

DECLARATION OF JOSEPH BLUM

[retyped from faxed copy -- 6.24.00]

[For Case No.: 00-0713-SC, U.S. District Court,
Northern District of California -- EPIC et al. v. A. Tuttle et al.]

I, Joseph Blum, declare the following:

1. I am the liaison to the State of California, National Marine Fisheries Service (NMFS), Southwest Region (SWR) and have held this position since 1998. Previously, I was the NMFS National Salmon Coordinator (1996-1998); Executive Director of the American Factory Trawler Association (1992-1996); Director of the Washington State Department of Fisheries (1986-1992); Deputy Regional Director, Pacific Region, United States Fish and Wildlife Service (FWS)(1984-1986); Assistant Regional Director - Environment, Pacific Region, FWS (1982-1984); Area Manager, Washington/Oregon, Pacific Region FWS (1976-1982); Project Leader Oil Shale/Non-energy Minerals, Headquarters, FWS (1974-1976); Endangered Species/Marine Mammal Division Chief, Headquarters, NMFS (1973-1974); and from 1964-1973 I served in several biological and administrative positions for the Alaska Department of Fish and Game, beginning as a field biologist and ending as Deputy Commissioner for Sport Fish and Game. I earned a Bachelor of Science Degree in Biology from the University of Santa Clara in 1963. I am responsible, among other things, for coordination between NMFS/SWR and State of California Agencies, Boards and Commissions that have responsibility for anadromous salmonids and other marine species, with particular emphasis on implementation of the Endangered Species Act. In this capacity, I am involved in issues pertaining to salmonid species protected under the ESA and the California Forest Practice Rules.

2. The NMFS has listed 10 species (evolutionarily significant units) of salmonids in California as threatened or endangered under the ESA since 1990. (55 FR 46,515; 61FR 56,138; 62 FR 24,588; 62 FR 43,937; 63 FR 13,347; 64 FR 50,393; 65 FR 36,074.) These 10 species include 2 species of coho salmon, 3 species of chinook salmon, and 5 species of steelhead from the Oregon border to Malibu Creek in the Los Angeles area. Forestry activities over the years have been one of the primary factors of decline for the majority of these species. (61 FR 56,138; 62 FR 24,588; 62 FR 43,937; 64 FR 50,393; 65 FR 36,074.)

3. In general, forestry activities harm salmonids by causing sedimentation of the streams which destroys salmon and steelhead eggs and impairs the ability of adults and juveniles to survive, reducing stream complexity when trees in or near the streams are harvested, reducing large woody debris from the riparian areas as well as the streambed itself, causing increased stream temperatures due to inadequate canopy cover, blocking fish passage through poorly designed, constructed and maintained stream crossings, reducing stream-flow through removing water for dust abatement on roads, and impairing water quality by adding toxic chemicals from vehicles or vegetation control. Salmonids are often impacted by forestry activities on streams which do not support runs of listed salmonids because many of these streams drain into streams with listed salmonids. Moreover, intermittent or seasonal streams also are important to properly functioning aquatic systems and forestry activities often destroy the ability of these streams to reduce siltation by removing trees that stabilize the associated hillslopes and by reducing the natural production of large woody debris. Although the California Forest Practice Rules purport to mandate protection of sensitive resources such as anadromous salmonids, the Rules, their implementation and enforcement do not accomplish this objective.

4. NMFS recently reviewed the California Forest Practice Rules during its reconsideration and reversal of its 1998 decision that the Northern California ESU of steelhead did not warrant listing under the ESA. (65 FR 36,074 - Northern California ESU of steelhead as threatened on June 7, 2000.) NMFS' review included the Board of Forestry's interim revisions to the California Forest Practice Rules which become effective July 1, 2000 (and are due to expire on December 31, 2000). NMFS concluded that the California Forest Practice Rules with the recently adopted interim changes are inadequate to protect anadromous salmonids or provide for properly functioning habitat conditions. (65 FR 36,074, 36,084-36,085.) Specifically, the California Forest

Practice Rules with the interim changes lack critical elements necessary to avoid, minimize and/or mitigate adverse site-specific and cumulative watershed impacts on salmonid populations.

5. NMFS has many responsibilities as a regulatory agency charged with administering the ESA, but it is not responsible for nor does it have the staff resources to participate in state regulatory processes to ensure they are in compliance with the ESA. However, in an effort to work with the state to protect salmonids, NMFS agreed to review some of the timber harvest plans submitted to the California Department of Forestry and Fire Protection (CDF) to ensure the plans were designed to avoid take of listed salmonids. Since 1997, CDF has sent over 1000 timber harvest plans to NMFS for review. NMFS' staff do not have time to review even a small fraction of the timber harvest plans provided by the CDF and have probably reviewed only 1% of those received. NMFS' reviews consist of reviewing the timber harvest plan application, participating in on-site field inspections (pre-harvest inspections) of the proposed plan, and attending meetings with the applicant and/or the CDF following the site inspection to discuss findings and options to protect salmonids. Every timber harvest plan that NMFS has reviewed has been found to have disparities between what was written in the timber harvest plan and what NMFS staff found to be occurring on the ground during pre-harvest inspections. The disparities generally involved the width of buffer areas along streams, sometimes the plan called for wider buffers than what was actually done on the ground and sometimes the buffer width in the field was wider than described in the plan. These discrepancies are only discovered if a timber harvest plan is reviewed and a site inspection occurs. The Board of Forestry and CDF have received testimony from the state agencies charged with reviewing timber harvest plans and those agencies report varying degrees of review far below 100%; the California Department of Fish and Game, for example, currently reviews only 14% of the timber harvest plans provided to them. For every timber harvest plan which NMFS has reviewed, NMFS has suggested modifications, sometimes substantial modifications, that should be made to the timber harvest plan to avoid take of listed salmonids and adverse modifications of their critical habitat. Most of NMFS' suggested modifications have been incorporated into timber harvest plans. In two instances however, Sulfur Creek and THP520 (prior to Pacific Lumber Company acquisition), NMFS informed CDF that the timber harvest plan was likely to harm listed coho and CDF issued the timber harvest plan anyway without requiring any modifications to address NMFS concerns.

6. NMFS is aware of examples where timber harvest plans which were approved by CDF as in compliance with the California Forest Practice Rules have likely resulted in the take of listed salmonids or adverse modification of their critical habitat. 99% of the timber harvest plans submitted to the CDF are never reviewed by NMFS. Considering the fact that every timber harvest plan NMFS has reviewed would likely result in the take of listed salmonids or adverse modification of critical habitat without NMFS' suggested modifications, it is likely that many of the remaining 99% which NMFS has not reviewed may result in take or adverse modification of critical habitat.

7. In my official capacity as NMFS representative, I have testified before the Board of Forestry and/or its Interim Committee, on no less than 10 occasions and explained that the California Forest Practice Rules are inadequate to protect and conserve salmonids. I have explained that timber activities under timber harvest plans approved under the California Forest Practice Rules are resulting in the destruction of salmonid habitat and are harming listed salmonids. I have presented the Board of Forestry with guidelines for forestry that, if followed, would reduce the likelihood of harming salmonids and I have provided the Board of Forestry and CDF with approximately 100 scientific citations documenting risks to salmonids associated with timber harvest and related activities. Numerous times, before the Board of Forestry's Interim Committee and before the Board of Forestry itself, I have recommended that the Board of Forestry adopt the NMFS' Short-Term HCP Guidelines as interim rules while the Board of Forestry promulgates permanent rules that incorporate adequate salmonid protection. Further, in my official capacity, I have explained to the Board of Forestry and officials at CDF on numerous occasions that the state may be liable under the ESA for promulgating a regulatory scheme which they are fully aware results in take of listed salmonids and adverse modification of critical habitat. The only

action the Board of Forestry has taken to address these issues is the adoption of the inadequate interim changes to the California Forest Practice Rules.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the following information is true and correct.

Executed this 21st day of June, 2000. in Sacramento, California.

[signed by:]
Joseph Blum