



July 8, 2005

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By email santarosapubliccomments@fire.ca.gov

California Department of Forestry and Fire Protection
135 Ridgeway Avenue
Santa Rosa, CA 95401

Attention: Forest Practice

Re: THP # 1-05-097 HUM

Dear CDF:

These comments are on behalf of the Environmental Protection Information Center (EPIC), based in Garberville, CA. EPIC has reviewed THP 1-05-097 HUM, the so-called "Bonanza" THP, which The Pacific Lumber Co. and Scotia Pacific Company LLC (collectively, "PL") submitted to the California Department of Forestry and Fire Protection (CDF) for approval on or about May 16, 2005.

CDF must deny approval of THP 1-05-097 HUM based on numerous legal grounds laid out below. Beyond the legal deficiencies with this THP, EPIC notes that the recent public comments of PL warning of its impending financial collapse, given the unsustainably high levels of logging and forest liquidation practiced by PL over the past 20 years, should not and must not distract public agencies including CDF, the California Department of Fish and Game (DFG), and the US Fish and Wildlife Service (FWS) from carrying out their legal mandate to protect the environment.



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1. Impermissible Reliance on the SYP/HCP

At the outset of the THP document, PL claims that this THP does not rely in any way on the state Incidental Take Permit (ITP) or the Sustained Yield Plan/Habitat Conservation Plan (SYP/HCP). (pp. 2-3) PL thus attempts to elude the recent rulings from state litigation, *EPIC & Sierra Club v. California Dept. of Forestry and Fire Protection, et al.* Humboldt Superior Court Case No. 990445, which found PL's state ITP and SYP/HCP invalid under California law. PL claims that its reliance on these documents for federal purposes does not implicate state law. PL is incorrect. PL can say what it wants, but the THP clearly relies upon on the same *substantive plan* for mitigation of the impacts from logging on wildlife, as well as for mitigation of impacts damaged watersheds. The federal and state plans are substantially the same. Citations to the HCP's provisions for the protection of biological resources and watersheds appear abundantly throughout the document and comprise the only provisions for mitigation of logging impacts. After careful consideration, the court in the above referenced case determined that PL's

past and current timber operations have resulted in water quality degradation and streambed alterations characterized by excessive sediment deposition and streambed elevation, as well as the elimination of pools, the covering of gravel beds, a decrease in channel capacity and flooding of adjacent lands and roads. It has been clearly demonstrated that streambed sedimentation has impaired spawning success of salmonid fish species, thereby reducing fish populations, and has also reduced the recreational potential of the streams.

Timber operations have also resulted in a reduction of timber stock which will constitute the basis for future achievement of maximum sustained production of high quality timber products. In addition, a plausible contention has been advanced that they have threatened marbled murrelet and spotted owl habitat.

(*EPIC v. CDF* Supp. Statement of Decision, at 2:3-12, September 26, 2003.)

Given that PL intends to operate under the same terms and conditions as found by the State Court to cause harm to the environment, PL's reliance upon the federal HCP cannot satisfy the California Environmental Quality Act (CEQA) and Forest Practice Act (FPA) duties to mitigate and remove adverse significant impact to the environment. The habitat of numerous sensitive, threatened, and endangered species will be adversely impacted and destroyed without any state authorization for incidental take. Under these circumstances, PL cannot merely assert non-reliance on the state scheme for environmental protection when in fact the federal scheme is virtually identical. CDF and DFG must still enforce the California Endangered Species Act (CESA) and the CEQA, and still must discharge their Public Trust responsibilities.

Furthermore, PL has gone on record as stating that it will not be able to meet its financial commitments under the HCP due to its precarious financial condition. Its current financial state is a direct consequence of its rapacious logging scheme over the past twenty years. Irrespective of that, it is clear that PL's promise of mitigation funding through the HCP is not reliable, and cannot be considered adequate mitigation at this time.



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2. Impacts on Species

Marbled Murrelet

This THP would authorize harvest of suitable marbled murrelet habitat, and, apparently, habitat that is actually currently occupied by murrelets. Higher quality stands slated for harvest include: 717E, 679E, 712E, 648E, 681E, 708E, 682E, 636D, 642D, 644D, 646D, 647D. (p. 43). The THP explicitly states that these stands will be harvested: “The higher quality stands are being proposed for harvest at this time...” (p. 108) The THP states that DFG cooperation is required as per HCP Section 6.1.2.3.5 before harvesting may occur. Thus, this THP does rely on the HCP for compliance with state law; moreover, PL explicitly admits here that DFG has a role to play in the process of phasing murrelet habitat for harvest.

As of this date, EPIC is aware of no effort by DFG to evaluate the effects of proposed timber harvests on the marbled murrelet or to evaluate the extent to which the “D” and “E” stands within this THP are occupied. Under these circumstances, approval of this THP by CDF would violate CEQA. CDF may not approve a THP “without having before it the data necessary to make an informed assessment of the environmental impact of the proposed timber harvest...” Sierra Club v. Board of Forestry, 7 Cal.4th 1215, 1216 (1994)

This oversight is particularly troublesome given the new information on the murrelet which reveals it is more at risk than was assumed at the time of the approval of the HCP. For example, there is new information which indicates that oil spills have had greater impact than expected.

In November 1997, the M/V Kure spilled substantial quantities of oil in Humboldt Bay. PL’s HCP includes a brief discussion of the M/V Kure oil spill, but modeling efforts to assess the impacts to the marbled murrelet were not completed when the HCP was approved. *See* PL HCP page 135. It was only known that nine murrelets were found dead from the spill, and that the “actual mortality was probably several times higher.” *Id.* Modeling efforts have since been completed, and this information shows the number of birds killed was much greater than contemplated in the HCP, with approximately 151 murrelets perishing in the M/V Kure oil spill.

In September 1999, the Bean-Stuyvesant oil spill occurred just outside Humboldt Bay, killing approximately 135 individual murrelets. Together with the M/V Kure spill, it is believed these two spills caused direct mortality to approximately 10% of the Marbled Murrelet Conservation Zone (MMCZ) 4 population, which includes the PL property.

Another significant oil spill, from the New Carissa, occurred in Coos Bay, Oregon in February and March 1999, after the effects analysis of the PL HCP had been completed. The spill was in the southern part of Zone 3 and killed an estimated 262 murrelets. Also following completion of the effects analysis, FWS revised downward its estimate of the Zone 6 population.

Additionally, there is new information which indicates that murrelets do not use conserved habitat. New information shows that for a period of time, murrelets will not use some of the conserved habitat that the Biological Opinion (BO) anticipated would be used.



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The Humboldt Bay-area oil spills killed murrelets that would otherwise have occupied and bred in habitat that the HCP conserved as mitigation for other murrelet habitat currently being logged by Pacific Lumber.

A significant period of time will elapse before this depopulated habitat, relied upon by the BO to mitigate the loss of other murrelet habitat, becomes colonized by murrelets. New information therefore shows the impacts from the HCP will be larger than anticipated because the mitigation analyzed in the FEIS will not work effectively.

There is also clear evidence that the FWS underestimated the level of take under the HCP. New information shows that FWS underestimated the HCP's take of murrelets by relying on surveys that took place in abnormal conditions and under-counted murrelets.

Surveys of potential murrelet habitat done after the November 1997 M/V Kure spill under-counted murrelet occupancy compared to "normal" circumstances and, therefore, underestimated the number of murrelets affected by the HCP. The post-Kure surveys determined not the "normal" level of occupancy, but rather an occupancy level temporarily reduced because of mortality from the M/V Kure spill. As a result, these surveys underestimated the amount of occupied habitat in areas that will be logged, and resulted in an underestimation of the impact of HCP to murrelet in the bioregion.

While the BO and ITP did not quantify the level of take in terms of individual murrelets, they did specify take in terms of murrelet habitat affected and the value of that habitat. For the reason described above, the value of destroyed habitat exceeds the level specified in the ITP/ITS.

The BO overestimated the usefulness of the conserved habitat because it did not anticipate depopulation caused by oil spills.

The BO also underestimated the value of the habitat designated for logging, wrongly concluding that habitat found unoccupied was normally unoccupied, because FWS did not know that surveys were temporarily affected by the November 1997 spill.

PL's operations under the HCP have had a greater impact on the murrelet population's survival and recovery than previously considered. New information shows that fewer murrelets exist across their entire population range than previously believed. Murrelet Conservation Zone 6 population estimates are substantially lower than previously believed, and Zones 3 and 4 have experienced catastrophic oil spills. FWS found that to ensure the eventual long-term survival and recovery of the murrelet, Zones 1 through 4 must be managed to produce and maintain viable marbled murrelet populations that are well distributed throughout the prospective Zones. Because the "margin of safety" separating murrelets from extinction is much smaller than previously believed, the impact of the HCP on murrelets overall is larger than previously believed.

Second, for all the reasons previously described, the effect of the HCP on the local Pacific Lumber murrelet population is greater than previously believed. In its analysis, the BO assumed a smaller effect on local murrelet populations than is now known to be the case, against a backdrop of an overall population level assumed to be much higher than is now known to be the



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case. Because the HCP has a larger impact to a smaller safety margin for murrelets, the new information shows the HCP adversely affects murrelets to an extent not considered in the BO. In May of 2004, a scientific report commissioned by FWS was released that shows that the marbled murrelets faces a 100% probability of extinction in California in the next 40 years under current management regimes. *See* Evaluation Report for the 5-Year Status Review of the Marbled Murrelet in Washington, Oregon, and California, March 2004.

This report concluded that "...the rate and risk of habitat loss in Oregon and California on private lands have likely remained the same since listing (that is, high)... Besides stochastic events, the greatest 'loss' of habitat in the 3-state area has resulted from consultations on individual harvest units, individual trees, and large amounts of suitable habitat through HCPs." Id.

The report further states that "[h]abitat loss has continued. Known occupied habitat has been lost. Loss of suitable habitat is expected to continue in the future based on ongoing Section 7 consultations and full implementation of approved HCPs. Since 1994, the rate of habitat loss has declined substantially on federal land under the NWFP, and the rate has likely declined in Washington where State protection guidelines have been developed. The relative threat of habitat loss has not changed on non-federal land in Oregon, which has no protective measures, or California, which protects the murrelet under state ESA." Id.

Its unambiguous conclusion: "Results of this scientific review indicate that marbled murrelet populations in Washington, Oregon and California continue to decline (especially in California) and continue to be at risk from the same threats identified at listing ... It is unrealistic to expect that the species will recover before there is significant improvement in the amount and distribution of suitable nesting habitat." (5-Year Status Review, p. 6-34) This status report is based on information not available at the time of approval of the PL SYP/HCP on March 1, 1999. THP 1-05-097 HUM fails to mention this new information or to incorporate it into an analysis of impacts to the murrelet from logging operations associated with THP 1-05-097 HUM.

Despite all of this evidence, PL relies upon the March 1, 1999 PL HCP to provide the framework for mitigating impacts from this THP. Thus, the THP fails to use the best available scientific information and must be re-submitted with the information so as to provide a legally adequate analysis of the impacts to murrelets from logging operations in this THP.

Additional new information indicates that reproductive success of murrelets in Redwood National Park is on the decline. This is an important finding, as Redwood National Park is considered one of the most unfragmented remaining habitat for murrelets in Conservation Zone 4, and if reproductive success is declining there, then other suitable murrelet habitat in the Region becomes all the more important. In the 2002 report, "Breeding, Biological, and Human-Caused Disturbance to Nesting Marbled Murrelets in Northern California, Progress Report 2002," the authors state,

Our observed rates of hatching success, 50% in 2001 and 50% in 2002, are somewhat lower than that reported in other studies (67%; Nelson 1997). Also, when the data are combined across years, our estimates of maximum reproductive success (#fledge/#eggs; 38.5%) and minimum reproductive success (15.4%) bracket the 28% reported by Nelson and Hamer (1995a).



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. . . . Clearly, reproductive success in northern California population is insufficient to maintain current populations levels.

(Id., p. 57.)

THP 1-05-097 HUM fails to incorporate this new information or analyze how declining reproductive success in Redwood National Park, together with logging operations in THP 1-05-097 HUM, will impact the marbled murrelet. This constitutes an inadequate legal analysis under the CEQA and the California Endangered Species Act (“CESA”). The new information constitutes best available science and must be included along with an analysis of its impacts.

In fact, as occurs throughout this document, PL offers much in the way of mitigation provisions (from the PL HCP) but very little in analysis of actual impacts, direct and cumulative, to be mitigated. Thus it is impossible in most instances to know whether the impacts will be mitigated to a less-than-significant level

Late seral forest is an important habitat for marbled murrelets. PL’s HCP defines late seral forest to include habitat that expert foresters consider too young to be called late seral. This definition enables PL to claim to fulfill retention requirements under state law for late seral forest without, in the opinion of many experts, actually doing so. Since, as PL admits, the HCP cannot serve as a sound basis for the conservation of listed species under state law, CDF must provide more analysis of effects on late seral forest than merely citing to the HCP, as it does on p. 55, with nothing more.

Northern Spotted Owl (NSO)

The provisions in this THP for protection of the Northern Spotted Owl are inadequate and fall short of legal requirements under CEQA, CESA, and Fish and Game Code (FGC) Section 3503.5. Section 3503.5 of the Fish and Game Code prohibits “take” of the NSO, as it is a species within the order *Strigiformes*. Section 3503.5 provides:

It is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

Like the provisions for all mitigation of impacts to biological resources, the Owl provisions in this THP consist of the HCP’s scheme of protection: for the NSO, of “Level One” and “Level Two” protections for seven NSO activity centers that occur within and near this THP. Reliance on the HCP’s scheme of protection will not ensure that NSO nests and eggs are not destroyed in violation of Section 3503.5.

Aquatic Wildlife and Water Quality

This THP relies on the riparian and hillslope protection strategies contained in the PL HCP. These strategies are designed to restore wildlife habitat and, as such, do not protect and restore beneficial uses of water as required by the Basin Plan. The streams in this THP drain into the Lower Eel River, which is listed as an impaired waterbody under the federal Clean Water Act.



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Nevertheless, this THP will allow the harvesting of timber in landslide-prone areas. On page 150, the author admits, “Beneficial uses of water could be impacted by timber operations if the operations affect such factors as sedimentation, water temperature, organic debris, chemical contamination, or peak flows. Potential impacts to these factors are also addressed in the landowner’s HCP.” Unfortunately, the THP explicitly fails to provide a standard of protection required by law: “This THP ... meets a high standard that achieves a *net reduction in controllable sediment discharge (based on expected logging sediment production discounted by mitigation sediment savings.*” (Italics added) The standard of “net sediment reduction” clearly falls short of “restoration of beneficial uses of water” required by the Basin Plan. This standard of protection is legally inadequate on its face.

The discussion on p. 81 regarding mitigation does not cure the lack of analysis of impacts. All that is presented is a set of mitigation to some unknown level of impacts with a conclusory statement that impacts will be mitigated to a level of insignificance. This is impermissible under CEQA. One inescapable conclusion flows from this deficiency is that it cannot be ascertained what impact this THP will potentially have on coho salmon, chinook salmon, steelhead trout, southern torrent salamander, and numerous other sensitive and/or listed aquatic species. This analysis must be completed before the THP can be considered.

This THP’s reliance on the disturbance index further clouds the issue of sediment impacts and mitigations. CDF foresters have rejected the use of the disturbance index as unreliable and it is astonishing that it is still relied upon here (see page 215).

In relying upon the HCP, the THP fails to deal with the likely impact to watersheds as a result of PL’s logging operations. Water quality is of particular concern for the watersheds within PL lands, including Nanning and Dean Creeks, as well as the entire Yager drainage given PL’s past practices. The streams within these watersheds are all formally listed as “impaired” under Section 303(d) of the CWA due to excessive amounts of temperature and/or sediment pollution. 33 U.S.C. § 1313(d).

On September 9, 2000, the North Coast Regional Water Quality Control Board (Water Board) staff published a report (Staff Report) detailing deficiencies in the HCP that fail to protect beneficial water uses, and proposing additional requirements that are necessary to comply with applicable water quality standards.

New information in the Staff Report includes the following: (1) evidence that the HCP’s Mass Wasting Avoidance Strategy will not avoid landslides because slides occur on slopes not identified for protection and because it fails to model the effect of logging on landslides; (2) evidence that HCP interim streamside buffers may not be effective in mitigating discharges of fine sediment; and (3) evidence that Bear Creek and the North Fork Elk River will not recover as anticipated in the HCP, especially in the short-term (regarding Bear Creek, *see also* Water Board Staff Non-concurrence with Second Review Team Chairman’s Recommendation of Approval for Timber Harvest Plan (THP) 1-01-112 HUM “Bear Thin”).

The Water Board has identified other new information indicating deficiencies in how PL’s HCP works in practice. For example, the Water Board published information indicating that field verification of mass-wasting areas would only be done to disqualify areas suspected of being prone to landsliding, and not to identify new landslide areas that had been missed. *See* Water Board Staff Response to Testimony by Thomas E. Koler.



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The Water Board has also shown that PL's logging operations under its HCP allow high-impact silvicultural methods that violate water quality standards for turbidity, sediment, temperature, and other pollution. For example, with respect to a recent PL Timber Harvest Plan ("THP"), the Water Board stated:

The THP proposes felling large Old Growth trees on steep slopes and dragging them upslope long distances with cables to the ridgeline. We anticipate that proposed winter operations in the plan area will elevate soil transport into the nearby watercourses, in violation of Basin Plan standards.

See Water Board Staff Non-concurrence with Second Review Team Chairman's Recommendation of Approval for Timber Harvest Plan (THP) 1-04-220 HUM, October 26, 2004.

Regarding another logging operation, the Water Board stated:

We are concerned that THP 1-03-126 HUM, as proposed for approval by CDF Second Review Team chair's recommendation, will violate our Basin Plan prohibitions and narrative water quality objectives through discharge of sediment, add to the existing nuisance flooding condition by itself and/or when combined with other CDF-approved THPs in the watershed as a cumulative effect that represents an ongoing threat to the public safety, health, and welfare for those residents that reside in the Freshwater Creek Watershed.

See Water Board Staff Non-concurrence with Second Review Team Chairman's Recommendation of Approval for Timber Harvest Plan (THP) 1-03-126 HUM, November 18, 2003. The Water Board also noted that

[O]n December 3, 2003, the Regional Water Board unanimously adopted a series of motions upon concluding that additional regulatory and non-regulatory actions, beyond those currently in place under the California Forest Practice Rules and the Pacific Lumber Company's...Habitat Conservation Plan, are necessary to address water quality impacts due to the rate and scale of land disturbing activities...[I]t is necessary to incorporate the sediment offset strategy...in order to mitigate for sediment discharges contributing to cumulative impacts to the beneficial uses of water. We believe that, without such mitigation in place, this THP does not comply with the Basin Plan....

See Water Board Staff Non-concurrence with Second Review Team Chairman's Recommendation of Approval for Timber Harvest Plan (THP) 1-04-001 HUM.

The Water Board has issued numerous other "non-concurrence" letters that set forth the reasons it believes PL's logging operations violate applicable water quality standards. E.g., Water Board Staff non-concurrences for THPs 1-01-141 HUM, 1-01-318 HUM, 1-01-345 HUM, 1-01-363 HUM, 1-01-387 HUM, 1-01-404 HUM, 1-02-052 HUM, 1-02-197 HUM, 1-02-218 HUM, 1-02-245 HUM, 1-02-258 HUM, 1-02-269 HUM, 1-03-002 HUM, 1-03-007 HUM, 1-03-018 HUM, 1-03-051 HUM, 1-03-053 HUM, 01-03-125 HUM, 1-03-126 HUM, 1-03-140 HUM, 1-03-177 HUM, 1-03-198 HUM, 1-04-001 HUM, 1-04-079 HUM, 1-04-155 HUM, 1-04-168 HUM, 1-04-184 HUM, and others.



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Under California state water quality standards, Class I streams are defined as those that currently support or could support fish. Class II streams are those supporting other aquatic life, including amphibians and invertebrates. Class III streams are those that do not support aquatic life.

In 2002, the North Coast Regional Water Quality Control Board commissioned an independent panel of scientists to examine the impacts of PL's logging on the beneficial uses of water.

In January 2003, the Humboldt Watersheds Independent Scientific Review Panel released its report, which unanimously concluded that "the THP-SYP-HCP structure lacks some of the key elements needed to move toward and assure attainment of water quality standards."

In February 2003, the North Coast Regional Water Quality Control Board asked the Independent Scientific Review Panel to do a more detailed analysis of PL's HCP. Specifically, the Regional Board asked the Panel to examine the prescriptions and protections of the HCP, developed as part of the Aquatic Conservation Plan, (and SYP/THP process) and their effectiveness in limiting sediment production and allowing for the recovery of the beneficial uses in five impacted watersheds. In August 2003, the Panel again issued a unanimous report, concluding that "the HCP/SYP/THP structure and the corresponding Watershed Analysis process cannot be relied upon to meet water quality." It further elaborated:

The Panel has concluded that these planning processes are unlikely, at the current rate of logging, to limit sediment production sufficient to allow timely recovery of the beneficial uses of water. For example, in Freshwater [Creek], the harvest and road construction rates over the last five years have been extremely high and have impacted a significant portion of that watershed. These activities and impacts are documented in the Freshwater Watershed Analysis, a centerpiece of the HCP/SYP planning process. The Panel concludes that the approval of plans generating this documented level of impact constitutes a strong indication that this planning process will not result in recovery of this watershed. The Panel points out that the other four watersheds have also received extensive disturbance from logging.

Therefore, on-the-ground information demonstrates that the HCP and/or ITP is not as effective as described in the BO and as required under the CWA. The result is that logging activities pursuant to the HCP have increased and will continue to increase the amount of sediment introduced to the salmon stream habitat, which has adverse effects on coho salmon, chinook salmon, coastal cutthroat trout, and steelhead trout.

Similarly, the BO underestimates the significant amounts of turbidity resulting from inadequate streamside buffers, which also has an adverse effect on coho. PL's implementation of THPs allowing sediment impacts to Class II and Class III streams have the effect of further harming coho in ways not considered in the BO. These adverse effects require reinitiation of consultation both because they were not considered in the BO and because they show PL has exceeded the specified level of take.

The new information about impacts to Bear Creek, North Fork Elk River, and other watersheds also shows effects on salmon that were not previously considered, because they show those watersheds will not recover as anticipated in the BO, especially in the short-term. This harm to



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coho salmon, chinook salmon, coastal cutthroat trout, and steelhead trout habitat also exceeds the specified level of take of coho salmon.

There is documented evidence showing that even if the provisions of the HCP and the Aquatic Conservation Plan are strictly adhered to, they are nonetheless inadequate to protect salmon and water quality. For example, the Independent Scientific Review Panel, commissioned by the North Coast Regional Water Quality Control Board, noted that, “[e]ven if fully implemented as envisaged, it is the Panel's judgment that the HCP/SYP/THP structure cannot be relied upon to meet water quality objectives due to eight critical shortcomings.”

This information also demonstrates that the HCP and ITP are not in accordance with applicable water quality standards, and are therefore in violation of the Porter Cologne Water Quality Act and the Clean Water Act.

3. Cumulative Impacts Analysis

The cumulative impacts analysis beginning at page 123 is vague and fails to provide an analytical link between impacts and mitigations, failing to mitigate impacts to a level of insignificance. The discussion of past, present and reasonably foreseeable impacts provides only a general survey of historical “legacy” logging and does not specify how the particular impacts will be mitigated or to what extent particular “present” impacts combined with past impacts from logging will produce a given cumulative impact. Instead, the THP references the discussion of past impacts which appears in the Final Environmental Impact Statement for the PL SYP/HCP, a discussion which is heavily biased toward emphasis of legacy logging impacts over more recent impacts such as from the 1997 storm.

Nor does the THP adequately disclose and evaluate the past logging that occurred in this area in the late 1990's. Your records provide that information and evidence the concern about logging at that time. None of that information has been brought forward or disclosed for analysis. This stand should not be entered now given the past logging which has occurred.

This is especially problematic with respect to hillslope processes, mass wasting and sedimentation. As the THP admits in the geologic review beginning on p. 227, the area contains many landslides from previous harvesting as well as a geologic condition susceptible to mass wasting. Again, by relying on the HCP's protections for hillslopes, and by adopting a weak standard for water quality protection, this THP utterly fails to provide an adequate cumulative impacts analysis under CEQA and NEPA.

4. Watershed Analysis

The logging is proposed in an area with steep and unstable slopes. There is inadequate disclosure of these conditions as well as methods to prevent impacts, including mass wasting effects, causing sediment delivery to streams and loss of productive site capacity.

The prescriptions for protection of riparian buffers and hillsides consist of HCP provisions as modified by watershed analysis prescriptions adopted on June 17, 2004, and as modified by adaptive management prescriptions adopted on January 9, 2004 and January 12, 2004. As a matter of reviewability, it is difficult if not impossible to determine precisely how these changes



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to the HCP provisions will affect conditions on the ground. Again, a complex set of mitigations is presented for an indeterminate amount and kind of impact. Moreover, the THP states that many of these new prescriptions can *again* be altered in the future without presenting any criteria for such alteration. (e.g. “CMZs prescriptions may be modified as a result of watershed analysis...” (p. 27) , “Class II RMZ prescriptions may be modified as a result of watershed analysis revisitiation.” (p. 30). If CDF were to undertake a legally adequate analysis of impacts, it would not need to defer its analysis via the vague, open-ended watershed analysis process.

5. PL’s Violations of the HCP and FPA Constitute Another Reason to Not Approve the THP.

As a matter of record, since issuance of the HCP, PL has continued to violate logging practices. The California Department of Forestry (“CDF”) and California Department of Fish and Game (“DFG”) have cited the company with at least 325 violations of the California Forest Practices Rules and its HCP in the last five years. Many of these violations resulted in serious irreparable damage to fish and wildlife habitat.

Many of these violations involved PL illegally cutting trees in riparian management zones (RMZs) by “misclassifying” streams, constructing fuel breaks, or simply cutting over boundary lines.

RMZs are critical in providing properly functioning habitat conditions for salmonids. Functions of riparian zones include: providing shade and cooler water temperatures; filtering sediment, chemicals, and nutrients from upslope sources; stabilizing stream banks by providing a root system on banks and floodplains; recruitment of “large woody debris,” which create pools, shade, and other complex stream characteristics that salmon need. Loss of riparian vegetation results in increased sediment delivery to streams from erosion on logged slopes and may also destabilize streambanks, leading to increased fine sediment deposition from eroding banks.

Trees and vegetation of substantial size that fall into streams and their flood areas are termed “large woody debris” (LWD). Riparian zones serve as the primary source of LWD. In smaller channels, woody debris limits the amount of sediment that can enter a stream by trapping that sediment. It can also stabilize debris and sediment that result from landslides. LWD also helps stabilize stream banks. In larger channels, wood accumulation can trigger the accumulation of spawning gravel for fish, create backwaters, and cause pools to form.

Several of these violations involved logging of very large, old growth redwood trees, including trees more than nine feet in diameter.

By misclassifying streams, failing to identify streams all together, and otherwise cutting into “no-cut” riparian zones, PL’s logging has resulted in significant degradation of watersheds that provide habitat for the federally threatened coho and chinook salmon and steelhead trout.

DFG and CDF have issued at least 31 violations to PL for “misclassifying” watercourses or failing to identify watercourses all together. In these instances, streams received smaller buffers than required, or no buffers at all. For example, in Shaw Creek Grove, PL misclassified a stream as one not supporting aquatic life (Class III). When DFG discovered the error, trees had already



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been felled in an area that properly should have been a “no-cut” zone. Large, old trees that are crucial in protecting streams from excessive sedimentation, including one measuring 8 feet in diameter, were cut in this “no-cut” zone.

PL has received at least 35 violations for other illegal cutting in riparian areas, with logging in the “no-cut” zones and cutting more than allowed in “selective entry bands.” For instance, in the Eel River watershed, DFG found that two ancient redwoods were cut within what should have been a “no-cut” zone. One stump measured nine feet in diameter while the other measured six feet in diameter.

The number and nature of these violations suggests that it is no accident that they are occurring and that the largest trees are falling. For example, in issuing one violation, DFG noted that “[b]lue flagging, which is used to demark a Class III watercourse, was hanging four feet from the tree stump.”

Two hundred forty-one of the 325 violations, or approximately 75%, resulted in degraded water quality. Twenty-three of those violations were issued because logging operations created large areas of exposed soil next to streams that were left untreated. Forty-six violations were issued for stream crossings, with many of these noting concern at multiple locations. These actions results in significant soil erosion and sedimentation. Sedimentation can have devastating impacts to salmonids.

Twenty-six of the 325 violations involved illegal logging operations within marbled murrelet habitat.

Fourteen of these violations involved unlawful logging in northern spotted owl habitat.

This systematic pattern of violation correspondence to PL’s general practice of violating the spirit as well as the letter of the HCP and ITP. Since approval of the HCP and issuance of the ITP PL has engaged in accelerated and concentrated intensive timber harvesting of the prime old growth and residual stands within its lands covered by the HCP.

CONCLUSION

THP 1-05-097 HUM must be disapproved as in violation of law. CDF does not have sufficient information to evaluate the impacts of this THP, and thus it must be denied pursuant to Rule 898.2(c). Furthermore, the THP will violate the Basin Plan and will cause unauthorized take of listed species, which are further grounds mandating denial at this time. Rule 898.2(h). Given PL’s unsustainable rate of harvest, CDF can only find that this THP will not achieve maximum sustained production of high quality timber products, and therefore it must be denied pursuant to Rule 898.2(g). Any attempt to rely upon an Option A is illegal and cannot justify a finding of sustainability, as any Option A for PL is illegal and contrary to law.

The lack of adequate review by the very agencies which are required to ensure compliance with the HCP, as well as to fulfill independent statutory and public trust duties, is reason enough to stop this THP now and require adequate review to ensure that all adverse impacts are removed. The absence of the public agency review by those agencies who have the expertise necessary to



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