misunderstood at first, wondering why the matter could not simply be addressed in the timber sale agreements. The proposal seemed to insert the state awkwardly into private disputes. It developed, however, that many roads in the county failed to meet subdivision standards and thus had not come under county jurisdiction. Nevertheless, the roads served many, sometimes dozens of homeowners, in a semi-public manner. In the absence of a clear responsibility for ownership and maintenance, protective regulations together with bonding eventually were seen as justifiable. Initially, however, the forestry board rejected the idea as unneeded.

Another new suggestion made by Santa Cruz was that the THP submitter should reimburse the county for its expenses in conducting environmental review. As the next chapter in this history will show, CDF had burned its own hands on a similar issue a couple of years earlier. The forestry board easily dismissed this proposal as outside its authority.

Adding a new wrinkle to the hardwood issue, Santa Cruz asked for and received, with some modifications, a rule to regulate firewood cutting. This business had become a big one in the county, and some additional regulation was clearly indicated.

Other counties had requested a written feasibility analysis, but Santa Cruz especially emphasized the demand. This request became a frequent refrain among the counties. As on all other occasions the board rejected the idea. (See Chapter One.)

Performance bonding came in for additional discussion, and as in the neighboring counties, the matter was put over for further discussion concerning need. In fairness to the Board of Forestry, this concept was entirely new and was outside the experience and expertise of the members. It required a lot of thought to do the job right. CDF generally supported the concept of performance bonding, but recommended a number of amendments. The board received constructive suggestions from a number of sources and eventually came up with a workable formula for all the counties.

A second hearing was scheduled to consider the Santa Cruz requests on September 15 and 16, 1983. It started out on the 15th as a reasoned step by step analysis of the county rule proposals. On the 16th, the Board of Forestry scheduled some routine board business for the early part of the morning and set the county issues for a later start. County representatives, including Supervisor Patton, delayed their arrival until the hour set for the continued hearing. In the meantime, the forestry board completed its other work ahead of time and decided to

discuss the county issues on an informal basis. The board intended to return to the beginning point as soon as the county representatives returned.

When Supervisor Patton returned, he objected strongly to the forestry board's having started without him. In the ensuing discussions, the board tended to reject a number of the items facing it at that point. Mr. Patton concluded that the rejections resulted from the board members prematurely making up their minds before hearing the county's case. A number of strong letters quickly passed between the two boards, but by the following December, a sort of peace had been reestablished.

In truth the county received some positive action by the forestry board on 26 out of the 33 specific rule requests acted upon. Several of the requests that the board denied or substantially modified could not have been granted as submitted for several reasons. The board of Forestry lacked authority to grant some of them. Others entailed costs that CDF could not absorb. Still others were covered by strong regulations already in existence in the district. Once the county officials were convinced of the logic in these decisions, they felt better about the results. Nevertheless, county representatives argued that the state rules did not adequately address several important property right and land use issues.

The Board of Forestry formally adopted the special rules for Santa Cruz County on October 20, 1983. Editorial changes insisted upon by OAL led to some delays. The rules finally went into effect on March 7, 1984. Further rule changes requested at a later date will be discussed later in this chapter.

BOARD OF FORESTRY ACTS ON SAN MATEO COUNTY REQUESTS

The next county in line was San Mateo. The various counties that petitioned the Board of Forestry for special rules presented surprisingly varied attitudes. No county seemed more pleasantly "out of character," however, than San Mateo County. Most of the issues confronted in these counties revolved around the encroachment of urban areas into the commercial forest. San Mateo County lies next to San Francisco and itself has a large population. Additionally, it was the case of Bayside v. San Mateo that brought an end to the original Forest Practice Act in 1971.[1] Thus, the stiffest "hard-line" opposition to logging might have been expected at this point. Not so.

With the possible exception of Bayside itself, no area with

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[1] TOIVO F. ARVOLA. 1976. Ibid. See page 66.

such built-in potential for controversy has ever caused less controversy than San Mateo County. Even Bayside, for all its reverberations, had not evoked the kinds of emotion often seen elsewhere when logging and urbanites meet. To be sure, the county had carefully regulated logging, just as the adjacent counties, until the adoption of SB 856. Seldom, however, had any San Mateo neighborhood arisen enmasse to protest a particular harvest plan as had so often happened in other areas. A small, but active timber economy has thrived there in relative peace through the years. The reasons for the different attitudes would be worth exploring, but such a study belongs to a different book. Nevertheless, to agency personnel wounded in numerous skirmishes elsewhere, San Mateo has always been a welcome relief.

The first hearing on San Mateo's SB 856 requests came on September 22, 1983. Almost immediately, a controversy broke out and threatened to undo San Mateo's reputation for peaceful timber harvesting. The citizens of El Granada, a community located near the coast, appeared in large numbers to protest a eucalyptus pulpwood harvesting operation under way nearby. Complaints centered on the noise of chippers and the use of narrow community streets by the chip trucks. The previous chapter described how the Coast DTAC sponsored a rule to increase the size of eucalyptus clearcut areas in the Southern Subdistrict. That same harvesting operation triggered the concerns of the El Granada citizens.

While the results did not entirely satisfy all the citizens, the board did not find the El Granada requests especially difficult to address. An accommodation was developed covering hours of work and the use of flagpersons and pilot cars where hauling on public roads might cause special hazards.

Other significant issues in the county included a request by citizens for additional public notice, preharvest marking of timber to be cut, and performance bonding. County officials, however, did not see a great need for additional public notice. These officials believed that the existing statewide standards for public notice should be tried first. The discussion led to an eventual adoption of a general rule on public notice for the entire Southern Subdistrict. San Mateo was satisfied with that solution.

Before the San Mateo hearing, a formula to provide bonding in the counties had eluded the Board of Forestry. It was here that the concept took its final shape. Following the San Mateo hearings, the board was able to complete the matter for all the counties that had previously requested it.

The issue of premarking of timber proposed for harvesting found industrial representatives somewhat in opposition to one another. Dale Holderman of Big Creek Lumber Company fully sup-

ported the county request for marking of all timber for review during preharvest inspection. Other industry spokespersons objected, suggesting instead that a sample mark should be enough. The board worked up a compromise that sets a total mark as the standard but allows CDF to approve a sample mark where justified.

A second hearing was needed to iron out the details, but the forestry board completed the final wording of San Mateo's special rules on October 20. After the usual waltzing with OAL, the new rules went into effect on January 30, 1984. San Mateo County has seen no need to revise the rules since then.

MARIN COUNTY MAKES A MODEST REQUEST

The Board of Forestry held its first hearing on the San Mateo County requests in Redwood City on September 22, 1983. The following day the board traveled to San Rafael to hear the Marin County proposals. The board members had a sense of deja vu from the outset, and after a short look at what the county had requested, realized the reason. They were seeing a re-run of the Santa Clara County proposals as first submitted. In fact, the package virtually repeated the Santa Clara list verbatim. The board had its suspicion confirmed when it found that the typist had in one place failed to change "Santa Clara" to "Marin."

The adequacy of public notice requirements became a key issue for discussion. The county wanted more notice than provided by the statewide rules. Since Marin County had only about 2,000 acres of commercial timberland in private ownership, board members questioned the need for special rules of any type. Moreover, the county had effectively prevented any timber harvesting for more than ten years previously. As mentioned earlier, the counties all had difficulty with the concept of proving need. Marin County officials suggested that the obligation to show a need, or at least to prove the lack of need in the face of a county request, belonged to the Board of Forestry. With the help of the Deputy Attorney General, the board reemphasized the obligation of the counties to supply proof.

In one departure from the standard set by Santa Clara County, the Marin County people insisted on extraordinary watercourse protection measures. They wanted the board to establish a protection zone on all watercourses, and they wanted no cutting within the zone. The board approved the protection zone because of Marin's unique water supply situation. Virtually all water needs are met from watersheds within the county. The board did not, however, agree to ban all logging in the zone. The county had not demonstrated a need. In the absence of overwhelming need, such a rule might have been called a "taking."

After a second hearing on October 20, the board adopted a final set of rules, modified in much the same way as the Santa Clara County rules. After the usual OAL editing process, the rules went into effect on March 2, 1984. The ink had hardly dried on the new rules, however, when David Dixon submitted a Timber Harvesting Plan to harvest 120 second-growth redwood trees from his property. The aftermath established a new high for emotional response to timber harvesting in an urban area.

DIXON FILES THP IN MARIN COUNTY

Up to this point the whole question of special rules for logging in Marin County had been entirely academic. Few people expected that anyone would ever log any timber in Marin County. So little commercial timber existed, and the county had done so much to discourage logging in the past, that most observers expected the pattern to continue. It did, but not without a lot of fireworks.

After Mr. Dixon filed his THP, the CDF Forest Practice Officer for CDF's North Coast Region, Ross Johnson, held a hearing in San Rafael that probably set a record for rancor. A member of the Marin Board of Supervisors blasted CDF in the press for what he called CDF's attempts to muzzle his comments. Mr. Johnson had tried to keep order by limiting the time for each witness and by limiting the comments to the relevant plan.

CDF decided to withhold approval of the plan under PRC 4555, in the process described earlier herein. CDF based its action on doubts raised by the county as to the adequacy of the rules to protect against erosion and to protect the Nicasio Reservoir from degradation. The reservoir was cited as being especially fragile. The Board of Forestry by law had to hold a hearing on the issues raised by CDF in withholding the plan and did so on May 16, 1984. The county used the opportunity to present the board with an entirely new and comprehensive set of special rules. The board agreed to new rules to strengthen erosion control and scenic values but denied the remainder as unsuitable for emergency adoption.

After Mr. Dixon willingly amended his THP to comply with the new rules, the county still went ahead with its lawsuit to block the harvest. That's another story that will be told later.

At the May 16th hearing the board promised to hold additional hearings on the issues not adopted at that time. After due notice the subsequent hearings were held on September 11,12, and 13, 1984. Most witnesses from the county argued that the board should simply ban all logging in the county as totally inappropriate in an urbanizing area. Senator Marks, as a political representative for the area, gave strong emphasis to

this idea. It fell to Board member George Dusheck, holder of impeccable environmental credentials, to explain why the board could not take such drastic action.

The board granted many of Marin's second round requests, but denied many, for the same reasons as in other areas. Final adoption occurred on April 3, 1985, and the revised rules became effective at the end of June. As predicted, however, no logging has taken place in the county.

RULES AMENDED FOR TIMBER HARVESTING PLAN SUBMITTAL AND REVIEW

In the meantime the board began to observe that each county seemed to have slightly varying demands for public notice of THP submittal and for public review. Hoping to reduce the confusion caused by overlapping rules, the board proposed to standardize the requirement. After first discussing the idea on November 2, 1982 it moved slowly toward this goal. On April 16, 1984 the proposal received a formal hearing and was adopted unanimously, but only for the Southern Subdistrict of the Coast Forest District. Unfortunately, the desired standardization could not be achieved. Both Santa Cruz and Santa Clara counties already had stronger rules on the subject that overrode the new rule. Monterey County, lying in the Southern District, was not affected. The result is that in some counties, three sets of rules must be followed to varying degrees when submitting and reviewing THPs.

MONTEREY COUNTY GOES A SECOND ROUND

After seeing the measures adopted for other counties nearby, Monterey County decided on a second try to obtain stricter regulations. County officials had watched closely and made a much more sophisticated effort this time. The Board of Forestry granted a hearing in Carmel on December 7, 1984 and adopted a sweeping revision of the earlier rules. New rules included water district membership on THP review teams, tightened performance bonding, and erosion control maintenance.

The board also approved several rules for application specifically to the Big Sur Coast Land Use Plan to protect viewsheds from major highways, protection of sensitive wildlife habitats, guaranteed field review of THPs by a hydrologist and a geologist, and more. The county had wanted full Special Treatment Area treatment for the Big Sur area, and they received most of what they requested, although not STA designation.

The board denied or postponed requests for expanded winter period restrictions, a requirement to hold public hearings on all major THP deviations, the ubiquitous "written feasibility

analysis," restrictions on reentry after making a timber cut, and additional protection for the Little Sur River Management Plan Area.

A member of the Monterey County Board of Supervisors called the forestry board "insensitive" for its failure to adopt all of the rules requested by the county. This charge drew an anguished response from several forestry board members that on balance it appeared that the county obtained quite a bit.

SANTA CRUZ COUNTY MAKES AN UNSUCCESSFUL SECOND TRY

The successful second efforts in both Marin and Monterey Counties apparently prompted Santa Cruz County to try again for the items it missed the first time. This time they petitioned the Board of Forestry for additional protection for private roads, for a requirement to review cumulative effects, stronger storm damage protection, more public participation in THP review, and for a required geologic review of THPs. The county also wanted an extension of the principles of the special rule for Soquel Creek described in Chapter 1 under Cumulative Effects. Its argument for this latter proposal was that all of Santa Cruz County was in the same condition as Soquel Creek.

The Board of Forestry held its hearing on this second effort on May 8, 1985. County officials gave a lengthy presentation to persuade the board of the justice of its case. CDF found reason to support a few of the requests but opposed most. The board surprised most onlookers by summarily and quickly moving to deny each and every request. Board members explained their action by saying that the county presentation had dwelt entirely on storm damage, primarily during the winter of 1983. All agreed that 1983 had been a bad year. The problem was, the county presented nothing that showed how logging had contributed in any way to the damage that had occurred. Moreover, and most importantly, the county had not shown how the proposed rules would prevent damage, even if logging had been shown as culpable.

Needless to say, the first reaction in the county was one of shock and disbelief. To the credit of the county representatives, especially Supervisor Patton, the county took positive steps to review its program. The Board of Supervisors appointed a Forestry Advisory Committee made up of equal numbers of Professional Foresters and interested lay citizens. In conjunction with this work, the county had obtained funds from the State Water Resources Control Board to conduct its own mini-208 study. The Board of Forestry held a meeting in Santa Cruz in March, 1986. The county reported on new proposals being developed with the aid of this committee. The county reported that CDF had been very helpful.

THE RETURN OF NAPA COUNTY

Napa County quietly worked away on its General Plan for more than two years, saying nothing about logging or forest practices. No one had conducted a logging operation in the county for this whole time. Then, in early 1985, a timber owner named Seghesio ended the quiet by deciding to harvest his timber. When he filed a THP, the county suddenly came unglued. The county planning department quickly threw together another list of proposals and petitioned the Board of Forestry for their emergency adoption. The board held its hearing on June 4, 1985 and concluded that no emergency existed to justify the rules. The county had thought that the mere absence of rules created an emergency, but state law holds otherwise. The rules went onto the shelf and are still there.

In the meantime, CDF went through a series of hearings on the THP. The first THP was denied for incompleteness, but after being revised and resubmitted, it was approved. The harvest went ahead without undue further controversy.

LEGISLATIVE MANEUVERING

No sooner had SB 856 gone into effect than legislators from the impacted areas began to introduce bills to modify its effect. These bills ranged all the way from outright repeal to short-term extensions of county rules. The "window of vulnerability" issue prompted some of the legislation. Other efforts came as the result of particular proposed logging operations that excited local popular opposition. The refusal of the Board of Forestry to accept certain county proposals also encouraged critics of the board to join in presenting bills to amend SB 856.

Assemblyman Goggin introduced a bill to create a Big Sur Special Treatment Area and give Monterey County the authority to regulate the area. He justified the bill on the failure of the Board of Forestry to grant many of Monterey County's rule requests. Also, a proposed timber harvesting operation in Palo Colorado Canyon near Big Sur had excited public opposition. The Board of Forestry opposed this bill, and it made little progress.

The most active legislators were Senators Mello and Marks and Assemblyman Farr. Senator Nielsen and Assemblyman Sher also participated to some extent. 1984 was the busiest year. At one point that year, SB 336 (Marks), SB 1007 (Mello), and AB 1050 (Farr) were working their way through the process with identical wording to repeal SB 856. At the same time, SB 2335 by Senator Marks would have restored to Marin County only the right to regulate logging. This bill clearly was a reaction to the Dixon

THP already mentioned. Of these bills, only AB 1050 made it onto the governor's desk where it was vetoed on October 1, 1985.

Assemblyman Farr and the Board of Forestry collaborated in 1984 on another bill, AB 3838. This bill was designed to satisfy some of the more pressing of the counties' concerns. These concerns included a right for the county to appeal CDF approval of a THP to the Board of Forestry, a longer review period for THPs in a county having special rules, and a way for the board to delegate performance bonding back to the counties. As the bill wended its way through the legislative labyrinth, various other ideas were added and dropped. The forestry board supported the bill in principle, however, and it reached the governor in time to become effective in 1985.

The board quickly responded by adopting regulations to implement AB 3838. These regulations consisted mainly of the process for filing an appeal and giving the necessary public notice plus the procedures for conducting hearings. The board completed its work on April 3, 1985, but with OAL's help, it took until the following September for the rules to become effective.

In the meantime, other legislation came and went. SB 1855 (Mello) in 1986 would have returned authority to the counties to regulate all non-TPZ lands. The Board of Forestry would have control of only TPZ lands. Except for Santa Cruz County, the counties in contention have very little TPZ. The bill died in committee.

Also in 1986, SB 2035 by Senator Morgan required a THP submitter to include haul route information in the THP if requested by the county. It also required CDF to withhold approval of a THP until assured that the submitter had received all required state highway encroachment permits. Both CDF and the board opposed this bill, but it passed, and the governor signed it.

In 1987, AB 1636 by Assemblyman Sher would have returned the power to regulate hardwood cutting to the counties. The bill died in committee.

THE COURTS GET INTO THE ACT

As most readers would expect by this time, no issues as controversial as the ones covered by this chapter could get by without judicial attention. In virtually all of these cases, the counties brought the issues into court. All were joined by citizens. In a few cases, however, citizen groups initiated the suits, and were joined later by the counties. The issues were almost identical in most cases. The plaintiffs would allege that CDF and the Board of Forestry had failed to comply with CEQA and

also had deprived some citizen of a right or of some property value without due process.

The CEQA issues centered on a contention that the many changes in regulations occurring since 1976 required the Resources Secretary to recertify the THP process as a functional equivalent under Section 21080.5 of the Public Resources Code. Inadequate attention to cumulative impacts was usually, but not always alleged, also. The due process contention was based upon the alleged lack of sufficient opportunities for the public to participate in the review of THPs. The constitutionality of the Forest Practice Act would thus come under attack for its supposed insufficient guarantees of due process.

The first of the SB 856 related lawsuits was filed by Monterey County in 1983 to block logging in Palo Colorado Canyon. The judge in the case issued a temporary restraining order. The issue never did go to trial, however, as the Big Sur Land Trust arranged to buy the property in question for recreational development.

Santa Cruz County and a plaintiff named Laupheimer sued in January, 1985 to block an operation near Lompico Creek. The case became known as Laupheimer v. State of California. In the ensuing trial, the judge ruled entirely in favor of the board and the CDF, finding against the plaintiffs on all counts. The plaintiffs appealed that case, and the appellate court upheld the trial court decision on all points except one. The court found that CDF gave inadequate attention to cumulative impacts. The decision became academic because following the trial court decision, the operation had taken place without incident. In the meantime CDF modified its cumulative impacts review process in a way that harmonized with the appellate decision.

This point calls for a return to the Dixon THP in Marin County. After the Board of Forestry refused to grant the second-round rule requests of the county, the county filed suit to block the Dixon THP. The trial judge granted a restraining order halting operations. While the case was awaiting trial, the county took advantage of the new appeal process provided by Assemblyman Farr's AB 3838. That bill allowed the Board of Forestry to assign appeals to a three-member board subcommittee. That subcommittee, with board member Carlton Yee as Chair, heard the county appeal on February 27, 1985. To no one's surprise, the subcommittee denied the county appeal.

Back in court, the judge found that CDF had committed a procedural error in failing to provide a response to environmental concerns in language that a layperson could understand. The lack centered on forest practice rule language. He ordered CDF to prepare a supplement to the THP giving a clear explanation of the rules. After CDF complied with this ruling,

the judge lifted the restraining order and rejected further appeals. The county might have appealed to a higher court, but the Trust For Public Lands intervened to buy the land and timber from Mr. Dixon. Thus was Marin County saved from the catastrophe of a logging operation!

Beginning in 1984, another lively set of cases was fought out in Santa Clara County. The arguments concerned logging in Moody Gulch, near State Highway 17, just over the hill from Santa Cruz County. CDF rejected one THP for the area in late 1984. Then, after correcting the faults that led to its rejection, the timber owner resubmitted the plan, and CDF approved it. The county at first appealed the approval to the Board of Forestry, but suddenly for no apparent reason withdrew its appeal on April 3, 1985. The Lexington Hills Homeowners Association representing adjacent property owners then filed suit to block the harvest. The charges essentially followed the script outlined previously. In one critical difference, the suit did not allege any cumulative impacts errors.

After the trial court found against the plaintiffs, they filed an appeal and at the same time filed a mandamus action against CDF's approval of the THP. In this second suit, plaintiffs simply charged CDF with improper application of the Forest Practice Act and Rules. Trial court ruled against plaintiff on all points, except one. The court ruled that CDF erred by not assessing the environmental effect of the timber operator's failure to obtain a Caltrans (California Department of Transportation) encroachment permit to enter Highway 17 before approving the THP. Alternatively, the court said CDF could have waited until Caltrans issued the permit before approving the THP. Since Caltrans had ultimately issued the permit, CDF considered the ruling somewhat absurd and appealed.

Up to this point, since withdrawing its appeal to the Board of Forestry, the county had stayed out of the case. Spurred by the trial court mandamus finding, the county sued Caltrans for not requiring an EIR under CEQA before issuing the encroachment permit. The trial court found for the county, and Caltrans appealed.

Thus, the appellate court had three separate appeals based on one THP to consider. After the litigants had filed many pounds of legal documents, the Sixth District Appellate Court found in favor of the state on all points. Had the plaintiffs mentioned cumulative impacts in some way, they might have won that single point. That lack, however, left them with nothing to assuage their loss. The Laupheimer and Lexington Hills appellate decisions all came down together on April 15, 1988.

In one final case, San Mateo County appealed CDF's approval of a THP submitted by Holmes Lumber Company. A Board of Forestry

subcommittee chaired by Dr. Carlton Yee heard this appeal at Redwood City on October 21, 1986. The county, aided by neighboring property owners who opposed the operation, argued that deed restrictions, hazards to public transportation, and threats to the water supply mitigated against approval of the plan. The subcommittee found that no board rule pertained to the deed restrictions and that the plan more than adequately complied with board rules on the other issues. They upheld CDF's approval. The neighbors have gone to court on the deed issues, but no state action was appealed. True to San Mateo County form, the appeal was a model of civility and decorum, unlike some of the others.

Chapter 11

FOREST PRACTICE ACT ENFORCEMENT

Until now, this history has necessarily concentrated on activities of the Board of Forestry. So many noteworthy events and policy decisions occurred at that level that it has been impossible to give board activities less attention. Nevertheless, as noted earlier in many places, especially in Chapter 2, the Department of Forestry and Fire Protection (CDF) had a large role in the implementation of the Forest Practice Act. This chapter will concentrate on the part played by CDF.

CDF RESPONSIBILITIES

As described in Chapter 2, CDF has played a dual role: staff-adjunct to the Board of Forestry, and agency with powers separate and distinct from those of the board. The board has never attempted to provide itself with enough staff to address all the many responsibilities given it by the Forest Practice Act. Where the act permits and common sense dictates, the board delegated a number of its duties to CDF. The board rightfully retained all of its policy setting and rule-making duties; it could not do otherwise, even if it wanted. For an example of delegation, as described in Chapter 9, the board authorized CDF to grant Timberland Conversion Permits. The board retained only the hearing of appeals if CDF denies a permit. The board still retains the power to make the rules governing conversion permits. In similar vein, the board, while retaining the setting of fees, delegated the issuance of Timber Operator Licenses. The board also assigned to CDF the soil erosion studies required by the act. This chapter will discuss Timber Operator Licenses and erosion studies later.

In addition to those duties delegated by the board, the Forest Practice Act either specifically or implicitly assigns a number of duties directly to the Director of Forestry. The duties directly assigned to CDF include making Forest Practice Rule recommendations to the board and reviewing THPs for compliance with the act and board rules. (As elsewhere in this history, "Director" and "Department of Forestry and Fire Protection" are used more or less interchangeably and are abbreviated "CDF.") These activities have already been addressed to some extent; this chapter will add more. CDF also has the responsibility to make the many types of inspections required by the act.

Implicit in the duty to inspect is the power to take enforcement action. With one exception, all enforcement action

goes through the courts and completely bypasses the board. This procedure affects even administrative enforcement such as revocation or suspension of a Timber Operator's License which, in case of appeal, is handled by the state Office of Administrative Hearings. The single exception involves the Notice of Intent to Take Corrective Action. When CDF issues such a notice, the board decides on any appeals. More later.

This chapter will also cover an interesting series of events that occurred when CDF attempted to adopt a fee schedule for filing THPs. Critics of the action charged both that CDF had usurped an authority that belonged to the board and that no one had such authority.

CDF STAFFING

CDF has a decentralized organization. The Director of Forestry, located in Sacramento, has a staff with which to confer and which does much of the routine headquarters work, as in any large agency. The director's staff, like all Gaul, is divided into three parts: Fire Protection, Resource Management, and Business Services. A Deputy Director heads each of the three branches. The director's staff addresses legislative matters, and handles liaison with other agencies and organizations, including the Board of Forestry. It performs certain limited coordination and control functions over the field operations but has no supervisory authority. Supervision flows directly from the Director through the Chief Deputy Director to the Regional Chiefs. The staff, more often than not, also performs a great deal of the board's detail work which its own staff cannot do.

CDF has divided the state into a number of administrative regions. Subordinate to the director, the head of each region was once called a Deputy State Forester, but more recently has held the title of Regional Chief. In 1976 there were five Regions, numbered, confusingly, I on the North Coast, II in the Sierra-Cascades, IV in the Southern Sierras, V on the Central Coast, and VI in Southern California. Region III disappeared in 1970 following a reorganization during the administration of Governor Reagan. Perhaps hoping for an ultimate reversal of the reorganization, CDF for many years did not change the numbers to account for the lost region. In 1985 the number of regions was further reduced to four. At that time the old Region V disappeared, its territory being absorbed by Regions I and IV and the Southern California Region. The latter became Region III instead of VI as before.

Each Regional Chief has a staff that parallels the director's staff. Below the Regional Chief are a number of Ranger Units divided roughly along county lines, each headed appropriately by a Ranger Unit Chief. Each Ranger Unit also has

a staff that resembles the staffs at the higher administrative levels. Since the relative workloads of fire protection and resource management varies considerably among the regions and ranger units, the size and composition of the different staffs vary greatly. For example, the North Coastal Region (Region I) has by far the heaviest resource management workload. As a result the Humboldt and Mendocino Ranger Units have larger forester staffs than some of the Regional Offices in other parts of the state.

Since this history relates almost exclusively to the Forest Practice Program, it will attempt to outline only the staffs assigned to that program. It will perhaps help to identify the individuals who occupied key Forest Practice positions during the years 1976 through 1988.

Until mid-1975 the Resource Management Staff of the then State Forester Larry Richey was headed by Tobe Arvola. Mr. Arvola was the author of the earlier forest practice history often alluded to in this work.[1] Following Mr. Arvola's retirement James Denny became Chief of Resource Management. When the Division of Forestry became a Department in 1977 the arrangement at first shifted only slightly. Mr. Richey's job title changed from State Forester to Deputy Director. He led both Resource Management and Fire Protection but no longer held responsibility for Business Services. Mr. Denny remained essentially as he was before the change. Then, in 1979, when David Pesonen assumed the directorship, he appointed Loyd Forrest Deputy Director in charge of Resource Management. A separate new Deputy Director position was created for Fire Protection and was filled by Mr. Robert Paulus. A new position of Chief Deputy Director was created and was filled by Mr. Robert Connelly.

In charge of Forest Practice Enforcement under both Messrs. Arvola and Denny until 1980 was Assistant Chief Earl Sechrist. In that year Kenneth Delfino assumed the duties formerly held by Mr. Sechrist. Then early in 1981 Mr. Denny retired and Mr. Delfino moved up to Chief of Resource Management. This writer became Assistant Chief for Forest Practice Enforcement at about the same time and continued until his retirement at the end of 1986. Ross Johnson of E.P.I.C. v. Johnson fame became Forest Practice Manager soon afterward.

Shortly after the accession of Dr. Jerry Partain to the Director's job in 1983, Mr. Forrest left CDF. The position of Chief of Resource Management was eliminated, and Mr. Delfino moved up to the Deputy Director's slot. The Assistant Chiefs in Sacramento then began to report directly to the Deputy Director. In the meantime, Donald Petersen took over as Chief Deputy

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[1] Arvola, T. F. 1976. Ibid.

Director and Jerry Letson moved into Fire Protection. Since Mr. Letson retired, Dick Day has occupied that hot seat. When Mr. Petersen retired he was replaced by Richard Ernest. Last, but not least, Dr. Partain retired at the end of 1988, and the governor promoted Mr. Ernest to the top job.

Through these many administrative changes, one face, that of Harold Slack, has remained constant, although his duties changed with the phases of the moon. He has done yeoman work as overseer of THPs and many other duties as required. Among other things, he became the primary expert on electronic data processing about which we shall have more later. Until 1985 Robert Maclean administered the Timberland Conversion activities. He also represented the Board of Forestry on the Timber Advisory Committee to the State Board of Equalization in administering timber taxation. After his retirement, Bruce Bayless took over that function. Soil scientist and research specialist John Munn, about whom there will be more at the end of this chapter, rounds out the Sacramento Forest Practice staff.

Two other persons deserve mention at this point. Dean Lucke who held a position at the time as Planning Officer, was placed in charge of the delicate negotiations with the counties in the wake of SB 856. He was succeeded in that job by Dennis Orrick, who in turn was replaced by Doug Wickizer, the current occupant.

In 1979 CDF created the new position of Forest Practice Enforcement Coordinator. Originally, this position was located in the staff of the Law Enforcement Coordinator, Deane Bennett. In 1980 it was transferred to the Resource Management staff under Mr. Delfino. This writer was assigned to that position from 1979 until 1981. From 1981 until 1986 Douglas Wickizer held the job. He was followed by Mr. Jonathan Rea who holds the position at this writing.

Out in the regions the turnover was not quite so frequent or dramatic. In Region I the chief at the beginning of 1976 was George Grogan. After Mr. Grogan retired in 1981 Dick Ernest became chief. In 1987 Mr. Ernest received his promotion to Chief Deputy Director, and William Imboden, formerly the Humboldt Unit Ranger, became Regional Chief.

Verne Osburn had been the Forest Practice Staff Officer in Region One since before the inception of the new act in 1973. He died suddenly of a heart attack in 1978 and was replaced early the following year by Ross Johnson. Mr. Johnson stayed at that post until 1987 when he replaced this writer in Sacramento. At that point, Len Theiss transferred from the Humboldt Unit to Santa Rosa to assume the lead Forest Practice job.

Two of the Region I ranger units, Humboldt and Mendocino, have lead foresters of the same rank as the regional Forest

Practice Staff Officer. In Humboldt, Charles Wagener held the first such assignment and, upon retirement in 1981, was replaced by Len Theiss. Richard Dresser moved into that job in 1987 when Mr. Theiss went to Santa Rosa. In Mendocino, Ray Witherow and John Teie have played tag with the assignment, both having held it at various times, with Mr. Witherow currently in charge.

In 1981 a new position of Assistant Chief for resource Management was created in Region I, and Ray Jackman assumed those duties which he still holds.

When the former Region V was abolished, the principle forested areas all went into the enlarged Region I. Dave Soho who had held the lead Forest Practice job in that region since 1981 was shifted to the San Mateo-Santa Cruz Ranger Unit. Between 1973 and 1981, Ray Jackman held the Region V job. John Hastings was Chief of Region V from 1975 until the region was abolished.

In Region II the chief in 1976 was William G. (Gary) Todd. He remained chief until 1986 when he retired and was replaced by William Banghart. Richard Schoenheide held the lead Forest Practice position from 1976 until 1986 when he requested a new assignment and was replaced by Wendell Reeves. Robert Malain became Assistant Chief in charge of Resource Management in 1982 when that position was newly created. In the Shasta-Trinity Ranger Unit, loyal Gary Harlowe has held down the fort for the whole time. In the Nevada-Yuba-Placer Unit, David Burns led the way until 1986 when the position was abolished, and he moved into Sacramento to take over Forest Pest Control duties.

In the present Region III, formerly Region VI, Joseph C. Springer was chief from 1975 until his retirement in 1980. From 1980 through 1985, Rex Griggs was chief until taking his turn at retirement. Since then, James Dykes has held the position of chief. David Gearhart was lead forester from 1974 until 1985 when he retired and was replaced by David Neff.

In Region IV, Gervice Nash became chief beginning in 1975. Mike Schori succeeded Mr. Nash on the latter's retirement in 1982. Mr. Schori retired in 1984 and was succeeded by Roy Killion. Dean Schlobohm held the lead forester's job from 1946 until his retirement in 1977 when he was replaced briefly by Kenneth Delfino on his way to becoming Deputy Director. Norman Cook has held the job since then.

A large number of other personnel have performed and still perform outstanding service at the ground level. They are the real heroes in an extraordinarily complex and difficult program that rarely seems to satisfy anyone. In oversimplified terms, the timber industry believes there is too much regulation, and the environmental community believes there isn't enough. The men

and women of CDF who make the inspections and take the enforcement action in the courts are often charged by both sides with doing the job badly. Few critics seem to understand that the officers must obey the law just as much as the citizens they regulate. Industry spokespersons sometimes behave as if the officers can ignore a legal requirement judged by the officer (or the critic) to be improper. Environmentalists often argue that the officers ought to prosecute for every imagined wrong, whether against the rules or not. The criticism, including occasional accusations of dishonesty from both sides, seems at times almost unrelenting.

Considering the numbers of persons and the numbers of changes over a fifteen-year period it would be tedious to name every person who has participated. This history will, however, include a number of examples of field work to demonstrate the kinds of effort put forth by these officers.

LAW ENFORCEMENT OPTIONS

CDF staff can take advantage of many options -- criminal, civil and administrative -- when violations of the Forest Practice Act or of the Rules occurs. The first and perhaps most obvious is the power to seek misdemeanor prosecution. A misdemeanor is a crime that usually carries a punishment of not more than $1,000 or six months in jail.[2] Any violation of the act or rules is, technically, a misdemeanor. To initiate a misdemeanor action, CDF officers usually file a complaint with the local district attorney who then carries on the prosecution. The DA can exercise a couple of options of his or her own. DAs are usually swamped with numerous felonies and aren't anxious to pursue forest practice violations. Often, the DA prefers to simply cite the offender, asking that person to appear in the DA's office. There, the offender receives a lecture and a promise from the DA of prosecution if further violations occur. If no further violations occur, that will usually be the end of it.

A serious or repeat violator can be brought to trial. CDF may or may not win. For several reasons, it isn't easy to gain a criminal conviction. Some of these difficulties are peculiar to the Forest Practice Act, and others pertain to all types of law enforcement. Even in a win the penalties are often suspended by the court, with the violator placed on probation. Again, if no further trouble occurs, that will be the end of it. Despite the

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[2] At least one exception to this generality exists in the Forest Practice Program. Misdemeanor fines of up to $5,000 may be levied against those who violate rules in the Special Treatment Area adjacent to Wild and Scenic Rivers.

pitfalls, CDF uses misdemeanor complaints more than any other option.

A number of cases will be described in which CDF has used the misdemeanor complaint. One case in particular, however, stands out as a demonstration of what can be accomplished if the right elements converge. In Santa Cruz County in 1984 three individuals paid fines of $4,000 apiece for forest practice violations. The defendants were caught logging without a Timber Operator's License and without a THP. Their operation had fouled a stream and done other damage. Each individual was fined the maximum penalty for each of four counts! As everyone waited with baited breath for the judge to suspend the fines and place the defendants on probation, he banged his gavel and called for the next case. There was no probation that day!

Besides the misdemeanor complaint, CDF officers may take certain civil actions. If the damages are severe enough, they may issue a stop-order or seek a court injunction to stop the offending action. As an alternative to the injunction, CDF has developed the stipulated agreement. CDF may also order the operator or timber owner to correct any violation and sometimes even the damages that result. If the persons notified do not comply with the order, CDF may make the corrections and charge the costs to those responsible. The costs are a lien on the property. Adjacent to Wild and Scenic Rivers, the courts may assess civil penalties for violations.

Administrative actions include revocation or suspension of the timber operator's license. For certain types of violations, the license of an RPF may be suspended or revoked. Informal administrative actions might include written warnings or conferences to determine why an operator has a poor record. One or more or even all of these actions may be and frequently have been taken in a single case. The following examples show how CDF has used these options.

LOGGING MUDDIES THE KLAMATH RIVER

One of the most notorious cases ever prosecuted by CDF involved an operation above a bend in the Klamath River about ten miles from its mouth. None of the names of the parties may be given, but the case is real, and it led to a number of significant changes in the act and the rules. The land in question belonged at the time to a San Diego based land developing company. Most of the land ranged from steep to very steep, and logging would have been extremely difficult with the best of equipment. A THP was submitted and approved. The owners found a logger, and early in 1976, harvesting began.

Almost immediately, CDF inspectors began to have difficulty with the operator. The operator clearly either could not or did not want to read the THP maps accurately. It took him three tries to get the access road located properly according to the approved THP map. These mistakes resulted in three trenches gouged into the hillside only a few hundred feet apart, one above the other like terraces. The inspectors discovered the violations, filed charges and obtained a conviction. The court levied a fine but suspended most of it with probation.

Upon making a routine inspection in December, after seasonal logging was over, CDF officers found that the operator had taken none of the required erosion control measures. Worse still, the officers found workers attempting to move a large logging machine under very wet and muddy conditions. To clear the roadbed to improve the traction, the workers were bulldozing mud over the roadside and down the hill. The mud was flowing directly into the river a few hundred feet below them. Upon being told that this was a serious violation of the rules, the workers ostensibly agreed to stop. The inspectors retreated, intending to file a complaint in town. Stopping at an observation point , they saw the workers back at work as before. The stop-order did not yet exist, and nothing more could be done except to proceed to town and complete the complaint.

CDF literally "threw the book" at all parties, taking every law enforcement action available at the time. The Attorney General's Office moved quickly and obtained an injunction to prevent further damaging activity. Probation in the earlier case was revoked and the local justice court levied additional fines. The Forestry Director revoked the Timber Operator's License.

This left one final action, the serving of a Notice of Intent to Take Corrective Action. This step is the first specified in the act to allow CDF to take corrective action. It orders the parties to make correction within a specified time period, or the state will do so without further notice. Costs of correction may be levied against the responsible parties. In this case, the landowners accepted the burden of making correction and cooperated most willingly. The operator's insurance eventually paid part of the cost.

These actions did not immediately end the damage. The hillside had been so seriously destabilized that the upper road collapsed onto the second one, and both fell onto the lowest. The whole hillside then simply oozed on down. Engineers estimated that several thousand cubic yards of mud flowed into the river from that single operation.

Little immediate correction could actually be done at this point because so much damage had occurred. Long-term efforts to aid natural healing action seemed the only solution. Attempts

were made to stabilize the worst areas with jute netting. The rest of the area was mulched with a slurry containing seeds of plants best suited to revegetate the slide. Furthermore, the corrective action notice included unique long-term maintenance requirements. Had the area required further stabilization as much as ten years later, CDF was prepared to act. Subsequently, one of the major timber owning companies in the area acquired the property and has managed the land very well. White alder seedlings took hold, and today, the area appears to have healed remarkably well.

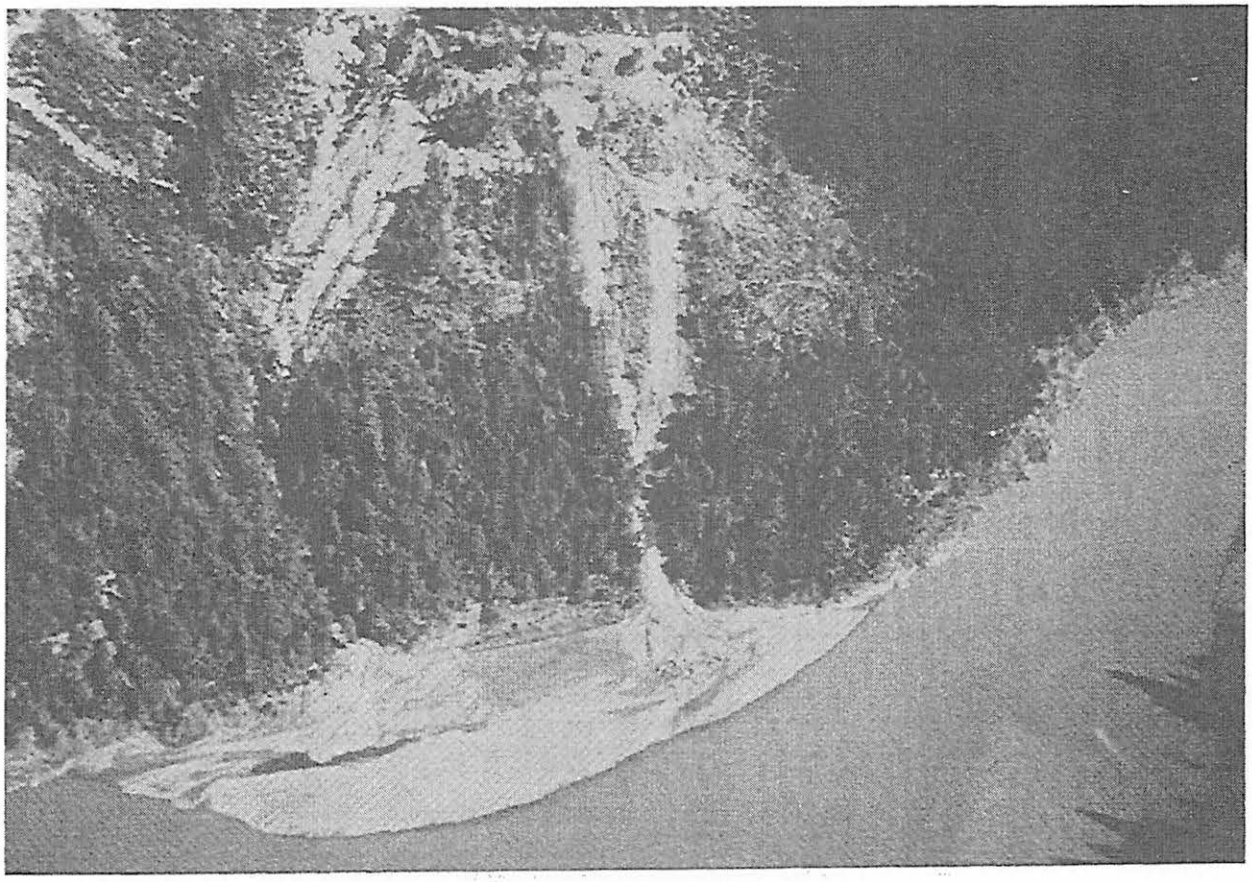
What this case illustrated better than anything before was the need for authority for inspecting officers to stop offending work instantly. Even though an injunction had been obtained in record time, so much time elapsed that incredible amounts of damage occurred. CDF argued, too, that the amounts of the fines had been much too small. There simply wasn't sufficient financial incentive to prevent violations of this magnitude. This chapter will describe a little later what finally took place to end at least some of these shortcomings.

MISDEMEANOR + ADMINISTRATIVE PROSECUTION = DOUBLE JEOPARDY ?

Occasionally, the question has arisen whether taking more than one type of action for a single violation adds up to double jeopardy. Double jeopardy is banned by the United States Constitution. The issue became especially acute whenever CDF failed to gain a conviction after making a misdemeanor complaint. At such times, spokesmen for the Associated California Loggers have occasionally requested that records of the alleged violations be expunged. They theorized that the acquittal proved the absence of any violation. In fact, the acquittal proved only that insufficient evidence of criminal intent existed, a necessity for a misdemeanor conviction, as for any crime, whether minor or major.

CDF long ago began attempts to remove "willfully" from the Forest Practice Act. PRC Section 4601 says, "Any person who willfully violates any provision of this chapter ... is guilty of a misdemeanor..." CDF saw the term as unnecessarily limiting for many of the reasons described in this chapter. We eventually learned that few criminal statutes require any less. It is one of those guarantees against arbitrary police action that abound in our laws for the protection of all citizens.

Moreover, the standards of proof needed to obtain a criminal conviction are quite stringent. At their best, many of the Forest Practice Rules are necessarily complex and occasionally vague. Forestry and timber harvesting are not simple "black and white" matters. These add to the difficulties inherent in obtaining proof of any type of crime.



A 1976 timber operation on the Klamath River that required the Department of Forestry and Fire Protection to use many different enforcement tools.

Adding to these routine difficulties, the Forest Practice Act has a number of sections that limit misdemeanor prosecution. The principle limits are found in PRC Sections 4526.5 and 4528.5 which together bar prosecution of employees. To evade misdemeanor prosecution, a timber operator may simply charge that his employees acted without his knowledge or approval. The burden of proof to the contrary rests with the CDF inspector. For these reasons, and more, a flagrant violation can exist under circumstances that prevent misdemeanor conviction.

These limitations do not apply so strictly to administrative actions such as revocation or denial of Timber Operator Licenses. An administrative action is akin to a civil action -- proof of criminal intent is unnecessary. Then, too, the standards of proof are less stringent. An operator may be held responsible for acts of his or her employees. The one factor working in the opposite direction is that a single violation is seldom enough to justify revoking or suspending a license; a repeating pattern of abuse is nearly always required. Thus, a record of violations is necessary to take action. This record may, however, include those cases where a misdemeanor (read "criminal") conviction cannot be obtained.

Regarding the question of double jeopardy, quite simply, lawyers have given assurance that the constitutional restriction does not apply. The double jeopardy provisions apply only to criminal actions, not civil. The statutes could also allow the collection of civil damages in addition to misdemeanor fines for violations, as has been done in a few other areas of law. CDF has more than once sought legislation for civil penalties for forest practice violations. Misdemeanor fines often seem quite low in comparison with the value of the timber or the costs of compliance. It could cost the operator less to pay the fine than to comply with the rules. Only where violations affect Wild and Scenic Rivers 0>have civil penalties been authorized, however.

In fairness to the many law abiding timber operators, it must be added that few provable cases exist where deliberate violations based solely on timber values or costs of compliance have occurred.

ADMINISTRATIVE ACTION NABS ELUSIVE LOGGERS

In 1978 CDF inspectors became alarmed over an accumulation of violations by two different major timber owning companies on the north coast. The officers had obtained misdemeanor convictions in a few but not all instances, and the violations continued. Recognizing that revocation of the license of a major company could drastically affect the employment of many persons, CDF decided to try an experiment. The Director of Forestry wrote

a strong letter to the officers of the companies and invited each company to a private conference. He insisted on attendance of company officers, not just employees. At the conferences, the Law Enforcement Coordinator, Deane Bennett, and others outlined the case being developed against the companies. The case for license revocation was made quite plain.

In both instances, the record of non-compliance presented in cold factual terms seems to have had the desired effect. Both companies made immediate organizational changes designed to establish more accountability by individual employees. The compliance record of both became dramatically better and has continued to the present with only a few lapses.

The value of the administrative penalties was never better exemplified than in another action that began early in 1978 and went on for the next two years. A relatively small timber operator who had operations in more than one wide-spread location at once had proven extremely difficult to convict of misdemeanors. The operations were located in Butte, Lake, and Nevada counties. The operator had more than once avoided conviction by blaming his employees. He justified himself with a claim that he was busy at one of his other work sites when the violation occurred. That the operations were located in two CDF regions added to the problem. A good system of inter-regional communication did not then exist.

The administrative conference technique used with the two companies described above was tried in this case, also. CDF certainly did not want it to appear that big companies got off easier than little ones. Initially, the operator's record seemed to improve, but it soon began to fall into the former pattern. When the extent of the violations was finally laid out before an Administrative Law Judge, it proved relatively easy to have the operator's license revoked. The earlier administrative conference added to the weight of evidence against the operator.

While not especially dramatic or newsworthy, the administrative conference has continued to be an effective enforcement tool. It's a lot cheaper to apply than to hold a hearing before a judge. If it doesn't work, it can help when the eventual judicial hearing does take place.

CDF INVENTS THE "STIPULATED AGREEMENT"

Still another creative event occurred in 1978 when one of the major north coast timber companies got caught in a legal bind not entirely of its own making. Because of a slow economy, several THPs had expired before completion of logging. The company could not simply amend the THPs to delete the unlogged areas because workers had felled much of the timber. The logs

bond or similar device that makes cash immediately available to CDF for correction of any violation of the agreement. If any further logging is to take place, an exhibit covering the same points as a THP becomes part of the agreement. The exhibit is essential because the THP has become inoperative, and an equivalent is needed.

At first, the stipulated agreements were used exactly as the originals -- to deal with expired THPs. The economy took a downturn starting in 1979, and many timber owners waited for better market conditions before logging. Several partially completed THPs resulted. Soon, however, it became apparent that the device had other applications, for example, to avoid the need for an injunction when violations occur. Such use requires operator who is willing to accept the responsibility for correcting the violations. Otherwise, an injunction becomes essential.

CDF ACTS TO CORRECT VIOLATIONS

This history has already mentioned the Notice of Intent to Take Corrective Action. Although not extensively used at first, this enforcement tool eventually became one of the most useful in CDF's arsenal. The initial reluctance to use this notice hinged on the lack of funds to do the work. Although the act allows CDF to collect the costs of correction from the violators and to file a lien on the property, collection can be extremely slow. As we shall see, sometimes the costs cannot be collected at all. CDF must initially take the costs from its own operating budget, and the amounts needed usually were not available for this purpose. In any event, payback rarely comes in the same fiscal year. Moreover, repayments always go into the general fund, not back into the account from which the money originally came.

The solution offered by CDF was for the legislature to create a revolving fund for the department's use to pay for corrective actions. Repayments would then return to that fund. The idea only required the legislature to put up the initial amount. The effort resulted in a lesson in politics and governmental finance. The Department of Finance fought the proposal from the outset because it would have allowed CDF to expend governmental funds without specific appropriation. The idea conceived in innocence died aborning. Nevertheless, the effort did have a payoff. It alerted the Department of Finance and the legislature to the problem. After a bit more discussion, in 1981, these worthy bodies began allowing CDF to budget for such costs. Corrective actions then became much more practicable.

Some of the pitfalls of the corrective action notice can be demonstrated with the first two cases in which it was used. The two cases began almost simultaneously in 1977, one in Humboldt

lay where they fell and would deteriorate if not soon brought into the mill. The law at the time, since amended, did not provide for an extension of THPs beyond the three-year maximum life.

State and company attorneys decided that the only possible remedy was to use the injunction provisions of the Forest Practice Act. Under this theory, to conduct operations without a THP would be a violation. CDF would then seek an injunction to prevent the operations from taking place. The law then allowed CDF and the "violator" to develop a bonded agreement, supervised by a court for correction of the violation. Here, the agreement would straightforwardly call for completion of logging, in compliance with terms of current THP requirements and Forest Practice Rules.

The attorneys all worked together and developed a complete package of forms, pleadings, stipulations, and agreements, one set for each of the eight THPs in question -- several pounds of paper. All parties then appeared in the Mendocino Superior Court of Judge Arthur Broaddus, he of NRDC v. Arcata National fame. The attorneys all expected a relatively easy time because the judge needed only to ratify their work and sign the appropriate papers. In fact, the process worked out mostly as planned, except that Judge Broaddus very much disliked the procedure. He scolded the attorneys for "misusing" his court by asking him to rubber stamp something already agreed upon. He evidently preferred to deal with parties who disagreed with each other. At any rate, he told them they had all the powers they needed to develop their own agreements without bothering the courts. This advice became the foundation for what came to be called a "Stipulated Agreement."

The agreements supervised by Judge Broaddus in this instance proved to be very workable and effective. All operations were completed in due course without further incident or difficulty. One important feature was a requirement that all reforestation be completed within the original time frames. The act requires that reforestation be completed within five years of the completion of work covered by a THP. The time extensions obtained by the agreements did not delay the ultimate restocking of the land. This feature became a feature of most agreements that followed, based on this case.

After this single instance, CDF took the judge's advice and did not return to the courts to have such agreements ratified. CDF and the parties have simply entered directly into written agreements. All of the agreements contain a stipulation by the other party that a violation has occurred allowing some form of enforcement action by CDF. CDF for its part agrees to postpone enforcement if the violation is corrected according to a schedule in the agreement. All agreements have included a performance

County and the other in Lassen County. The Humboldt case involved overcutting and failure to restock the property. After giving due notice and receiving no response, CDF crews replanted the understocked areas. The bill for replanting was submitted to the owner who also happened to be the operator. The owner/ operator contested the bill and, after a protracted legal battle, convinced the court in 1983 that CDF's action was improper. He claimed that he had not received proper notice and that CDF had planted areas needing no reforestation. The court dismissed CDF's arguments and dissolved the lien on the property.

In the second case, the operator had not complied with slash disposal and erosion control requirements. Serious erosion had occurred. Again, after receiving no response to the notice, CDF made correction, this time contracting for a portion of the work. CDF submitted its bill for the expenses and filed a lien on the property, but the operator, who owned the land in this case also, did not respond. In fact, the statements were returned by the Postal Service as undeliverable, even though CDF had used every known address. It appeared that the owner was ducking service.

CDF then attempted to foreclose on the lien. In the trial, the owner claimed CDF had seriously damaged his property while purportedly making corrections. He also insisted that he had not received proper notice of the lien. The court rejected the latter defense and did not even allow testimony on the issue. After the court found in favor of the state, the owner appealed. The appellate court sent the case back to the trial court on the grounds that CDF had not given proper notice of the lien. CDF had ample evidence of proper notice, but the trial court's ruling unfortunately prevented the appellate court from seeing it. Since then, the Attorney General's Office has not pursued the case, despite many promises to do so. Evidently the A.G. believes that, since the state has already spent more on the case than the amount of the lien, it isn't worth more effort.

Subsequently, however, CDF has had very good results from corrective notices. In over 90% of the cases, the owners or the operators have themselves taken the required corrective action. In most cases action has even included work to correct damage that resulted from the violations. The Board of Forestry has upheld CDF in all appeals. CDF has generally had good luck collecting for the costs of correction in those cases where state action became necessary. Exceptions still occur, of course. In one recent case involving an equestrian club in the Lake Tahoe area, the ownership of the land has become so tangled that CDF may never identify the responsible parties.

Starting in 1980 more and more early THPs had gone beyond the five years following logging at which time the timber owners must file a stocking report. A sampling procedure usually is required to complete the report. Many owners, especially small

absentee owners, were ignoring the requirement. The law makes the lack of a stocking report a misdemeanor. Although citing the owners might have led to a few fines, it did not seem like the best way to go. The need was for compliance, not fines. The corrective notice offered a possible solution. A simplified format was developed to allow regional offices to prepare and submit the required notices directly to the owners. The system has worked well; compliance has improved markedly. In the few cases where CDF has had to do the sample, most charges were collected with little trouble. Exceptions have occurred where the land has been divided into many small parcels.

The operator/landowner from Humboldt, who in 1983 defeated CDF's effort to collect the costs of making correction, ventured that same year into Santa Cruz County. There he did some flagrantly improper road construction that led to serious erosion. Not to be done in by one defeat, CDF again tested the corrective notice procedure. This time, CDF won a substantial judgement.

In 1979 occurred an important case that expanded and proved the usefulness of the stipulated agreement. A Forest Practice Officer working in eastern Nevada County discovered a major series of violations on an operation conducted by a mid-sized company in the central Sierras. At that point few applicable rules remained unbroken on the area. Especially critical violations involved overcutting and damage to a stream, including removal of trees from the watercourse protection zone.

CDF moved immediately to seek an injunction, but the company voluntarily ceased further cutting and agreed to make corrections. CDF decided to use the stipulated agreement to guarantee completion of the work. The company accepted stringent corrective measures and a very tight schedule of accomplishment covered by a very large performance bond. The operation lay at a high elevation where snow usually arrives early. Some of the corrective work had to be done before snowfall, and the season was late. One month was allowed for the initial work to be done.

The company forester gave continual reassurances that work was progressing. Finally, however, near the deadline, the inspector returned to the area and found that almost nothing had been done. CDF mobilized crews, equipment and materials to begin corrective work as allowed under the agreement. This writer notified both the lumber company and the bonding company of the department's intention. The results were remarkable. Company officers immediately shut down at least one shift at their mill and sent workers up the hill to start the clean-up. Workers were held on the job over a weekend at premium pay. The company fired the chief forester. Snow fell a few days later, but in the interim, the company had done just about everything possible for

that season. They needed two more seasons to complete reforestation, but they eventually completed all corrective actions.

CDF also filed misdemeanor charges, and the company paid fines. These fines were relatively small in comparison with either the damage or the costs of correction, however.

FOREST PRACTICE OFFICERS ARE ONLY HUMAN

Lest this history give the impression that CDF Forest Practice Inspectors are cool, calculating automatons, one or two incidents heretofore kept under cover suggest otherwise. There was the time when one of the inspectors on the north coast was being questioned very closely by an antagonist. After having repeated the same answer to the same question a number of times, the inspector looked his tormentor squarely in the eye and said, "Read my lips!" Undoubtedly, President Bush had a representative listening who liked the phrase and suggested that his boss try it sometime during an election campaign.

Inspectors must frequently travel over rough, unpaved, often muddy roads. All of them develop a sort of sixth sense for quagmires that spell serious trouble, none being more expert than Jim Anderson of the Mendocino Ranger Unit. On one occasion, Jim, Ken Delfino and Hal Slack were making an on-site review of several troublesome logging areas over an hour's drive from a public road. The time was mid-summer, and dust covered most of the unpaved roads inches deep. With Jim at the wheel, the trio started down a ridge-top (Note: ridge-top) road when a bluish, sort of wet looking area appeared ahead. Jim assured his companions that they had nothing to fear and drove on. You guessed it! The "no problem" wet spot reached up, grabbed the vehicle, and pulled it down above the door sills. After the three warriors exited through the windows, they were lucky enough to hail a passing logging truck for a rescue. Lucky they were because the CDF pickup had no two-way radio!

On another occasion an unnamed inspector had just completed a heated exchange with a timber operator about a long list of violations he had observed. Heading away, only a quarter-mile below the landing, his brakes failed, just as a logging truck was coming up the hill. Over the bank, and onto its side into the brush he steered his vehicle to avoid a collision. There was no one to help but the just-violated logger! To his credit, the logger did not hesitate, and eventually ferried our intrepid inspector over fifty miles home. No, I didn't tear up the inspection report.

To the consternation of those who cherish snags for their value as habitat for certain birds, snags often become easy targets for inspectors. They're pretty obvious, and there's usually little doubt whether they're in violation or not. Once,

one of our favorite inspectors was inspecting a well known timber company and reported a snag that the loggers should have felled. The company forester called to complain bitterly that there was no need to report a violation! Wouldn't it have been easier just to make a phone call? Anyway, he had the snag felled. After the inspector returned to recheck the area, he found the snag on the ground all right, but venturing farther up a side road, he discovered literally dozens more still standing in a spot he hadn't visited before. He called the company forester and before he could describe his new findings, the forester started on about how good the area surely looked by now. When he had his chance, the inspector asked, "But how about those other snags?" There was one of those long, pregnant silences that Jack Benny made so famous. Finally, the forester came back with, "Let me tell you about those snags..." He had a pretty interesting story, but he did eventually bring the area into compliance.

The same company forester used a snag to illustrate that there can be more than one way to eliminate a violation. The inspector had called a snag in violation that stood barely a couple of feet taller than the 20-foot limit. The extra height resulted from a long splinter sticking up after the top had broken off some time previously. It was a huge old redwood snag. The forester decided to simply have a fork lift raise him to the top of the snag where he used a chainsaw to cut off the splinter, leaving a snag 19½ feet tall!....Then, there was other gigantic redwood snag that stood twelve inches taller lying down than when upright!

STOP-WORK ORDERS AUTHORIZED

Moving on. Except for injunctions, the various enforcement options previously described in this chapter could be used only after a violation had occurred. As effective as many of the options were, CDF had long contended that inspection officers needed a way to stop violations before they led to serious damage. The Oregon Department of Forestry had an effective stop-work order for many years. The unsuccessful 1977 legislation, AB 1236, had proposed this authority as we shall see in the next chapter. Although industrial representatives continued to hold serious reservations about the exact wording of the legislation, they had at one time appeared willing to accept the concept.

After much discussion Assemblyman Byron Sher introduced AB 2770 in 1982. This bill contained a little bit for everyone. It renamed the Timber Preserve Zone (TPZ) to Timber Production Zone, a change desired by industry. It also included the desired stop-order authority. Timber industrial representatives did not oppose the stop-order, but they did insist on safeguards to prevent abuse by CDF. A key feature is one that allows reimbursement for damages if the order is applied without

reasonable cause. Another is the requirement that an inspector's initial order be reviewed immediately by a higher ranking CDF officer. The bill passed in September, 1982.

A parallel bill was going forward at the same time to give protection to Wild and Scenic Rivers. This second bill also contained a stop-order, but one applicable only to the Special Treatment Area adjacent to an affected river. The problem was that the two stop-orders were not the same. Eventually, the authors of the two bills were persuaded to harmonize their requirements. This bill also contained provisions for civil penalties up to $10,000 and misdemeanor fines up to $5,000. As with the stop-order, these higher penalties applied only to violations occurring within the Special Treatment Areas adjacent to Wild and Scenic Rivers.

One would think that after all its eagerness to obtain stop-order authority, CDF would begin using it immediately and often. In fact, CDF has never used the stop-order, at least not in the formal sense. Forest Practice Officers in Siskiyou County came close in 1986 when they found an osprey nest being threatened by a logging road. At first the company refused to comply with requests to alter operations. After CDF gave notice that it would not hesitate to use the stop-order, the company reluctantly complied. This example illustrates the greatest value of the stop-order. Its very existence in CDF's bag of tricks makes its use very unlikely. A very powerful weapon, it gives potency to a mere request for compliance. The Oregon Department of Forestry says it has had much the same experience.[3]

CDF REFUSES TO FILE RESTRICTIVE THP

A timber operator working in the southern sierras, who also happened to be an RPF, in 1980 became upset with CDF inspections done in his absence. He regarded this as unwarranted police action and determined to stop it. He thus began inserting a clause into his THPs that would require CDF to notify him before conducting an inspection. To approve such altered THPs would have cost CDF a valuable enforcement technique. The department, therefore, refused to approve the THPs and returned them to the submitter for deletion of the unwanted clauses. CDF justified its action on the grounds that the plan contained "inaccuracies." The operator did not give up easily. On October 10, 1980 he appealed CDF's action to the Board of Forestry.

The board heard this appeal on the following November 4 and found that it did not have to deal directly with the primary issue. The board could use a technicality to deny the appeal,

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[3] LEO WILSON. Personal communication. 1986.

but the technicality had considerable importance. The Forest Practice Act gives the THP submitter a right to appeal CDF's denial of a THP. It says nothing, however, about appealing a refusal to file the THP. Conceivably, for an abuse of discretion by CDF, the submitter could appeal the action to a court of law, but not to the board. A board majority apparently agreed that the department had committed no abuse, but used lack of jurisdiction as the reason for unanimously rejecting the appeal.

The board did, however, express concern about CDF's inspection procedures and scheduled the subject as a regular agenda item a few months later. Not only the person previously involved in the appeal but several others also criticized CDF for making unannounced inspections. CDF argued that for meaningful enforcement, especially for prevention of violations, it should have the freedom to inspect at its own discretion. Moreover, simple efficiency dictated that inspectors should take advantage of unexpected inspection opportunities discovered in the course of the day. There was at that time no legal system for operators to notify CDF when harvesting operations actually began. Inspections had to be made somewhat in a catch-as-catch-can manner. The discussion did, however, lead to a formal CDF policy to notify operators of intended inspections whenever feasible. CDF has long preferred to be accompanied by a representative of the operator, especially a person with authority. It facilitates corrections. The policy actually required no change in practice.

Since that incident, the board late in 1988 adopted CCR Section 1035.4 to require operators to notify CDF when logging will begin. The need for occasional unannounced inspections still remains. The new rule did not go into effect until the first of January, 1989.

The matter of restricting inspections through THP clauses did not end with the case on appeal, however. In subsequent years, several operators and RPFs, especially on the north coast, tried to restrict the participation of unwanted individual inspectors. The restrictions were usually aimed at representatives of cooperating agencies such as Fish and Game and Water Quality rather than CDF. Nevertheless, the precedent established by the appeal has held firm; the submitter may not write clauses into a THP that restrict CDF enforcement.

WATER QUALITY DEMANDS PUBLIC COMPLAINT POLICY

During the 208 hearings, critics of the CDF and Board of Forestry complained that CDF often brushed off their protests over certain logging practices. Thus, the Water Resources Control Board insisted that CDF adopt a formal procedure to handle public complaints. The water board became convinced that water quality could not be protected without a guarantee that

such complaints will be properly addressed. In response CDF in 1981 adopted a policy requiring that all complaints be recorded, whether verbal or written, along with the answers given. If the answer is unsatisfactory, the complaint may be bumped up to a higher level. The complainant must be furnished with the procedure for doing so.

CDF has long had a "Manual of Instructions" in which it registers its policies and procedural instructions. The Public Complaint Policy was added to this manual. The portion that deals with forest practices has long been among the largest, most comprehensive, and up-to-date of all the sections in the manual. No brag, just fact. The demands of the program have required it.

CFPA ACCUSES CDF OF EXCESSIVE DISCRETION

Not all the critics of CDF practices belonged to the environmental community. The forest products industry had a few bones to pick, also. The California Forest Protective Association (CFPA), represented by Fred Landenberger, often gave voice to these criticisms. One particular complaint heard loudly and frequently, especially in the early days after NRDC v. Arcata National was that CDF had gone overboard with environmental mitigations. This history covered the issue at some length in Chapter One, but it also seemed appropriate to refer to it again in this chapter.

Fred Landenberger wrote to the Board of Forestry on CFPA letterhead on April 8, 1981. The letter itemized a long list of environmental mitigations included in THPs at CDF's insistence that CFPA believed exceeded rule requirements. A few weeks later another letter arrived with additional items, bringing the total to one hundred items. The board asked CDF to investigate and respond.

Because of the large number of items CDF elected to check out only a sample, but a large, random sample was taken. CDF's investigation found not a single item in the sample where CDF had exceeded rule authority. Some mitigations did go beyond requirements, but were added voluntarily by the submitters. As described in Chapter One, many of these doubtlessly resulted from CDF suggestions, but not from overt coercion. The department responded in a letter to the board dated July 7, 1981 with a copy to CFPA. CFPA rebutted the CDF letter on August 4. The board chose never to make the matter public, apparently believing it better not to arouse recumbent canines. For another version of this event see Fred Landenberger's account.[4]

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[4] C. FRED. LANDENBERGER. 1988. Ibid. See page 239.

CDF ATTEMPTS TO CHARGE FEES FOR THPS

One of the most misunderstood actions ever attempted by CDF took place during 1981. It had its inception during budget hearings held by legislative committees in the spring of that year. 1981 was a bad year for the state, fiscally speaking. The economy was down and so were revenues. Both the administration and the legislature were looking for places in the budget to slash expenditures. Deputy Director Loyd Forrest believed that a way existed to establish a schedule of fees for THPs. CEQA allows the imposition of a fee for Environmental Impact Report preparation. It seemed logical, then, that since a THP was part of the functional equivalent to an EIR, the fee authority in CEQA might extend to THPs. The Board of Forestry discussed the idea at its March 3rd meeting that year with much obvious disapproval.

So sure of this logic was the Deputy Director, that the entire cost of conducting THP review was calculated and filed for possible consideration. No detail of cost was omitted; the total came to $1,000,400 for the year. No evidence exists that the director's office ever purposely intended to offer a program cut in this amount, though behind-the-scenes discussions may have occurred. It was evidently only a contingency plan in case CDF got cornered by a legislative budget committee, but the worst happened. The Assembly Finance Committee asked how much money could be generated by such a fee. Upon hearing the answer, the committee cut the funds and added control language requiring the department to make up the amount through fees.

Doubts about the legal authority to levy the fees immediately sprang up, and the Attorney General's office was asked for an opinion. That office apparently was divided on the issue. A draft opinion inadvertently came to CDF's attention indicating support for the idea. When the formal opinion reached the department, however, the A.G. had decided against it. The Legislative Counsel also found a lack of authority. Nevertheless, Director Pesonen believed that, because of the dictates of the budget bill, he had no choice but to make the attempt. Since lawyers had differed, he feared that the legislature would refuse to replace the funds unless he made a strong effort, even if it failed.

CDF drafted a proposal and held a hearing on December 7, 1981. Representatives of the timber industry unanimously and heatedly attacked the fees. They cited enormous costs of compliance with the rules. They further argued that CDF had usurped authority belonging to the Board of Forestry, that only the board could adopt any such fee. Environmental witnesses, of course, argued to the contrary, pointing out that CEQA required applicants to pay for environmental assessments.

The idea that only the board could adopt fees was rejected in part because of the wording of the budget bill. Moreover, CEQA, the basis for the whole thing, gave the fee authority to reviewing agencies. The basic authority remained in doubt, but CDF gave its best shot. Because the A.G. had ruled against fees, CDF engaged an outside attorney to develop its case to win OAL's approval. Nevertheless, on January 29, 1982, OAL shot it down, a record for speedy action by that agency. Actually, CDF had requested expedited review because of the controversy and because of the fiscal crunch. So as to return to the legislature with no stone unturned, CDF immediately appealed OAL's decision to the Governor's Legal Secretary. The latter also quickly turned it down.

The governor's office suggested emergency legislation to allow the fees, as did the Legislative Analyst. Nothing ever came of that, however. Fred Landenberger relates a slightly different description of events,[5] but having been personally present when most of the decisions were made, the writer will stand by this version.

DEPARTMENT CUTS STAFF TO REDUCE COSTS

CDF had to absorb the loss of the $1,004,000. After the debacle with the fees, the board resolved that the legislature should restore the deleted funds. The legislature partially did so in the 1982-83 budget year, but not in 1981-82. Eight positions were cut from the staff, including one from the Sacramento staff. The effect of the cuts was partly offset by a downturn in THP activity due to a slow timber economy. Unfortunately, the cuts came at a time when a swelling tide of stocking reports were becoming due from plans nearing five years since completion of logging.

Primarily because of the restocking issue, the Legislative Analyst tried repeatedly to have the positions restored. The director, however, repeatedly insisted that CDF could handle the job with the existing staff. From time to time, the legislature would restore some or all of the positions, but the governor would veto the funds. Finally, in 1986, the department and the legislature agreed on the restoration of five new positions.

The number "five" as it relates to inspector positions has been around a long time. In 1975, when Review Teams were first established, Claire Dedrick, the Secretary for Resources, insisted that CDF pay for the assistance of the Department of Fish and Game. At the same time, State Forester Richey believed that a couple of geologists could help out also. As a result,

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[5] Op. cit. See page 238.

CDF gave up five inspectors and used the funds to contract for three biologists from Fish and Game and two engineering geologists from the Division of Mines and Geology.

Although CDF pays for the three biologists, they continue to work under supervision of the Department of Fish and Game. In an unorthodox arrangement, CDF has little control over their assignments, despite paying the bill. More than once, the suggestion has been made that Fish and Game should budget for their own people, allowing CDF to use the funds for more inspectors. During the "dry" years of low budgets in the early '80s the suggestion was heard somewhat more loudly. On the other hand, if the biologists are to make unbiased recommendations, it is argued, they should be free of CDF constraints. Still, the geologists have performed competently and professionally under CDF direction.

CDF SUGGESTS RULE CHANGES

Despite occasional protests, CDF has frequently exercised its legal authority to suggest rule improvements. Many of these suggestions have already been covered and will not be repeated here. To further illustrate CDF's activities, however, there are a few more matters that do not fit well under other topics.

In 1978 CDF inspectors argued for improved definitions for the differences between minor and major THP deviations. The difference is important because major deviations require the same full environmental review as a new THP. Minor deviations do not, and they may be implemented without delay. Vaguely worded rules had led to unproductive disagreements among inspectors, review team members, and industry personnel. The board adopted the requested changes in June of that year.

In 1979 it became apparent that nothing in the rules or law required a timber operator to comply with the terms of the THP under which he was working. This seemingly "minor" oversight caused no little stir when the board discovered it. Everyone had just assumed it to be required. The board adopted an emergency rule in July, then modified and made it permanent in October.

A curious requirement crept into the rules at about this time specifying that the signature of an applicant for a Timber Operator's License be notarized. Finally, after questioning the requirement from its inception, CDF persuaded the board to rescind it. This action not only simplified things for the applicant, it simplified CDF's duties, too. No longer did CDF need to have a Notary Public always available during office hours at Sacramento. Applicants often come directly to headquarters because that is the only way they can obtain a license without delay. Christmas Tree operators, firewood cutters and other

minor forest products harvesters often do not even learn of the license requirement until just before they need one.

In September, 1980 CDF proposed a consolidation of definitions. The three sets of district Forest Practice Rules had many slightly dissimilar definitions for identical terms. Much confusion had resulted. No changes occurred immediately, but the suggestions began a process that has eliminated most of the inconsistencies and has streamlined the rules considerably.

About 1980 CDF began to have increasing difficulty obtaining stocking reports on properties logged several years earlier, especially where ownerships had changed. The new owners would claim that no one had told them of the requirements. To help overcome this real problem, CDF had begun selectively to record notices of stocking requirements on properties where ownership seemed likely to change. A few county recorders began to question CDF's authority and had refused to record these notices. To overcome this difficulty, CDF asked the Board of Forestry to enact rules clarifying its authority. In June, 1984 the board finally did and also required sellers of a property to inform purchasers of the requirements. Similar rules had been requested many years earlier, but the board had rejected the requests until a need became apparent.

LICENSED TIMBER OPERATOR TRAINING

The Forest Practice Act establishes few qualifications for a Timber Operator's License. The applicant must only: (1) be the real person in interest; (2) tell the truth on the application; (3) be innocent of operating without a license within the past year; and (4) be innocent of violating the Forest Practice Act and rules within the past three years. The applicant is also required to pay the fee established by the Board of Forestry. The act further requires the board to approve the form and content of the application and to establish application procedures. The board may delegate its powers to license timber operators to CDF. It has done so insofar as issuance, denial and revocation are concerned while retaining its other authorities.

The very limited qualifications to obtain a license has bothered more than one observer. One such very persistent observer with good qualifications for comment is Judge Joel Orr of the Leggett Justice Court in Mendocino County. Having seen defendant loggers in his court who couldn't read and knew nothing about the requirements, Judge Orr petitioned the Board of Forestry to do something. He suggested, among other things, a requirement that license applicants successfully complete a comprehensive test.

The board, led by Clarence Rose, himself a Licensed Timber Operator and an RPF, looked favorably on the idea. The only question seemed to be whether authority existed to require a test. The law seemed against it, but opinions differed. After discussing it at several meetings during 1985, the board requested OAL to give its opinion. After OAL indicated a lack of authority to require a test, the board turned its attention to a training requirement. About this time, the State Water Resources Control Board came along and made a training program for timber operators a requirement for BMP certification. The forestry board had its directions.

Board regulations had previously established two types of Timber Operator Licenses, an unlimited license allowing the harvest of all kinds of forest products, and a limited license good only for the harvest of minor products such as christmas trees and firewood. These license are termed "A" and "B", respectively. The question naturally arose whether to establish the same level of training requirement for both licenses. Another question was whether to require all current licensees to receive training to qualify for annual license renewal. Still another was who in a corporation should take the training course.

Tentatively, the board decided to require new applicants for both kinds of licenses to show proof of having received specialized training in the rule requirements. Since tardy applicants for renewal must, under the present rules, apply for a new license, the training rule would also have applied to the late comers. In a corporation the employee actually responsible for compliance with the Forest Practice Rules would have to take the training. The company would be required to identify this person in the application. Licensees subjected to disciplinary action, either misdemeanor penalties or license revocation/suspension, could be required to take training as a condition of probation.

After many discussions at many board meetings throughout 1986 and well into 1987, the board finally in November, 1987 adopted requirements to require the training. Unfortunately, OAL took a dim view of many details and in July, 1988 rejected the new rules. Significantly, OAL did not reject the board's authority to require training.

In October, 1988 the board amended the rule package to overcome OAL objections and resubmitted it. OAL accepted this version, and on January 1, 1989 the rules went into effect, a most significant addition to the effort to obtain improved forest practices. Some of the details undergoing change addressed the manner in which the CDF director approves training courses and materials. Limited "B" license applicants may either take the training course or complete a questionnaire at the time of application. The questionnaire requirement may be administered orally or in writing.

CDF ASSISTS LANDOWNERS WITH REFORESTATION

At first glance the heading of this section might seem unnecessary. CDF through its Service Forestry program has for many years assisted landowners who have had difficulties with reforestation. What makes this case unique is that a THP approved with what came to be a questionable silvicultural system was involved. Richard V. Hunt, a Rancher in the Bridgeville area of Humboldt County, had in the early years of the 1973 Forest Practice Act clearcut his douglas-fir timber. His THP called for him to replant with seedlings. At that point there had been little experience with clearcutting as a silvicultural method in that particular area. Many ranchers and others had cleared their timber for conversion to grazing, with spotty success. Mostly they had obtained brush. Few had practiced clearcutting by design as a forest management practice.

Mr. Hunt's timberland lies in the pure douglas-fir belt that runs north and south, east of the redwood belt. The climate tends to be hot and dry in the summer, not an ideal climate for the establishment of young douglas-fir seedlings. Most landowners to the west, closer to the coast, were having good luck using "tublings." These are small seedlings grown in plastic tubes just one season in a nursery. During the planting season, the trees are removed from the plastic tubes for transplanting. Mr. Hunt and others nearby began to have poor results. Apparently, the small tublings couldn't cope with the climate in that area.

Mrs. Helen Libeu, who very carefully follows CDF activities, became aware of the problem and pointedly suggested that CDF help Mr. Hunt. After all, hadn't CDF approved the system called for in his THP? She didn't think it quite fair of CDF to take law enforcement action in view of his efforts to comply with his plan. CDF agreed and began an experiment to find a better method. It found one which has now become more or less standard for that climatic area. Bare-root seedlings raised two years in the nursery and cultured so as to develop bushy roots have performed well when carefully planted. Mr. Hunt replanted his area using the modified methods. CDF was able to report to the Board of Forestry on August 7, 1985 that the plantations had succeeded.

A small lumber company owned an area even farther east where foresters had tried and failed as many as three times using tublings. At that time the rules of the Coast Forest District required only three attempts at reforestation. After that the area could be abandoned. (That rule was changed in 1983, along with the other silvicultural rules!) CDF decided, however, that three attempts using the same unsuccessful method was not a good

faith effort and served a Notice of Intent to Take Corrective Action. The notice required the use of the larger, two year old bare-root seedlings. The newest effort worked, to the credit not only of the planting technique but also of the corrective notice as an enforcement tool. Significantly, the company did not even contest the notice but cooperated willingly.

SOIL EROSION STUDIES

We now must back-track temporarily to the beginnings of the present Forest Practice Act. As Assemblyman Z'berg and Senator Nejedly were diligently pursuing the perfect forest practice act, one problem that could not be resolved with legislation was soil erosion. Certain groups had sought standards within the act as rigid as those established for reforestation. It became more and more apparent, however, that no one knew enough to say what those standards should be. The legislators worked out a compromise requiring the Board of Forestry to sponsor research to find better answers and then to act on those findings. That requirement is located in Section 4562.5 of the act.

The board began work early in 1975 to meet the deadlines imposed by Section 4562.5. The initial work was done under the direction of Drs. L.T. Burcham and J. Marvin Dodge, CDF staff soil scientists. Their draft report was completed essentially in December, 1975 and submitted to the board the following month in compliance with the law.[6] Arvola has reported briefly on this study.[7] At the first two meetings of the board in 1976, under the scrutiny of Dr. Clyde Wahrhaftig, the board suggested a number of refinements. The report came out in final form in October, 1976.

This report came to a number of valuable conclusions. It found, among other things, that clearcut areas had eroded more than areas treated to lighter cuts; that there had been a large increase in amounts of mass movement in the preceding four years; that the Erosion Hazard Rating systems then in use were not doing a good job; that none of the EHR systems measured the potential for mass movement; and that poorly planned and constructed erosion control measures could increase erosion rates significantly. It urged additional research to find ways to do things better.

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[6] J. MARVIN DODGE, L.T. BURCHAM, SUSAN GOLDHABER, BRYAN McCULLEY, AND CHARLES SPRINGER. An Investigation of Soil Characteristics and Erosion Rates on California Forest Lands. California Department of Forestry and Fire Protection, 1976. 105 pages.

[7] TOIVO F. ARVOLA. 1976. Ibid. See pages 95 and 96.

At its February, 1976 meeting the Board of Forestry resolved that additional studies should begin without delay and that the initial study should be continued. Thus, two separate studies grew out of that resolution. One was called an In-House Study (IHS), and the second, which continued and expanded the first, became known as Soil Erosion Study II (SES II).

IHS was initiated under the direction of Dr. Dodge with the help of graduate students from the University of California. The field work was performed by study teams made up of field Forest Practice Inspectors. Data were collected from 100 randomly located plots. The purpose was to measure the erosion that had occurred after 1975 logging and to determine what improvements might be made in the existing Forest Practice Rules. After the completion of IHS, Carl Hauge published an interim report in April 1977.[8] Carl Hauge was an Engineering Geologist employed by the California Division of Mines and Geology assigned to the soil erosion study program under contract after the project began.

This interim report of the IHS study, along with the 1975-76 study by Dodge, et al, provided the background for the initial report of the Board of Forestry to the Water Resources Control Board on BMP needs.

SES II got started in March, 1977 under the direction of Mr. Hauge and CDF headquarters staff. Field measurements were completed in October, 1979. Objectives of that study originally were (1) to define improvements in the Erosion Hazard Rating systems then in use, (2) to ascertain the effectiveness of various runoff control measures, and (3) to determine the effectiveness of stream protection zones for safeguarding water quality.

After a time it became plain that flaws in the study design and in the collection of field measurements would make it impossible to complete the second and third of the three objectives. In fact, for a time, it appeared that much of the study might not be completed as intended.

To salvage as much of the study as possible, CDF decided to appoint a Soil Erosion Studies Advisory Committee comprised of Dr. Clyde Wahrhaftig, Dr. Luna Leopold, Dr. Paul Zinke, Dr. Carlton Yee, Dr. Norman Pillsbury, Mr. Andrew Levin, and Mr. Robert Thomas. This committee represented three major universities, the Pacific Southwest Forest and Range Experiment Station, and the USDA Forest Service. Under the guidance of this committee, CDF contracted with Western Ecological Services

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[8] CARL J. HAUGE. Timber Harvesting and Soil Erosion, an Interim Report. Department of Forestry and Fire Protection, 1977. 55 pages.

Company (WESCO) for a review of the data in hand and the compilation of the final report. The WESCO study team was led by Mr. Jeffrey H. Peters, a soil scientist. As it turned out on close examination, much more of SES II had produced valid and useful results than originally expected.

The report prepared by Mr. Peters and the WESCO team[9] concluded that "over 80% of the measured soil erosion was produced by less than 15% of the plots. Mass wasting was the predominant erosional process and accounted for 77% of the measured erosion. Much of the measured erosion was associated with roads and landings; harvest areas generally experienced little erosion." These findings agreed with those of other similar studies in California and elsewhere. Therefore, the report concluded, "The analysis suggests that forest management and regulatory review would be more effective if it were to focus on those timber harvest sites which may experience major erosion events or `critical sites.'"

WESCO also contracted to develop a study design to carry out the recommendations of SES II. The study design was delivered by the contractor in July, 1983.[10] The study would focus on major soil erosion events. It would also do a case study documentation and assessment of causes and effects. The three-fold objective of the study would be:

1. To provide the data necessary to develop a predictor equation that can be used to identify potential critical harvest sites.

2. To provide an overview as to the primary categorical origins of major timber harvest site failure.

3. To suggest, where appropriate, modifications to the erosion control and stream and lake protection measures of the Forest Practice Rules and Regulations.

This latest study has become known informally as the "Critical Sites Study." CDF contracted with the Pacific Southwest Forest and Range Experiment Station (PSW) of the USDA

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9 WESTERN ECOLOGICAL SERVICES COMPANY (JEFFREY H. PETERS, et al). Factors Influencing Soil Erosion on Timber-Harvested Lands in California. California Department of Forestry and Fire Protection, 1983. 94 pages.

10 WESTERN ECOLOGICAL SERVICES COMPANY (JEFFREY PETERS, et al). Study Design for Selection and Characterization of Critical Erosion Sites on Timber-Harvested Lands and for Evaluation of Factors Controlling Erosion on Forested Lands. California Department of Forestry and Fire Protection, 1983. 115 pages.

Forest Service to implement the study. Mr. John Munn, a research specialist and soil scientist employed by CDF, has supervised the contract. Dr. Robert Ziemer, a hydrologist and soil scientist with the station was named as project leader. Much of the field work is under the direction of Dr. Raymond Rice. At this writing, the field work has been completed and the final report will soon be available.

This segment would not be complete without a word about the long-term cumulative effects study being conducted by PSW in cooperation with CDF on Jackson State Forest. This study is also under the direction of Drs. Ziemer and Rice and is located in the Caspar Creek Watershed. At this writing, results are still a long distance in the future. One early indication is that subsurface flow of water through naturally occurring "pipes" is more significant than once thought. Pipes are underground channels caused by small burrowing animals, decayed roots, etc.

The foregoing experiences do not by any means exhaust the story of CDF's forest practice activities. They were chosen for their illustrative value and because they perhaps generated more than usual interest at the time they occurred. The full story would fill a book much larger than this one.

Chapter 12

LEGISLATIVE CONCERNS

The foregoing chapters have frequently described legislative activities as they related to specific subjects, but these descriptions by no means tell the whole tale. No forestry subject during the period of this history excited the California State Legislature more than the regulation of timber harvesting. The Forest Practice Program generally accounted for little more than five percent of the annual CDF budgets. Yet it seemed that year in and year out nearly three-quarters of the forestry related bills introduced in the senate and assembly dealt with forest practice matters. This history does not pretend to address every single piece of proposed legislation introduced during that period. It would not only be grossly boring, it would probably not be especially instructive. Nevertheless, certain measures that do not fit well elsewhere in this work will receive at least passing mention in this last chapter.

WHO SHOULD PAY FOR THE COSTS OF ENFORCEMENT?

Since the inception of forest practice regulation in 1945, the costs of administration have been borne by the General Fund. Over the years various schemes have been proposed to raise special revenues to pay these rather substantial costs. The previous chapter describes how during 1981, a year of slow economic activity and reduced revenues, the legislature proposed a THP fee for this purpose. Arvola mentions that even earlier, in 1975, with this same goal in mind Governor Brown proposed raising Timber Operator License fees.[1] Although the legislature as well as the Board of Forestry refused to go along at that time, the very next year, 1976, Assemblyman Herschel Rosenthal introduced AB 3943 to push the same idea. That same year, Assembly Concurrent Resolution 220 was introduced urging that 25% of the program costs be raised through the license fees.

The board discussed the issue on many occasions. Testimony before the board revealed clearly that raising revenues was not the only motivation for suggesting these types of fees. Many proponents exhibited obvious anti-timber industry bias. To these persons, the idea that the fees might place California timber producers in an economic disadvantage seemed desirable. Such fees, of course, were not entirely without precedent. Many of the extractive industries, such as the oil and gas producers,

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[1] TOIVO F. ARVOLA. 1976. Ibid. See page 87.

already paid fees to support their regulatory programs. Then, too, as pointed out in Chapter 11, CEQA imposes the costs of EIR preparation on the permittee. An even more emotional argument was sometimes made to the effect that "The polluters ought to pay for preventing the pollution they're causing."

On the other side is the fact that California timber producers already face substantial costs to comply with the regulations. Industry estimates given in testimony before the board have placed the costs at ten times those of Oregon and twice those of Washington State. Perhaps, as suggested in an earlier chapter, these estimates are somewhat exaggerated. Still, unquestionably, the costs are high. California timber producers are thus perhaps already at a competitive disadvantage with timber harvesters in other parts of the country, regardless of fees. Industry witnesses also pointed out that the nationwide economics of the timber industry seem to preclude passing many, though perhaps not all, of these costs down to the consumer. As a result, much of the cost of compliance must be passed back to the timber owner in the form of reduced stumpage values, a decided disincentive to long-term forest management. This fact also leads to disproportionate penalties on the many small, farm timber owners. Then, too, reduced stumpage values would result in reduced property tax revenues to local governments.

Other persons, including some with sound environmental credentials, argued against using license fees to support the enforcement program. Their arguments centered on the idea that it would give the industry too much control over the program. They feared the truth of the old saying that "He who pays the piper can call the tune." The board concluded that regardless of arguments pro or con, the Forest Practice Act did not allow it to set fees at the level needed to support the program. The act then allowed and still allows only a "reasonable filing fee." To go further would require legislation such as Rosenthal's AB 3943, which the board strongly opposed.

In the end the idea of requiring the timber operator to support the costs of forest practice regulation pretty well died out. In late 1976 AB 3943 and AB 220 wound up in an interim study committee of the legislature and never saw light again. In contrast to license fees, the THP fee concept still arises now and then, but has not been given serious consideration since 1982.

Parenthetically, Dr. Henry Vaux, former Chairman of the Board of Forestry, has suggested that California provides several advantages to offset some of the costs of Forest Practice Act

compliance.[2] These include CDF's very sophisticated fire protection system, an enlightened system of forest taxation, and generous small timber owner incentives that are arguably superior to those of other states. David Pesonen often argued, too, that the state's obvious concern with maintaining good forest stocking levels worked to industry's advantage by helping to assure a stable timber supply.

EXEMPTIONS FOR SMALL TIMBER HARVESTING AREAS

Chapter One of this history already to some extent examined the problems of small timber harvesting areas. Legislative activity to ease the bureaucratic burdens of forest practice regulations for small operators and landowners was especially pronounced during 1976. A number of the bills introduced that year to exempt all timber harvesting from CEQA made special provisions for small operations. Some would have granted an unconditional exemption from CEQA for operations below a certain size. A categorical exemption was sought from the Secretary for Resources under provisions of CEQA, but this was denied on December 10, 1976.

In 1977, Senator John Garamendi introduced SB 1043 which would have granted an exemption from CEQA for all operations under 40 acres in size. CDF supported the concept but opposed the exemption for such a large area and sought to amend the exempted area to somewhere below ten acres. Nothing came of the bill. The rest of the story is told in Chapter One. Although in many respects smaller operations would merit relief from some of the rules, it has never proven possible to write a definition for an operation that would exclude all non-impacting operations. Size alone simply could not do it.

Many very small operations can, because of their sensitive locations, have or be perceived to have severe environmental impacts. One of the most controversial operations to face CDF during this period involved 2½ acres and about fourteen old-growth redwood trees near the town of Redway in southern Humboldt county. It lay near the South Fork of the Eel River, suggesting water quality concerns, but the primary impact was aesthetic.

EARLY LEGISLATIVE OVERSIGHT

The legislature, to see how its bills have fared after the departments have begun to implement them, often resorts to what

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[2] HENRY J. VAUX. The Regulation of Private Forest Practices in California: A case in Policy Evolution. Journal of Forest History. July, 1986.

it calls "oversight" hearings. In late 1976 and early 1977 Assemblyman Charles Warren, who at the time chaired the Assembly Natural Resources Committee, announced plans to hold such a hearing to review recent forest practice developments. Certainly, many unpredictable things had happened since passage of the Z'berg-Nejedly Forest Practice Act.

The Board of Forestry on January 17, 1977 discussed in detail what positions it should take at the hearing. Board member Phillip Berry pushed for support of many program improvements sought by the Sierra Club and other environmental activists. Among these were a longer review period for THPs, a right for the public or at least the heads of other environmental protection agencies to appeal THPs approved by CDF, civil penalties for violations, stop-orders, and suspension of THPs not in compliance. Mr. Berry also urged amendment of the intent section of the act to clarify the relative importance of the resources being protected. He believed that all resources should receive equal protection status, whereas the act as written gave apparent preeminence to timber over water, aesthetics, fish, wildlife, etc.

The upshot of all this furor was that Mr. Warren suddenly received an appointment from President Carter to the Federal Environmental Protection Agency and abruptly left the scene. The Chair of the Natural Resources Committee went to Assemblyman Victor Calvo who seemed less inclined to hold a hearing. Without bothering to hold a hearing, he proceeded to introduce AB 1236. No doubt, this bill had been in Mr. Warren's mind all along. The hearing most likely had been scheduled simply to drum up support.

AB 1236

AB 1236(Calvo), introduced March 30, 1977, was one of the landmark legislative attempts to amend the Forest Practice Act after the dust of the Functional Equivalency fight had settled. CDF had for some time held urgent conferences with representatives of the timber industry about the need for stronger enforcement measures. CDF especially wanted to do away with the need to prove willfulness to gain criminal convictions, as discussed in Chapter 11. The department also hoped at this point to have the legislature enact civil penalties and stop-orders. Special provisions were included for small operations, as described in Chapter One. Industry representatives had begun to realize that violators gave them a bad image, thus adding to the pressures for more punitive legislation. For these and perhaps other reasons, industry representatives tended to not oppose the civil penalty and stop order concepts.

As originally introduced, AB 1236 was a fairly simple bill carrying these not-quite-agreed-upon principles. CDF had reason

for optimism that some parts of its agenda could be achieved. What happened next well illustrates how zealous activists can sometimes kill the magical goose even before it has a chance to lay its golden eggs.

Sensing a vehicle on which some consensus appeared to have developed, the Resources Agency under Secretary Huey Johnson immediately began to pile more baggage onto AB 1236. Environmental activists had become disenchanted with the DTACs, so the agency proposed their elimination. Arbitrary Stream and Lake Protection Zones were added. Language requiring companies to reveal future operating plans so as to expedite cumulative effects review was tucked in. Most of the other measures urged the previous January by Board Member Berry became part of the bill. The industry, not yet quite sure of itself about the original bill, could never swallow to these additional measures. Moving from a position of hesitant neutrality, the industry became a strong opponent of the bill.

In discussing AB 1236 at its June, 1977 meeting, the Board of Forestry gave its support to the basic concepts originally sought by CDF. It would not support changes in the intent language or any of the other add-on provisions. Despite board and industry action AB 1236 did receive Assembly approval, and it went to the senate in September, 1977. There it languished, however, for the rest of 1977 and all of 1978. It never even received a vote in the Senate Natural resources Committee.

Politics is the art of the possible as an old saying has it. In the political climate of 1977, it might have been possible to obtain a few constructive measures to build an act that could have defused many of the subsequent controversies. By going for the impossible, adherents of environmental causes set their own programs back for unknown periods of time. To be sure, some of the improvements sought by CDF eventually became law, and others, by a far more tortuous process, became part of the regulations. Then, too, AB 1236 may not have had a chance anyway. Nevertheless, an early golden opportunity may have been scuttled by overeagerness.

LEGISLATIVE OVERSIGHT CONTINUES

Senator Nejedly, who at this point still held tight reign over the Senate Natural Resources Committee, called for an oversight hearing in Eureka in October, 1977. A continuation of that hearing followed in Santa Rosa in December. Board Chairman Henry Vaux urged the committee to "go slow" in his testimony before the committee. CDF Director Lewis Moran testified essentially in support of the department's enforcement measures. This committee obviously heeded Dr. Vaux' advice and continued to

exhibit a very cautious attitude, as demonstrated by its success at keeping AB 1236 bottled up.

In late 1981 a joint Senate and Assembly Select Committee on Economic Problems in the Timber Industry held a series of hearings, including one in Eureka and one in Placerville. The industry pleaded for legislative restraint and limits on board regulations, arguing that forest practice regulations had become too costly. CDF again made a plea for the strengthened enforcement measures it had requested in AB 1236. A series of large, color blow-ups of photographs of resource damage caused by violations made a visible impression at the Placerville hearing. Although there was no immediate connection, it seems certain that the eventual passage of stop-order legislation and civil penalties for damages to protection zones on Wild and Scenic Rivers grew out of this testimony.

SUSTAINED YIELD

While discussing the Timber Resource Production Plan in Chapter One, this history briefly mentioned Senator Barry Keene's efforts to obtain legislation to mandate sustained yield. The Woodworkers Union had become concerned that some of the companies were overcutting their timber supplies and would not be able to keep their mills open; they hoped somehow to make sure that this wouldn't happen. Senator Keene's legislation failed in 1986, and the idea seemed to have gone into hibernation. Then, the very next year, the Maxxam Corporation acquired The Pacific Lumber Company in a hostile, leveraged buy-out. TPL, as most Humboldt County natives call it, had been a conservatively managed company with a large inventory of old-growth redwood timber. This timber clearly was the incentive for the buy-out. To pay off its creditors, Maxxam immediately began harvesting its newly acquired timber at an accelerated rate. Liquidation, some called it. Naturally, this revived and emphasized the worst fears of the woodworkers.

TPL had historically done very little clearcutting, making it the favorite timber company of the environmentalists. The accelerated cut involved proposals to clearcut! That TPL foresters had begun to increase the amount of clearcutting even before the buy-out was not evident and was conveniently ignored. While environmentalists decried the cumulative environmental effects of the rapid cutting of old-growth redwoods, as described in Chapter One, the woodworkers were concerned about future jobs. In an attempt to satisfy the concerns of both groups, Senator Barry Keene on March 7, 1987 introduced SB 1641.

SB 1641 made another valiant attempt to mandate sustained yield. The concept has a wonderfully emotional appeal, but its complexities defy precise definition, especially when applied to

a single ownership. The explanation of those complexities does not belong here. The many experimental legal formulas proved only that it was impossible to write a bill that would completely satisfy all its adherents. The bill died in the Assembly after squeaking through the Senate. Enroute, it made a stab at adding a "Head-of-Agency-Appeal" to the Forest Practice Act.

EPILOGUE

Writing a history of a program that continues to generate controversy is a frustrating business. This story is on-going and will continue to make history for a long time to come. For that reason, there can be no real conclusion to this history for now, if ever. At this point (March 10, 1989), however, some definitive events have come to at least a temporary climax. The State Water Resources Control Board has granted certification of the existing Forest Practice Enforcement program as the Best Management Practices for the prevention of non-point source water pollution from timber harvesting operations. That the Environmental Protection Agency has not ratified this certification is more a reflection on that agency than on either of the two state boards. Both state boards have developed a constructive rapport that seems to have overcome most of the animosities that prevailed during an earlier period. Together, the two boards are working out the remaining problems affecting their overlapping missions.

All parties await the outcome and recommendations of the Critical Site Erosion Study now nearing completion. There is little doubt that new calls for more effective erosion prevention will follow, regardless of what the report recommends. The future status of BMP certification will no doubt depend on how the two boards respond to the recommendations.

The problems of local control versus state control of timber harvesting will probably never be satisfied. Indeed, as the state's population grows ever larger and as more of that population moves out into the rural areas, those pressures will almost certainly intensify.

Controversies over environmental protection will undoubtedly continue to rage. The uncertainties surrounding the concept of cumulative impacts have given environmental activists a convenient handle by which to keep tightening the screws as long as the courts will allow. The imprecisely understood needs of wildlife provide another convenient handle to continue turning up the heat under the controversies.

As if to second these comments, there appeared in the March 8, 1989, Vol. 259, issue of the Sacramento Bee, the following article by Ken Payton, Bee Staff Writer:

> Facing criticism by a Humboldt County judge as well as a string of defeats in north state courtrooms, the State Board of Forestry took a closer look Tuesday at whether wild-life is threatened by increased harvesting of old-growth timber on private land.
>
> For the first time, the board considered specific species of wildlife whose protection could lead to new forest practice rules this spring. Such practices could decrease the income of private timber owners by limiting the old growth they could cut and restricting the size of the land that could be clear cut.
>
> In an all-day session with the Department of Fish and Game, U.S. Forest Service and a cross-section of environmental and resource groups, forestry board members said they were trying to determine whether they indeed should protect those species.
>
> The board, if it assumes the responsibility, is several months away from adopting any new rules. The board also left open the possibility that it just might refer specific limits and protections to the Legislature.
>
> In February, Humboldt County Superior Court Judge John E. Buffington, in a 23-page opinion in a case involving Pacific Lumber Co., said the Forestry Board has the duty to decide whether wildlife is threatened and whether society's need to cut old-growth timber outweighs the risks to wildlife.
>
> Old growth, particularly on the north coast, has become of primary importance to many environmental groups.
>
> But some critics say such species as spotted owls, fishers, marbled murrelets and some types of salamanders and frogs are being used as surrogates for the hidden agenda environmental groups have of stopping altogether the harvest of old-growth trees.
>
> Thomas N. Lippe, attorney who has argued and won lawsuits filed against the board by the North Coast Environmental Protection Information Center [E.P.I.C.], said he is aware of people whose goal is to stop the cutting of old growth. "And they perhaps have the money to go to court on that issue; but that's no reason for

the board to say it can't be responsible for better timber harvesting," he said.

Lippe, contradicting some who contended that more information on wildlife was needed, said there already is enough information on species that need old growth. "The problem is the refusal of companies to survey where they actually are," he said.

Large land owners such as Pacific Lumber Co. in Humboldt County, which owns 14,000 acres of old-growth redwoods, could afford to make such studies, Lippe said. Small landowners, on the other hand, might contribute to the cost of surveys in a harvesting fee paid to the state, he said.

Joyce Muraoka of the Forest Service said the agency estimates California has 50 percent of the old-growth timber it had in 1900. To successfully manage it and the forest's dependent wildlife will take cooperation between both public and private lands because animals know no boundaries.

Now it costs the Forest Service $1.6 million a year to manage 500 pairs of spotted owls on about 500,000 acres, Muraoka said.

Dean Currier, Forest Service old-growth habitat program manager, said the agency doesn't know how many spotted owls there are but bases estimates on conditions in the forest.

Asked if species can adapt to different habitat, Carrier said, "An animal just needs a place where it can live, find some cover, and where it won't be eaten. To help the spotted owl, we could kill off all the great horned owls, because they eat them.

"Sure, they're adaptable, but only at a cost to something else."

That prompted the comment, "Yes, and it's costing the timber industry," from board member Roy D. Berridge.

According to Jim Steele, Fish and Game's timber harvest review coordinator, "a 25-acre clearcut in the middle of an old-growth forest actually destroys 60 acres of old-growth habitat. Each mile of road built in unfragmented old-growth forest equals 97 acres of altered wildlife habitat."

Steele said, "The most valuable old growth we're losing is low-elevation coastal trees. Higher elevation old growth, which is in national forests, has more protection."

George Craig of Oakland, a timber consultant for Pacific Lumber Co., called research on the spotted owl's need for old growth "deficient. The data shows no support for the contention that the spotted owl is headed for extinction."

He called it unrealistic to put off cutting wood on the Plumas National Forest that would build homes for 150,000 people, simply because of 150 owls.

On the other hand, Gail Lucas of the Sierra Club State Forest Practices Task Force in Mendocino County, called for a stop on all old-growth logging until "a major study funded by the state" establishes how many animals are dependent on old-growth.

This article pretty well sums up where many of the future battles will take place. It indicates that perhaps some of our earlier optimism about the outlook of the courts was misplaced.

At the same time, the needs of the public and the benefits of the material resources of the forest show no signs of abating. Few other material resources have such a potential for renewability. Few can enter the market place with such low investments of energy. Few can match the forest products industry in providing meaningful employment opportunities at so many steps along the way. It simply behooves those who harvest these resources and those who regulate the harvesters to find ever better and less impacting ways to do their jobs. A practical balance between the broader environmental needs and the more immediate material needs must continually be sought. That the perfect balance may always prove elusive is no excuse for not making the search. That search will be more successful if we avoid as many of the dead-ends of the past as possible. To that objective, this history is dedicated.

FOREST PRACTICE HISTORY

Chronology of Significant Events - 1976 through 1988

1976

January 6	Secretary for Resources, Claire Dedrick, certifies Timber Harvesting Plan preparation and review as a functional equivalent of EIR preparation, pursuant to SB 707(Nejedly).
January 15	"An Investigation of Soil Characteristics and Erosion Rates on California Forest Lands" first presented to the Board of Forestry.
	Board declines to adopt special rules for timber harvesting in the Redwood Creek Drainage.
February 2	SB 1579(Beilenson) Coastal Conservation Act is introduced.
February 11	Board of Forestry sustains departmental denial of Paul Bunyan Lbr. Co. Timber Harvesting Plan (THP) for vagueness and incompleteness.
March 26	Board of Forestry receives its first report on Section 208 of the Federal Clean Water Act, PL 92-500, which requires "Best Management Practices" (BMPs) to control non-point sources of pollution.
April 22	Board of Forestry receives the report of its Committee on Snags appointed in 1975.
	Board adopts rule defining the effective period of a THP to specify its beginning and ending.
May 22	AB 1258 Forest Taxation Reform Act is signed by the governor. Timber Advisory Board is appointed by Board of Equalization. Board of Forestry may nominate one member.
May 25	Board of Forestry hears report that the U. S. Army Corps of Engineers may assume authority over tributary streams to navigable waters under Section 404 of the Federal Clean Water Act, PL 92-500.
June 23	Board of Forestry adopts new Snag Retention and Disposal Rules.

June 23 — Chairman Howard Nakae retires from Board of Forestry.

June 24 — Henry Vaux assumes chair of Board of Forestry.

Board of Forestry amends definition of "Special Treatment Area" to exclude recreational trails.

July 1 — Second Erosion Control Study begins.

July 22 — Chairman Vaux proposes adoption of timber supply policy by Board of Forestry.

National Park Service presses for greater control over timber harvesting in Redwood Creek drainage, suggests need for attention to cumulative impacts.

August 31 — Text of SB 1579(Beilenson) Coastal Conservation Act is written into SB 1277(Smith).

September 29 — SB 78(Nejedly) passes and is signed into law, creating a Department of Forestry, effective January 1, 1977.

October 1 — Division of Forestry engages a Registered Geologist to supervise erosion studies.

1977

January 1 — Lewis A. Moran appointed first Director of the new Department of Forestry (CDF).

January 18 — Board of Forestry holds first hearing on its Timber Supply Policy.

Board appoints task force to review problems of multiple-use, especially grazing and timber management, under the Forest Practice Rules.

The State Water Resources Control Board presents the Board of Forestry with its findings on needs to strengthen the Forest Practice Rules to meet objectives of PL 92-500, Section 208.

February 16 — Board of Forestry upholds denial of two THPs proposed within the Coastal Zone, pending mandated adoption of special rules.

February 16	Board adopts amended Timberland Conversion rules to conform with the Coastal act and the Forest Taxation Reform Act.
March 15	Board of Forestry appoints task force to study cumulative impacts and maintenance of erosion control structures.
March 30	AB 1236(Calvo) is introduced to substantially revise the Forest Practice Act, adding strong enforcement measures .
April 5	Board of Forestry appoints Dean Cromwell as its Executive Officer.
April 11	SB 886(Nejedly) introduced requiring Board of Forestry to establish standards for Forestry Director's use of discretion in reviewing THPs.
April 19	On appeal, Board of Forestry approves Chenoweth Lumber Co. THP near Camp Meeker in Sonoma county, after CDF denial.
May 12	Board of Forestry upholds denial of three THPs in Redwood Creek drainage, pending congressional approval of Redwood National Park extension.
June 22	Board of Forestry upholds denial of two more THPs in Redwood Creek pending national park extension.
	Board revises definitions for THP deviations.
July 1	CDF engages archeologist from Department of Parks and Recreation for project review.
July 19	State Water Resources Control Board proposes that Board of Forestry take active role in planning for development of BMPs.
	Board of Forestry adopts Timber Supply Policy.
July 20	Coastal Commission presents recommendations for special Forest Practice Rules for Coastal Zone Special Treatment Areas to Board of Forestry.
August 11	Board of Forestry upholds CDF denial of THP because U.S. Forest Service disputes property line.

1977 (Cont.)

August 12	Emergency Forest Practice Rules adopted to cope with fire prevention needs brought on by drought.
September 20	SB 886 signed into law requiring the Board of Forestry to adopt standards for the exercise of discretion by the Forestry Director when reviewing THPs; allows director to withhold decision on a THP, pending review of need for special rules by the Board.
September 30	Board of Forestry upholds departmental denial of Pumpkin Logging Co. THP for incompleteness and inadequacy of public notice.
October 20	Senator Nejedly and Senate Committee on Natural Resources hold oversight hearing on Forest Practices in Eureka; again in Santa Rosa on Dec. 16.
October 27	Committee on Multiple Uses reports to Board of Forestry; recommends no rule changes.
October 28	Board of Forestry Chairman is authorized to execute an agreement with the State Water Resources Control Board to study and develop needed rules and procedures for BMPs.
November 18	Board of Forestry requests Director of Forestry to review existing rules in which Director's discretion is an issue and to recommend amendments to comply with SB 886.
December 7	Board of Forestry upholds denial of resubmitted THPs in Redwood Creek drainage upon receiving assurances that congress will soon act on park extension.
December 27	Federal Clean Water Act amended to require attention to cumulative impacts in BMPs; Section 404 amended to allow USACE to issue blanket permits on tributary streams to navigable waters.

1978

January 9	Board of Forestry upholds denial of five additional THPs in Redwood Creek Drainage.

January 10 — Rules for review of THPs by Director of Forestry under SB 886 adopted; includes unwritten feasibility analysis for review of alternatives.

January 19 — Board of Forestry approval of Chenoweth THP overturned by appellate court in Gallegos v. Board of Forestry; Board made inadequate findings.

January 31 — Senator Nejedly addresses Board of Forestry urging greater public involvement in rule-making and that the Board should develop rules adequate to curtail administrative ad hoc rule-making.

March 6 — Board of Forestry adopts temporary emergency rules requiring additional slash treatment to reduce insect potential in post-drought period.

Board adopts Forest Practice Rules for Coastal Zone Special Treatment Areas.

Board engages staff to study BMPs needed to comply with Section 208.

March 27 — President Carter signs PL 95-250 extending Redwood National Park by 48,000 acres.

March 28 — AB 3304(Calvo) introduced to establish Forest Improvement Program, allow Board of Forestry to lighten stocking standards on low site lands.

March 30 — Board of Forestry adopts new findings in the Chenoweth case, as directed by the court.

April 12 — Letter mailed by Board of Forestry staff to all Registered Professional Foresters (RPFs) describing new responsibilities under rules adopted in compliance with SB 886.

April 26 — CDF presents recommendations to Board for rule revisions pursuant to SB 886.

May 12 — Court issues order voiding Board of Forestry approval of Chenoweth THP; Board failed to consider additional environmental issues on March 30.

June 21 — Chairman Vaux and Board of Forestry staff meet with RPFs to discuss letter of April 12.

1978 (Cont.)

June 21 — Following re-hearing of the Chenoweth THP appeal, the plan is again approved by the Board of Forestry in accordance with court decisions.

July 14 — Attorney General notifies Board of Forestry that Chenoweth/Camp Meeker case has been settled in Board's favor.

July 27 — Director of Forestry withholds decision on three THPs that call for overstory removal and asks for Board of Forestry policy guidance; Board instructs Director to treat THP areas as clearcuts under the rules if they have similar effects.

August 17 — AB 1236 fails to leave legislative committee.

September 26 — AB 3304 approved establishing the California Forest Improvement Program and amending the Forest Practice Act to allow waivers of sampling for restocking and reduced stocking standards for low-site lands.

October 13 — Chairman Vaux sends letter offering further information on responsibilities of RPFs under recently adopted regulations.

October 23 — Board of Forestry Section 208 Study Team begins public meetings for review and development of BMPs.

1979

January 1 — CDF adds new Forest Practice Enforcement Coordinator to its staff.

February 22 — License of a Registered Professional Forester is revoked for incompetent work connected with the Forest Practice Act.

Rules adopted providing for a limited waiver of sampling where stocking is obvious.

March 6 — Secretary for Resources requests Board of Forestry consideration of interim measures to protect Wild and Scenic Rivers, pending legislative approval of management plans.

March 9 — Environmental Protection Agency certifies Oregon State Forest Practice Rules as Best Management Practices in that state.

March 27 — Board of Forestry upholds denial of THP on Kerr Ranch; proposed clearcutting would take buffer from an area previously approved but plan had expired; Board proposes a rule revision to prevent hardship on landowner.

March 30 — Director of Forestry Lewis A. Moran retires.

April 23 — David Pesonen appointed Director of Forestry.

April 24 — Board of Forestry receives requests to deny plans near Sinkyone Wilderness State Park and to require written feasibility analyses of THP alternatives.

May 23 — CDF suggests need for Board of Forestry to adopt augmented public notice rules for THPs following Horn v. County of Ventura.

June 26 — Board of Forestry adopts rule amendments to allow limited removal of buffer strips next to clearcuts where clearcut area does not exceed that in a previously approved THP. See Kerr Ranch, 3/27/79.

June 27 — Board of Forestry adopts amended rules for the Southern Subdistrict of the Coast Forest District.

July 25 — CDF withholds approval of a THP because it lies within a congressionally designated wilderness area; Board of Forestry adopts emergency rule allowing denial of such THPs, the rule to expire on Oct 1, 1980.

Board also adopts emergency rule establishing timber operators' responsibility for compliance with the Forest Practice Rules.

July 31 — Attorney Joseph Brecher on behalf of Sierra Club petitions Secretary for Resources to decertify functional equivalency of the THP review process and rules.

September 18 — SB 667(Ayala) signed to exempt timber harvesting from Waste Discharge Requirements of the Porter-Cologne Water Quality Control Act if the Environ-

mental Protection Agency certifies the Forest Practice Rules and procedures as BMPs under Section 208.

September 20 — Santa Clara County proposes to limit timber harvesting to fuel wood and fire salvage.

September 25 — Board of Forestry receives draft report containing recommendations for BMPs.

September 26 — Chairman Vaux proposes symposium on cumulative effects.

October 22 — Secretary for Resources responds to Joseph Brecher that Brecher's issues will be dealt with in the Board of Forestry report on Section 208.

October 24 — Board of Forestry receives report on need for geologic mapping of the north coast.

November 27 — Board of Forestry receives first report on mandated review of all regulations under AB 1111; plan for review due by July 1, 1980.

Board conducts first hearing on augmented public notice rules for THPs.

December 10 — Board of Forestry adopts rules for conversion of timberland in Coastal Zone and to require conversion permits for Immediate Rezoning of TPZ lands.

December 11 — THP Public Notice hearing continued to January.

1980

January 8 — THP Public Notice hearing continued to March.

February 5 — Board of Forestry upholds CDF denial of THP in area proposed for acquisition by Bureau of Land Management for King Range Wilderness Area.

March 5 — Board of Forestry adopts augmented THP Public Notice rules.

April 2 — In response to CDF suggestions, Board of Forestry amends its new THP Public Notice rules.

May 6	New THP Public Notice rules held in abeyance, pending AB 1111 review.
May 7	Roseburg Lumber Co. requests time extension for completion of required restocking on THP area damaged in 1977 Pondosa Fire.
	Board of Forestry upholds CDF denial of THP for Masonite Tbr. Co. refusal to allow Review Team member to use a camera; Masonite appeals this decision in court.
June 2-3	Edgebrook Conference on Cumulative Effects of Forest Management on California Watersheds is held at University of California.
June 11	Board of Forestry overturns CDF denial of Hiatt Logging Co. THP for failure to protect water-courses; board agrees that rule needs improvement.
	Board accepts Draft Section 208 Report as approved by the Editorial Committee; submits report to the State Water Resources Control Board.
June 16	Santa Clara County requires county use permit for TPZ zoning.
July 2	Board of Forestry readopts THP Public Notice Rules with amended findings based on both Horn and CEQA; provides additional time for public and departmental review of THPs before filing.
August 6	Registered Professional Foresters' Liaison Committee appointed.
	Board of Forestry begins hearings on proposed amendments to the Forest Practice Rules on silvicultural practices.
September 10	Board of Forestry begins hearings on revisions of Watercourse and Lake Protection Rule intent and definition sections.
	Board adopts rules to clarify "Financial Emergency" to expedite small harvesting operations.

1980 (Cont.)

November 4	Board of Forestry rejects appeal of CDF refusal to file Pollard THP containing restrictive conditions.
	Board reactivates ad-hoc Committee on Protection of Bird Nesting Sites.
December 16	CDF appoints Soil Erosion Studies Advisory Committee to help improve study procedures.

1981

January 6	CDF adopts procedures to handle public complaints.
January 7	CDF notifies Board of Forestry that Department of Finance has rejected new THP Public Notice Rules because of costs to CDF.
February 1	With termination of Parks and Recreation contract, CDF employs a staff archeologist.
February 3	Hearings open on new Watercourse and Lake Protection Rules and continue on Silvicultural Rules.
February 25	Court finds in favor of Masonite in camera case, orders Board to approve THP.
March 3-4	Board of Forestry appoints second Cumulative Impacts Task Force.
March 18	SB 720(Johnson) Industry sponsored bill introduced to exempt the Forest Practice Act from CEQA.
March 24	SB 899(O'Keefe) Industry sponsored bill to rescind county authority to regulate timber harvesting; Language later amended into SB 856(Keene).
March 25	AB 1600(Sher) Departmental bill introduced to provide for long-term timber harvesting plans and other revisions in the Forest Practice Act.
April 8-9	California Forest Protective Association requests Board of Forestry to examine mitigations demanded by CDF when reviewing THPs.
May 4	Court rules that Santa Clara County may not require a use permit for TPZ zoning.

1981 (Cont.)

June 2	Under court mandate, Board sets aside denial of THP for failure to permit use of camera; THP is approved.
July 1	Budget for 1981-82 is reduced by $1,004,000 for forest practice environmental review; budget language mandates difference be made up by collection of fees for THPs.
July 7-8	Board of Forestry holds first hearing on Proposed new rules for Roads and Landings. Board adopts revised Silvicultural Rules. CDF withholds approval of THP because of question about counting hardwoods toward restocking. Board declines to adopt emergency rule; appoints first Hardwood Study Committee. CDF responds to CFPA request for study of THP mitigations; denies ad hoc rule making.
August 4-5	Board of Forestry holds another hearing on THP Public Notice rules and adopts a modified version Board holds its first hearing on proposed new Harvesting Practices and Erosion Control Rules.
September 1-2	Board of Forestry adopts revised Watercourse and Lake Protection Rules.
November 3-4	Board of Forestry holds first hearing on rules for review teams and THP review procedures.
December 7	CDF holds hearing on fee schedule for THPs; adopts tentative schedule on December 30.
December 9	Senate and Assembly Select Committee on Economic problems meets in Placerville to receive testimony on the plight of the timber industry.

1982

January 1	Cumulative Effects Task Force recommends that Board treat cumulative effects through reduction of on-site impacts; CDF should review off-site watershed conditions when reviewing THPs.

January 29 — Office of Administrative Law (OAL) rejects departmental regulations establishing THP fees. Governor's Legal Secretary upholds the decision.

February 24 — AB 2770(Sher) introduced to rename TPZ Timberland Production Zone and to allow CDF to issue stop-orders for forest practice violations.

March 2-3 — Board of Forestry holds its first hearing on proposed revisions to Erosion Hazard Rating system.

OAL rejects new Silvicultural Rules because Board did not provide guidelines for use of alternative prescriptions.

March 11 — AB 1600(Sher) dies in committee. SB 1797(Johnson) is introduced to carry forward the concept of long-term timber harvest planning.

April 6-7 — Board of Forestry approves revised Erosion Hazard Rating system. Professional geologists object that foresters lack qualifications for rating geologic hazards.

Board hears CDF proposal to amend new THP Public Notice rules to require submission of addresses of persons to be notified.

Board allows Roseburg Lumber Co. a time extension for restocking areas burned in 1977 Pondosa Fire.

May 4-5 — OAL rejects revised Silvicultural Rules because adoption occurred more than one year after initial public notices; re-hearing needed.

Director of Forestry delays decision on Georgia-Pacific THP for consideration of special rule to protect the Sinkyone Wilderness Trail. Board declines to adopt; director allows plan to be approved by default.

Board revises its new Erosion Hazard Rating system.

OAL returns Watercourse and Lake Protection Rules for clarification of "deleterious substances."

May 4-5	Board approves revised Harvesting Practices and Erosion Control Rules.
June 1	Green-Gallez research report is released describing perceptions of foresters and timber operators concerning the Forest Practice Act.
July 1	CDF cuts Forest Practice Inspectors from 66 to 58.
July 6-7	Rules for Coastal Special Treatment Areas amended in compliance with standards of AB 1111.
August 3-4	Board of Forestry readopts Silvicultural Rules after making further amendments.
	OAL returns Harvesting Practices and Erosion Control Rules; cites need to define "Winter Period."
	Board amends Public Notice rules to require submission of addresses of persons to receive notice.
September 7	SB 1797(Johnson) is dead in Assembly Natural Resources Committee.
September 27	AB 2770(Sher) passes; TPZ renamed Timber Production Zone; stop-orders for threatened Forest Practice violations authorized.
September 30	SB 856(Keene) passes. Counties will no longer have authority to regulate timber harvesting.
	Board of Forestry adopts new policy on Economic Emergencies to improve opportunities for small operators during depressed economy.
	New rules for Logging Roads and Landings, Fire Protection, and Stocking Sampling approved.
October 4	Legislative committee holds hearing in Eureka (and in Sacramento in November) to study depressed economic status of timber industry.
October 6	Watercourse and Lake Protection Rules withdrawn from OAL to revise authority of review teams to reject proposed alternatives to rules.
November 3-4	Watercourse and Lake Protection Rules reapproved; review teams may not reject alternatives.

1982 (Cont.)

November 3-4	Timberland Conversion Rules and Insect and Disease Protection Rules amended to comply with AB 1111 standards.
December 24	Simpson Timber Co. petitions OAL for priority review of requirements for buffers between clearcuts.
December 29	Napa County submits a request for special rules pursuant to SB 856.
December 30	Monterey and Santa Clara Counties submit rule proposals under SB 856.
December 31	Director of Forestry David Pesonen resigns.

1983

January 1	New Erosion Hazard Rating system becomes effective.
January 4-5	Board of Forestry approves rules for protection of bird nesting sites. Board also approves new rules for THP review and operation of review teams. Hardwood Study Committee presents its policy recommendations.
February 10	New Silvicultural Rules become effective following approval by OAL; Simpson's petition for priority review is completed, no changes are ordered.
February 14	New Stocking Sampling Procedures become effective.
March 7	Jerry Partain appointed Director of Forestry.
March 22	Cooperative training sessions begin in several locations throughout state by CDF, Calif. Forest Protective Association, Associated Calif. Loggers, and Forest Landowners of Calif., ending on April 21. Sessions cover new silviculture, stocking sampling, and erosion hazard rules.
April 5-6	Board of Forestry approves rules for restocking of lands damaged by natural causes before stocking reports can be submitted.

1983 (Cont.)

April 5-6	Board discusses need for a hardwoods policy.
	Napa County withdraws its proposed rules.
	Henry Vaux retires as Board Chairman.
April 20	Board of Forestry holds first hearing of proposed Monterey County rules in Salinas.
May 3-4	Harold Walt takes chair of Board of Forestry.
	Board holds first hearing of revised Hazard Reduction Rules to comply with AB 1111.
May 26	Board of Forestry holds first hearing on proposed Santa Clara County rules, meeting in San Jose.
May 27	Board of Forestry holds second hearing on proposed Monterey County rules in San Jose.
June 1	Board of Forestry approves final report on its agreement with the State Water Resources Control Board for adoption of BMPs under Section 208.
July 1	All county timber harvesting regulations expire under terms of SB 856 leading to allegations that a "window of vulnerability" exists.
July 6	Board of Forestry approves revised Hazard Reduction Rules, meeting in Sacramento.
	Board rescinds its policy of September 8, 1982 on Economic Emergencies, upon advice of counsel.
July 7	Board meets in San Jose, continues hearing proposed Santa Clara County rules.
July 8	Board meets in San Jose, approves Monterey and Santa Clara County rules.
July 21-22	Board meets in Santa Cruz, holds first hearing on proposed Santa Cruz County rules.
July 31	A pictorial training guide for watercourse classification is published by the CDF.

August 12 — Coast District Technical Advisory Committee appoints task force to develop proposals for measuring erosion potential from unstable lands.

September 2 — CDF approves THP for Georgia-Pacific Corp. near Sinkyone State Park, north-coastal Mendocino County.

September 16 — Board of Forestry meets in Santa Cruz, approves Santa Cruz County rules.

September 22 — Board of Forestry meets in Redwood City for first hearing of San Mateo County rule proposals.

September 23 — Board of Forestry meets in San Rafael for first hearing of Marin County rule proposals.

September 30 — Environmental Protection Information Center (EPIC) files suit against the Board and Department of Forestry to void Georgia-Pacific THP near Sinkyone State Park; E.P.I.C. v. Johnson.

October 1 — New rules for Watercourse and Lake Protection, Roads and Landings, Harvesting Practices and Erosion Control, THPs and Review Teams, Insect and Disease Protection, and Bird Nest Protection become effective; training of state and private foresters ensues through joint industry/agency workshops held statewide.

October 13 — Monterey County sues to void THP in Palo Colorado Canyon; court grants restraining order but no trial occurs; trust buys property.

October 20 — Board of Forestry meets in Redwood City for continued hearings on San Mateo and Marin County rules. Santa Cruz County rules are revised.

October 21 — Lexington Hills Homeowners Ass'n. sues to prevent timber harvesting in Moody Gulch in Santa Clara County; restraining order is granted.

October 31 — Trial court in E.P.I.C. finds for CDF and timber owners and rejects suit; E.P.I.C. appeals.

November 18 — Coast District Technical Advisory Committee suggests new silvicultural method to solve problems caused by new Selection Method stocking standards.

December 6 — Board of Forestry meeting in Sacramento approves rules for San Mateo and Marin Counties.

Board upholds CDF denial of two THPs: one for failure to protect a bald eagle nest; the other for potential road construction impacts on creek.

1984

January 10-11 — Board of Forestry receives report of the Soil Erosion Studies Advisory Committee; a new study design is described.

February 3 — CDF approves two Pelican Lbr. Co. THPs for Soquel Creek drainage in Santa Cruz County and delays decision on a third for policy decision by Board of Forestry re: cumulative effects.

February 16 — AB 3473(Sher) introduced to require a written feasibility analysis and augmented public notice of THPs.

February 16 — SB 2041(Mello) introduced to revise Professional Foresters Law to strengthen disciplinary features.

February 17 — AB 3838(Farr) introduced to give counties more say in the THP review and approval process.

February 27 — Santa Cruz County sues to void Pelican Timber Harvesting Plans in Soquel Creek drainage.

March 7 — Coast District Technical Advisory Committee recommends "Transition Silvicultural Method" and new definitions for unstable land forms to Board of Forestry.

Board begins hearing on cumulative effects issues in Soquel Creek, Santa Cruz County.

March 8 — State Water Resources Control Board holds hearing on certification of the Forest Practice Rules and procedures as BMPs.

March 19 — Department of Forestry holds public hearing in Marin County on proposed THP by Dixon near Nicasio.

April 16-17 — Board of Forestry meets in Redwood City to consider special rules to protect the Soquel Creek Drainage in Santa Cruz County. Pelican Lbr. Co. withdraws THP at issue; moots PRC 4555 hearing.

Board approves expanded THP Public Notice Rules for the Southern Subdistrict of the Coast Forest District.

Board approves lower stocking standards for low sites, allows waiver of stocking by landowner, makes owner liable to notify subsequent purchaser if THP area fails to meet stocking standards.

May 16 — Director of Forestry withholds decision on Dixon THP because of Marin County request for special emergency rules. Board of Forestry meets in San Rafael and adopts several rules requested by the county. THP is amended; CDF gives approval.

June 4 — Marin County sues to void Dixon THP.

June 7 — Board of Forestry meeting in Fort Bragg approves special rule for protection of Soquel drainage in Santa Cruz County; allows broad CDF discretion.

June 21 — State Water Resources Control Board votes 4-year certification of Forest Practice Program as BMPs, conditioned on agreement to conduct a 4-year study of the effectiveness of the program.

June 26 — Santa Cruz County sues to void THP near Lompico Creek - (Laupheimer v. CDF).

August 20-23 — Department of Forestry sponsors first field workshop on THP preparation at U.C. Blodgett Forest.

September 13 — Board of Forestry meets in San Rafael to consider permanent adoption of emergency rules previously adopted for Marin County.

September 19 — SB 2041(Mello) is signed, amending the Professional Foresters Act to ease discipline of RPFs for incompetence and gross negligence.

1984 (Cont.)

September 25	AB 3838(Farr) is approved and signed, giving counties more say in THP review.
September 28	AB 3473(Sher), amended to only require augmented public notice provisions, is approved and signed.
October 3	Board of Forestry meets in Redding; approves new set of special rules for Marin County.
	Board also approves new rules to establish a "Transition Silvicultural Method."
November 1	Forest Practice Subcommittee of the Board of Forestry meets in Eureka to consider ways to expedite THPs on small operations.
November 26	Judge issues Writ of Mandate, blocking Dixon THP in Marin County; requires additional information in THP and new public hearings by CDF.
December 5	CDF releases "A Basic Guide on How to Construct and Maintain Small Forest Roads."
December 7	Board of Forestry meets in Carmel; approves added special rules requested by Monterey County.
December 14	Critical Sites Soil Erosion Study gets under way through contract with Pacific Southwest Forest and Range Experiment Station.
December 27	Court rules against plaintiffs in Laupheimer v. CDF in Santa Cruz County, stating that the Forest Practice Act is constitutional; plaintiffs appeal, seek restraining order. Restraining order is denied and timber harvesting is completed.

1985

January 8-9	Board of Forestry approves revised Special Rules for the Coastal Special Treatment Areas.
January 9	Court finds against plaintiffs in the Lexington Hills (Moody Gulch) case; timber harvesting almost begins, but upon appeal, court issues stay.
February 5-6	Board of Forestry holds hearing on expanded THP Public Notice as required by AB 3473(Sher).

Board also holds hearings on rules governing waivers of THP review and appeals by counties of approved THPs under AB 3838(Farr).

February 12 — SB 398(Nielsen) introduced to allow more than one stocking report per THP and THP time extensions.

February 27 — Special 3-member panel of the Board of Forestry hears Marin County's appeal of CDF approval of Dixon THP near Nicasio; appeal is denied.

March 3-5 — Board of Forestry holds its Centennial I Conference in Yosemite National Park to commemorate the 100th anniversary of the Board's creation.

March 19 — Subcommittee of the Assembly Committee on Natural Resources holds hearing in Sacramento regarding Board of Forestry action on Coastal Special Treatment areas.

April 2-3 — Board of Forestry considers but doesn't adopt amended clearcutting rule for Coastal Special Treatment Areas.

Board approves expanded THP Public Notice Rules.

Board also approves rules for Waiver of THP Review and County Appeal Procedures.

April 8-10 — Department of Forestry sponsors second THP workshop at Blodgett U.C. Forest.

Special Treatment Area Rules for Coastal Zone sent to Coastal Commission for review before submission to OAL for approval.

April 23 — Court rules in favor of CDF and Board in Soquel Creek case; plaintiffs appeal.

May 1 — CDF learns Office of Historic Preservation will no longer perform archeological review of THPs; CDF archeologist expands program of review.

May 8-9 — Board of Forestry meets in Santa Cruz to hear Santa Cruz County request for additional special rules; board rejects the rules.

Woodworkers Union seeks regulations to compel "sustained yield" on industry timberland.

May 22 — Plaintiffs in Lexington Hills (Moody Gulch) case in Santa Clara County sue Cal-Trans to block issuance of Encroachment Permit to enter State Highway 17, claiming an EIR is required.

May 29 — CDF complies with Marin court order; court rejects final appeals of plaintiffs opposing Dixon THP; Trust for Public Lands purchases property.

June 25 — In Lexington Hills case Court requires Cal-Trans to prepare EIR for Encroachment Permit; state appeals.

July 25 — Appeals Court in EPIC rules that CDF gave inadequate evidence of cumulative effects review, failed to notify Native American Heritage Commission, and made procedural errors; voids THP.

August 9 — CDF issues instructions for compliance with EPIC.

September 4 — Board meets in Truckee, approves "General Alternative" rule to provide flexibility to meet unique circumstances not provided in standard Forest Practice Rules.

Board requests Director of Forestry to appoint a Task Force to develop procedures for reviewing cumulative effects.

September 12 — 4-year Monitoring and Assessment Plan for review of Forest Practice Program for BMP Certification proves not feasible; one-year qualitative assessment is developed by Water and Forestry Boards.

September 21 — Governor signs SB 398 allowing THP extensions and one stocking report per year for each THP.

October 7 — Georgia-Pacific Corp. submits new THP for its Sinkyone timber.

November 6 — Board of Forestry reviews THP Public Notice Rules; makes revisions. Legislative Counsel believes rules do not comply with AB 3473(Sher).

November 8 — Assemblyman Hauser holds a hearing in Ft. Bragg on employment in the timber industry.

December 3 — Report of latest Cumulative Effects Task Force is published, makes four recommendations to improve

cumulative effects review and documentation, with a check-list to assure review of all factors.

December 20 — Department of Forestry approves new THP for the same area involved in E.P.I.C. v. Johnson.

1986

January 2 — Laura Rothkoph sues CDF and Louisiana-Pacific Corp. to void THP in the Russian River area of Sonoma County.

January 7 — Board of Forestry approves rule amendments to eliminate the unwritten feasibility analysis; substitutes requirement for analysis of feasible alternatives in THPs.

Board hears proposal for expedited THPs for small, non-impacting harvesting operations and gives tentative approval.

Board approves recommendations of the Cumulative Effects Task Force.

January 16 — AB 2697(Sher) is introduced to take appointment of public members of the Board of Forestry from the Governor and give it to legislative leaders.

January 17 — Rothkoph suit on Russian River THP is settled.

January 17 — EPIC sues to void the new THP submitted by Georgia-Pacific Corp. at Sinkyone; E.P.I.C. II.

February 3 — 208 Assessment Team completes work plan and begins field work to monitor Forest Practice Program effectiveness under one-year study plan.

February 4-5 — Board of Forestry approves definitions for several types of unstable areas to clarify rules.

Board upholds CDF denial of THP adjacent to the "Pony Express" slide on U.S. Highway 50.

February 12 — SB 1855(Mello) would allow five Bay Area counties to regulate timber harvesting on non-TPZ lands.

February 14 — U.S. Army Corps of Engineers writes to timber operators about stream crossings on Wild and Scenic River tributaries under Section 404.

February 21	Senator Keene introduces SB 2394 to establish a Timber Resource Production Plan (TRPP), a new version of the long-term timber harvesting plan.
February 26	Director of Forestry issues general letter to explain need and methodology for making cumulative effects review when developing THPs.
March 5	Board of Forestry adopts rule revisions to implement SB 398, allowing two 1-year extensions of incompleted THPs for good cause.
April 1-3	Department of Forestry sponsors its third THP workshop at Blodgett U.C. Forest.
April 7	Helen Libeu sues CDF and Louisiana-Pacific Corp. to stop timber harvesting in Freeze-out Creek and Kolmer Gulch in Sonoma County - Libeu v. CDF.
May 7	Board of Forestry approves definition of "significant adverse impacts" to clarify rule on analysis of alternatives during THP preparation. Board decides against adoption of expedited THP for small operations.
June 4	Final versions of rules defining unstable areas and significant adverse impacts, and for extension of THPs are adopted.
June 13	Trial court finds against plaintiff in Libeu v. CDF; Libeu appeals.
July 1	SB 2394(Keene), the TRPP bill, fails in Senate Natural Resources Committee; contents amended into SB 2554(Keene) which also dies in committee.
July 2	Agreement with Roseburg Lumber Co. allowing time extension for reforestation is concluded; extensive reforestation efforts were successful on lands damaged during the 1977 Pondosa Fire.
August 8	Director of Forestry issues general letter concerning requirements for archeological review of THPs, review of feasible alternatives, new THP form, and related matters.

August 8	SB 1855(Mello) dies in Senate Inactive File.
October 8	Board of Forestry eliminates the requirement for notarized signatures on applications for Timber Operator Licenses.
October 21	Three-member panel from Board of Forestry hears appeal of San Mateo County to overturn Department of Forestry approval of Holmes Lumber Co. THP. Panel denies appeal.
November 12	Hardwoods Management Symposium begins at Cal-poly in San Luis Obispo.
November 15	Board of Forestry meets in San Luis Obispo to hear discussion on possible regulation of hardwood harvesting.
November 24	Greater Middleton Ass'n. sues to void Holmes Lbr. Co. THP in San Mateo County.
December 30	Trust for Public Lands buys Georgia-Pacific timberlands involved in E.P.I.C. II lawsuit near Sinkyone State Park; lawsuit dies.

1987

January 1	Department of Forestry becomes the Department of Forestry and Fire Protection.
January 7	Department completes six archeological training sessions attended by several hundred private and state foresters.
February 3	Board of Forestry adopts resolution on hardwood management, stresses a non-regulatory approach using education and research.
March 6	Senator Keene introduces SB 1641 which would have mandated sustained yield for private timber owners and would have established Head of Agency appeals on THPs. Bill dies in assembly.
April 13-16	Department of Forestry holds fourth THP workshop at Blodgett U.C. Forest.
April 24	CDF and Associated California Loggers release video tape series designed to train timber operators about the Forest Practice Rules.

April 24 — 208 Assessment Team submits report describing problems with enforcement and with THP preparation and review; rules generally appear adequate.

May 5 — Board of Forestry approves rule permitting limited clearcutting of eucalyptus stands in the Southern Subdistrict of the Coast Forest District.

May 26 — State Water Resources Control Board holds public hearing on the report of 208 Assessment Team.

June 3 — EPIC files suit against Maxxam Corp., CDF, Board of Forestry, and North Coast Regional Water Quality Control Board with allegations similar to those in E.P.I.C. v. Johnson; also charges that review team meetings violate Open Meeting Act and that NCRWQCB failed to protect water.

June 3 — Board of Forestry hears report of 208 Assessment Team.

Eucalyptus harvesting rules adopted for Southern Subdistrict of the Coast Forest Practice District.

CDF and Forest Service report that their methods for assessment of cumulative effects are not compatible; board informs SWRCB that mutually acceptable means are unobtainable.

June 25 — Board of Forestry accepts findings of the 208 Assessment Team; action plan is adopted to implement recommendations.

Professional Foresters Examining Committee recommends performance auditing of RPFs, urges CDF to report repeated substandard performances of RPFs.

July 8 — Assemblyman Sher amends AB 1629 at request of Board of Forestry to implement 208 Assessment Team recommendations for long-term erosion control and site preparation. Bill also includes a requirement for a study of reforestation success.

August 5 — Board of Forestry hears proposed rules to require applicants for Timber Operator Licenses to receive training; rules not adopted but matter held open.

September 9 — AB 1965(Farr) is signed; allows for acquisition of Pelican property and establishment of Soquel State Demonstration Forest; no funding provided.

1987 (Cont.)

September 22 — Governor signs AB 1629(Sher) into law.

October 14 — First District Court of Appeals in Libeu v. CDF finds for Libeu on cumulative effects issue. CDF appeals to Supreme Court.

October 16 — Board of Forestry learns of decision in trial of EPIC v. Maxxam; court finds that CDF approved incomplete THPs, made inadequate study of cumulative effects on wildlife, did not consider altertives to clearcutting; also that Water Quality and Fish and Game improperly relied on information provided by RPFs employed by Maxxam and CDF.

November 3-4 — Board of Forestry adopts regulations to require applicants for a Timber Operator's License to receive training.

December 16 — Board of Forestry subcommittee hears appeal by Monterey County of THP approved by CDF; county wants bond to protect private roads. Appeal is denied; no rule in place to require bond.

1988

January 5-6 — Board of Forestry approves Management Agency Agreement with SWRCB after revisions are made.

RPF is disciplined by suspension of license for failure to perform conditions of THP in 1985.

January 15 — Board of Forestry learns that Supreme Court refuses to hear appeal of Libeu v. CDF but decertifies publication of the appellate decision.

January 21 — State Water Resources Control Board certifies that the Forest Practice Program meets the requirements of the Federal Clean Water Act, PL 92-500; Approves Management Agency Agreement; EPA has 150 days to review the certification.

February 2-3 — Board of Forestry hears CDF request under PRC 4555 to consider regulation of old-growth redwood cutting; board finds no emergency re: intent of the Forest Practice Act; deletes rule requiring CDF to refer such issues.

March 2 — Fred Landenberger announces retirement from the California Forest Protective Association.

April 6 — Elizabeth A. Penaat takes oath as public member of Board of Forestry, vice Jean Atkisson.

Board votes to retain rule requiring CDF to refer PRC 4555 issues to the board.

April 15 — Sixth District Court of Appeals issues decisions in Laupheimer v. State of California (Lompico Cr.) and in Lexington Hills Assoc. v. State of California (Moody Gulch - all three cases). Court finds for the state on all issues except for cumulative effects in Laupheimer.

April 18 — CDF denies two THPs submitted by The Pacific Lbr. Co.(Maxxam) because of additional information required by Department of Fish and Game; TPL appeals to Board of Forestry.

June 7 — Board of Forestry hears appeal of Pacfic Lbr. Co.; votes to overturn CDF denial; Sierra Club Legal Defense Council sues for restraining order.

June 28 — Humboldt County Superior Court refuses to grant restraining order to Sierra Club; found board made careful analysis and petitioners not likely to succeed with litigation on appeal.

June 29 — Supreme Court refuses to hear Laupheimer, allows Appeals Court decision of April 15 to stand.

July 6 — Board of Forestry learns that OAL has rejected its Timber Operator Education rules.

August 3 — Board of Forestry approves rules clarifying responsibilities of THP submitters, RPFs and Licensed Timber Operators; requires a notice of the start of harvesting operations.

October 4 — Board approves amended language for Timber Operator Education rules for resubmission to OAL.

1989

January 1 — Timber Operator Education rules go into effect along with rules for responsibilities of THP submitters, RPFs, and timber operators.

March 7 — Board of Forestry adopts regulations to govern site preparation and long-term maintenance of erosion control structures following logging.

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