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FINAL REPORT

CONCLUSIONS AND RECOMMENDATIONS FOR STRENGTHENING THE REVIEW AND EVALUATION OF TIMBER HARVEST PLANS

PREPARED FOR

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PAGE 2 Show Image

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INTRODUCTION AND CONTRACT DESCRIPTION

Since March 1989, LSA Associates, Inc., has been under contract to the California Department of Forestry and Fire Protection to provide consultive services in support of the Forest Practices Program. The purpose of this consulting contract has been to assist the Department in improving the administration of the timber harvest plan (THP) review and decision-making process, with particular focus on strengthening the THP administrative file presented to the courts in the event of litigation. It is generally recognized within the Department that the track record of litigated THPs has not been satisfactory and that weaknesses in the THP file (the written record that documents the decision-making process) have directly contributedto adverse court

rulings.

In that most THP litigation in recent years has focused on "old growth/ wildlife" issues, the geographic focus of the contract was Region I, the north coast region, headquartered in Santa Rosa. During the course of the contract period, LSA performed in a variety of capacities, each with the dual purpose of:

1. Providing Nreal~timeu support to regional office and field personnel in the review, evaluation, and processing of selected THPs; and
2. Observing and gathering information on the operation of the Forest Practices Program (i.e., the processing of THPs) in order to formulate recommendations to the Sacramento Office on possible changes or modifications in the program.

For selected THPs, LSA was asked to participate in field inspections and discussions that were often, but not always conducted in the context of a formal pre-harvest inspection (PHI). For these field inspections, LSA was usually represented by a 2-person team of a licensed forester and professional wildlife biologist. LSA personnel were not formal members of the PHI team. During these field inspections, many fundamental wildlife issues were raised and discussed by the representatives from the California Department of Fish and Game, the plan submitter, the land owner, CDF and its consultants. LSA periodically submitted written or oral reports to CDF Sacramento Office personnel that summarized these field inspections and provided focused recommendations.

Another task performed by LSA during the contract period was support to Region I forest practices personnel in the organization and preparation of official response to environmental comments documents ("ORs"). LSA personnel met with forest practices staff in the Santa Rosa office and offered editorial and technical input on how to best structure and present the CDF's response to key

wildlife issues raised on selected THPs. Memoranda were prepared and submitted to the Sacramento office that detailed our evaluation of selected draft ORs.

SCOPE AND PURPOSE OF FINAL REPORT

The intent of this report is to convey to CDF a series of conclusions and recommendations prepared by LSA on the basis of nine months' involvement in and observation of the THP review and decision-making process. Our active examination of the process ended in November, 1989. The principal investigator and author of this report is Dr. Robert J. Hrubes. The purpose or motivation behind the recommendations is to improve CDF's overall administration of the forest practices program and, thereby, to improve the Department's likeli-hood for favorable court judgments in the event of litigation. Many of the conclusions and observations concerning the current state of program adminis-tration focus on deficiencies and areas needing improvement, particularly with respect to the consideration of wildlife. This Is not meant to be construed as a general indictment of the current situation or an indictment of individuals performing various functions within the program. Rather, they are the result of the basic focus which is on opportunities and means to improve the THP review and decision-making process. The premise motivating this consulting contract is that changes and improvements are needed. To identify and implement these changes, it is first necessary to objectively and dispassionately reveal shortcomings and weaknesses. We offer the following conclusions and recommendations in that context.

CONCLUSION AND RECOMMENDATIONS

The f6llowing comments are organized by subject area components of the THP review and decision process with additional sections of more general focus.

The Time Frame for THP Review

Depending upon the review actions taken (e.g., pre-harvest inspection), the Rules require that CDF reach a decision for a THP within 35 days. For most THP's, this time frame has proven to be adequate. But for the controversial, 53o1d-growth" THPs, the time frame set out in the Rules is almost totally

irrelevant. In these cases, the average time required for reaching a decision has been much closer to six months, necessitating multiple time extensions being granted by the plan submitter. Our review of several old-growth THP administrative records revealed that requests for time extensions were made at various times by DFG, CDF, and the plan submitter. While DFG has been responsible for the bulk of extension requests, both CDF and the plan submitter have, at times, needed additional time for their own purposes.

PAGE 4 Show Image

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In our opinion, attempts to impose the 35-day review time frame on these increasingly complex and controversial THPs are pointless and detract from the adequate analysis of substantive issues. And from the standpoint of the CDF as lead agency, it is undesirable to be put in a situation requiring frequent appeals to the plan submitter to grant time extensions. We reco~end that CDF work with Board staff on a possible rule change aimed at establishing a twotrack review process. The recent rule change that added up to 10 days additional review time is clearly inadequate for controversial and/or complex THPs. A more appropriate arrangement would allow CDF to assign selected THPs to a separate time frame that reflects the demands associated with reviewing lengthy documents and the time needed to complete negotiations between the plan submitter and reviewing agencies. In Sierra Club vs. CDF, Judge Ferrogiaro concluded that the present time frame leads to decisions based upon 38sheer ~ The recent rule change notwithstanding, we feel that the Department is still vulnerable to this charge, for a distinct subset of THPs.

Feasibility of Su~9ested Mitigations

For "old-growth THPs81, conflict and controversy frequently arise when DFG proposes mitigations that their forest practices biologists feel are necessary

to adequately reduce adverse wildlife impacts. The plan submitter's response
often is that the suggested mitigations are infeasible, either because they are
too costly or they will result in unacceptable silvicultural ramifications. The
response of some RPFs has also included the assertion that the burden falls on
the DFG to prove that the suggested mitigations are, in fact, necessary. The CDF
review team chairman generally endorses the plan submitter's response by either
forwarding it to DFG without critical evaluation or by opting not to be actively
involved in the negotiations/discussions.

In our opinion, the Rules require CDF to more actively and vigorously review
and evaluate the feasibility of proposed mitigations. We are not arguing that
the industry is necessarily in error in rejecting various mitigations as being
infeasible. But we do believe that CDF must critically evaluate such claims in
order to reach its own, independent judgement. To accomplish this evaluation,
the plan submitter should be asked to provide sitespecific information as to why
the mitigation is felt to be infeasible. In evaluating the feasibility of
proposed mitigations, CDF must apply the standards set forth in the Rules (Title
14 CCR, Section 895.1). The Rules' definition clearly states that the mere fact
that a mitigation may be costly (e.g., in terms of foregone or delayed revenue)
is not a valid basis for judging it infeasible. Information should be supplied
by the plan submitter that enables CDF to reach a judgement with respect to the
standards set out in 14 CCR 895.1.

In a few recent coast-region THPs, CDF has invoked the concept of
uncompensated taking when responding to mitigation suggested by DFG. We caution

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against the attempted use of this argument in that constitutional standards of
taking are complex and generally not adequately understood by CDF review team

personnel. If tested in court, CDF 5 arguments concerning taking of private property through imposition of mitigations are not likely to be sustained. Again, it appears in these cases that CDF personnel are merely echoing the arguments of the plan submitter, without independent critical evaluation.

In a similar manner the principle or goal of maximum sustained yield has been cited by both plan submitters and CDF in rejecting proposed mitigations. While we agree that the sustainability of yields is a valid consideration in evaluating proposed mitigation, we are concerned with the simplistic manner in which the concept has been invoked. Merely rejecting a proposed mitigation as being Incompatible with maximum sustained yield without any elaboration of the standards associated with the concept is not likely to withstand judicial review. How is Ig maximum sustained yield" measured? Does any silvicultural prescription that involves the retention of merchantable volume necessarily detract from maximum sustained yield? It is noteworthy that both the environmentalists and the industry are citing the concept of sustained yield as support for their clearly divergent agendas. As a lead agency and a leader in the forestry community, CDF should assume, in cooperation with the Board, the responsibility for developing workable standards for applying the concept of maximum.sustained yield to the regulation of private harvests. Failing to take the initiative, it is a safe bet that others will, with unknown but potentially troublesome consequences.

$i~n1f1cant Environmental Impacts

Title 14 Section 898 of the California Administrative Code requires the RPF to determine if the proposed operation will have any significant adverse impact on the environment, after considering the rules of the Board and any mitigation measures proposed in the plan. A significant, adverse impact is defined as a substantial, or potentially substantial, adverse change in any of the physical conditions within the affected area including flora and fauna. To date, a THP with a positive determination of significance has been submitted in only the

rarest of occasions (well less than .1% of all THPs). We were not able to
uncover an instance in which CDF rejected the RPF's judgement. So in effect, the
THP has evolved into the functional equivalent of a "mitigated negative
ded aration" , appl ied categorically.

With respect to possible wildlife impacts, we believe the Department's tacit
endorsement of the almost-categorical judgement of non-significance is both
practically and factually untenable. While the forest practices rules and
additional mitigations included in many THPs do substantially reduce the level
of adverse impact, it is clear that the preponderance of professional and
scientific biological opinion (including ours) holds that significant impacts on

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some species may still occur. We believe that it will be increasingly difficult
for the Department to successfully argue in the official response documents or
in court that impacts of some proposed harvesting operations on some species are
not potentially substantial (i.e., significant). The impacts of clearcutting old
growth stands on Hold growth dependent" species are the obvious case in point.
Tocategorically hold to the position that impacts are not significant, as the
Department has essentially done to date, increasingly puts the credibility of the
THP review process in jeopardy. Some RPF's have argued, and the CDF has
accepted, that for non-listed species, significant impacts occur only if
viability of the species is threatened. Relative to definitions of significance
in both the forest practice rules and the CEQA guidelines, we find this standard
to be overly restrictive and without the support of widespread professional
biological opinion.

Where the case-specific facts merit it, we feel that it is necessary for the
Department to take issue with the RPF's determination of non-significance.

Either by not accepting offending THPs for filing or by returning them unapproved, it is important that the Department take steps to end its tacit endorsement of categorical non-significance. While the motivations or concerns of both the RPF and CDF reviewing staff is understandable, aversion to the possible ramifications is not a defensible justification. And, in fact the long term chances for successfully seeing a THP through the review process and subsequent litigation are quite possibly enhanced by shifting the focus away from the significance issue and on to possible "overriding considerations".

Analvsis of Cumulative ImDacts

Our evaluation of the cumulative impacts analyses that are conducted as part of the THP preparation and review process is influenced by a fundamental premise. In our professional judgement, we believe that significant adverse cumulative impacts on wildlife (and other) resources can occur from a broad range of TMdevelopment" activities including timber harvesting. We note that the prepon-derance of professional wildlife management opinion is consistent with our perspective. We further note that in the context of other planning processes such as EIR preparation, that a positive determination of significant cumulative impacts is increasingly common.

In contrast to the status of cumulative impacts analyses in other planning processes, of those that we examined we were not able to identify a THP in which the RPF or review team concluded that a significant cumulative impact on wildlife or their habitat would occur. With respect to other resources, the occurrence of a positive deter-mination was only slightly higher and was generally limited to water quality impacts. So, as with significant on-site impacts, the aggregate implication of the conclusions reached in THPs to date is that there are essentially no cumulative wildlife impacts, and very little other resource

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cumulative impacts associated with state and private timber harvests in California. In our judgement, the Implied position that the Department has assumed with respect to cumulative impacts lacks credibility and represents a significant weakness In the overall administration of the forest practices program. We believe that responsible agencies (e.g., DFG), the public, and the courts are increasingly focusing on cumulative impacts and that continued adherence to the Department's present position places the viability of the THP process in jeopardy.

Our conclusion is that the present situation results from the inadequate cumulative impact analysis methodology that is currently in place. The RPF is required to answer a single question as to cumulative impacts and to elaborate only when the answer Is ny~5u The CDF, as leader of the review team, must respond to 15 questions contained in the Forest Practices Cumulative Impacts Checklist. Answers are in the form of Ny~5/~~fl with a brief (2-3 sentence) elaboration for each. Our review of several recent THPs revealed that the exact wording of answers to the checklist questions is replicated on several review team reports. The use of boilerplate responses projects the undesirable and unfortunately accurate impression that the review team is not affording an adequate level of attention to their cumulative impact assessment responsi-bilities. For both the RPFs' and review teams' responsibilities, it is apparent that the process suffers from a lack of adequate direction and guidance on how to accomplish a meaningful cumulative impacts analysis. When coupled with the widespread sense within the forestry profession that acknowledging the possibility of a significant impact is tantamount to a kiss of death for the THP, it is not surprising that so few THP preparers and reviewers reach an affirmative conclusion. But even though the present situation is understandable or explainable, it is not acceptable with respect to the Department's desire to

improve its performance in the courts.

As evidenced by the rule modifications submitted to the Board during the past year, including proposed cumulative impact assessment methods submitted by the industry, CDF, and CLFA, it is apparent that there is a general recognition within the forestry profession that the process needs to be modified. But based upon our review of these suggested rule packages, we are concerned that the forestry community has not yet fully acknowledged the extent to which substantive changes are required. As the various packages are being reworked for submission, there remain issues that will require careful consideration in upcoming deliberations. Issues that are likely to generate public discussion include:

--Standards for information gathering

The various rule packages continue and codify the standard of "ready availability" which states that the need for information that may be necessary to assess environmental impacts is held subservient to the need to reach a decision within the relatively brief review period.

In our judgment, this priority imparts an undesirable impression of bias, especially if, in the event that needed information cannot be `U readily" obtained, the THP is approved.

--Explanation of checklist responses

These.packages require that only "yes" responses on the checklist be supported with explanation. A more balanced approach would require explanation of ~no N responses, as well.

-Definition of significance

At least one of the packages would formalize the very restrictive definition of significant impacts to non-listed species as being only those impacts that threaten the viability of the species as a whole.

This defin-ition strongly conflicts the CEQA Guidelines. Some components of the reviewing public may see no reason why the *THP process, as a certified EIR-equivalent program, should have a

different standard for judging significance of impacts than that used for other CEQA documents, especially when the Guidelines are cited elsewhere in the Rules.

--Related actions

None of the packages would require the plan submitter to provide and consider information on related actions (past, present and reasonably foreseeable) on land under other ownerships. Such information, often critical to an adequate cumulative impacts analysis, must be provided by preparers of CEQA documents, within the standards of practicality and reasonableness (Section 15130 of the Guidelines). We believe that shifting this information-gathering burden onto the already over-burdened CDF Forest Practices Staff is both inappropriate and likely to result in inadequate analysis of long-term issues such as old-growth conversion.

--The need for regulatory relief

An explicit premise of the industry's initial rule package was that environmental considerations required under the forest practices program are excessively burdensome and that regulatory relief is needed. That premise implicitly remains in the current rule package.

But as we have discussed in other reports to the Department, our investigations have revealed that the validity of this premise is limited to a relatively select set of circumstances and, accordingly, is an inappropriate basis for program-wide rule changes.

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The Official Response Document

With respect to the Department's desire to strengthen the administrative record in support of a THP decision, the official response to significant environment comments (the 380R1u) ~5 perhaps the single most important document.

The OR provides the opportunity to present the rationale and factual basis for the THP decision and to establish in the record a written counter-argument to assertions made by reviewing agencies and the general public. In particular, the OR affords CDF the opportunity to demonstrate how it has considered and balanced the *conflict of evidenceuu in the record. As indicated by recent court cases, the OR is closely scrutinized by reviewing judges and it clearly impacts their rulings (e.g., EPIC vs. Johnson, Galle~os vs. BOF, EPIC vs. MAXXAM). For instance, Judge Buffington in EPIC vs. MAXXAM ruled that insufficiency of the OR U' may be grounds to set aside a decision approving the plan".

Standards of adequacy for the OR are not formally established in statute or Departmental policy. But as key element of "certified" (i.e., functionally equivalent) program, we feel that the CEQA guidelines on responsive statements constitute sound direction and effectively reflect the standards that are generally applied by the courts in reviewing the administrative record for a THP.

"The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objectives raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith and reasoned analysis in responses. Conclusory statements unsupported by factual Information will not suffice." [CEQA Guidelines, 15088(b)]

A review of ?ecent court rulings provides additional guidance or direction that reinforces the relevance of th? CEQA guidelines to both the courts, in reviewing THP files, and to the CDF in preparing the ORs. In EPIC vs. MAXXAM, Judge Buffington cited EPIC vs. Johnson as the prime judicial standard and concluded that the OR must set forth a "meaningful, reasoned response" to significant environmental comments. Later in the same ruling, Buffington re-

states that obligation of the OR to contain a "reasoned assessment, compiled in
a meaningful manner U' and that the THP decision should be based or supported by
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scientific opinion or reasoned analysis". In Friends of Daughertv Creek vs.
---CDF, Judge Cox concluded that the OR should "make meaningful responses to all
significant issues raised and the responses will set forth the reasoning of the
CDF and the facts relied upon in exercising its discretion". Judge Cox further
ruled that only significant points require a response but that the OR should in

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response to non-significant points TMstate the factual basis upon which the
determination of `non-significance I was made81.
These cases and others reinforce the judicial posture that if the admin-
istrative record clearly sets forth substantial evidence to support CDF's
decision and, by doing so, demonstrates that CDF has not prejudicially abused its
discretionary authority, then the courts may not substitute its judgment for the
Director's. The goal of the OR in combination with the entire administrative
record should be to present the requisite supporting evidence and decision making
logic so as, to the extent feasible, to pre-empt charges of prejudicial abuse of
discretion, and, thereby, to obligate the courts to defer to the professional
judgments of the Director and his representatives. In the regulatory climate of
increasing judicial activism, this is a difficult task. But by responding to
these standards of adequacy, the Department can expect to measurably improve its
judicial track record.
Our evaluation of several recent' ORs prepared for THPs in the coast region
leads us to the conclusion that additional guidance and assistance is needed for

personnel who are preparing ORs. Many ORs do not compare favorably with the standard of presenting a reasoned, meaningful response to environmental comments and of demonstrating the scientific opinion and/or reasoned analysis that supports the THP decision. A more detailed discussion of this conclusion is contained in our August 1, 1989, interim report and we will only briefly repeat them, here. As currently being prepared, ORs clearly do not respond to Judge Cox's ruling that even non-significant environmental comments merit a response as to why CDF judges them to be non-significant. And for significant comments, it is sometimes very difficult to identify in the OR where and how the Department has responded. Current direction to OR preparers is to lump all comments into a synthesized response rather than splitting out and responding to each signif-icant comment, individually. But in applying this direction, the ORs generally fail to present an impression of responsiveness or even acknowledgement that many of the comments have been considered. They leave the department vulnerable to judicial impressions that the Director and/or his representative have prejudicially abused their discretionary authority. The use of "boiler plate88 language further erodes the credibility of the OR and lends credence to the impression that the Department has not seriously considered some of the significant points raised by commenters.

In large part, we attribute the shortcomings of the ORs to inadequate numbers of staff committed to their preparation. To prepare an OR that adequately meets the judicial standards of review requires more time and preparation than what is presently available, certainly within the present review time frame. Given the workload of the staff who prepare the ORs, it is unreasonable to expect a significantly greater time commitment per THP. We

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recommendthat CDF place high priority on assigning additional staff to the preparation of OR's and additional clerical support to the technical staff.

A cautionary note is that the strength of the OR is inherently limited by the strength of the factual arguments it contains. While the format and structure can be improved, with desirable results, we caution that an extra burden is placed on the OR when the Department takes a position on controversial issues (such as old-growth dependency) that runs counter to accepted scientific and professional opinion. We do not argue that contrary opinions should be summarily avoided or rejected, but there is clearly an elevated need to logically and reasonably set forth the basis for accepting new or minority opinions over accepted opinion. Recent efforts (e.g., Plan 1-89-230-MEN) represent progress in the right direction. But as indicated by the response of one academic to the OR for plan 230 (letter from Gutierrez), basing a THP decision on minority opinion will continue to be problematic, no matter how it is presented.

Learning from the Past

Given the widely accepted judgement that the Department's litigation track record has been less than desirable, it follows that the Department should seek to learn from litigative setbacks and to modify policies and procedures within the Rules, accordingly. To a limited degree, we see that this effort is occurring. This consulting contract, for instance, was awarded partially in response to the Department's desire to identify and learn from current short comings. But in our opinion, a more focussed and formalized effort should be made to analyze the on-going litigation track record.

It is our impression that forest practice personnel are not kept adequately abreast of emerging judicial standards of review for such things as the official response document, feasibility, and significance. We recommend that a position be established, or duties be assigned to a current position, that is responsible

for continuously monitoring and analyzing relevant court rulings and regularly
disseminating pertinent information to field personnel. A similar function does
currently exist, but a more rigorous monitoring of court cases' is needed.
Coordination with Board staff is important to assure that the Department
Continues to operate within the roles and responsibilities defined by the Rules.
Where this Is not possible, CDF should convey to the Board the need for a change
in the Rules.
CDF Interaction With DFG

A source of frustration and concern among CDF forest practices personnel has
been the growing conflicts with their sister agency personnel in the Department
of Fish and Game. DFG is perceived as an increasingly obstructionist element in
the timber harvest review process. Requests from DFG for additional information

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and miti9ations above and beyond those required in the Rules, and their
increasing penchant for filing nonconcurrence positions on oldgrowth THPs have
all contributed to the deteriorating state of relations between the two agencies.
In response, the CDF (often amplifying the responses of the plan submitter) has
requested DFG to justify and substantiate the need for additional information and
mitigations. In essence, the position of the industry and some CDF personnel is that the burden falls on DFG to prove that additional
information and/or mitigations are needed.

While the Department's frustration is understandable and not without basis
we know of no statutory authority by which the burden of proof can be shifted'
onto the DFG. The consultation requirements under Section 21080.5(d) of CEQA--
which is the basis for DFG involvement in timber harvest review--does not allude
to a burden of proof on responsible agencies. On the other hand, we do agree
that CDF should expect more that bare requests, unsupported by any explanation

or rationale. As lead agency under a certified program, CDF needs to seek means and methods for working productively with responsible agencies such as DFG. Based upon our observations on selected THPs, we feel that this is best achieved through active discussion and negotiation rather than confrontation. Ultimately, the CDF has final responsibility for weighing and balancing the conflict of evidence and opinion with respect to information needs and mitigations. The merits of such requests should be judged, in part, by the degree to which other agencies have helped CDF understand the basis and need for those requests.

We believe that a major reason for COF's frustration with DFG is that DFG is asked to perform two, conflicting roles in the timber harvest review process. On the one hand, CDF has a contract and pays DFG to supply technical wildlife biology expertise to the Department in the overall administration of the forest practices program. This inter-agency arrangement is necessitated by CDF's lack of biological expertise within its forest practices workforce. On the other hand, DFG also functions as a commenting/responsible agency under CEQA. In this role, DFG's primary responsibility is to represent the public interest in maintaining the viability of the state's wildlife populations. In this capacity, DFG cannot be expected to necessarily support CDF in the administration of a program aimed at fostering a maximum sustained yield of forest products.

In that the distinction between these two roles is not clearly understood by many within CDF (and DFG) and because these roles are inherently contradictory, we recommend that CDF no longer contract with DFG for biological expertise. A better arrangement would be for CDF to begin hiring its own staff of field biologists, leaving DFG to perform its public trust function. An additional advantage is that with internal wildlife biology expertise, CDF will be on a more equal footing in debating technical issues with its sister agency. We caution, however, against the simplistic expectation that hiring biologists within CDF will automatically generate the necessary professional opinion to

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counter the opinions held by DFG. As other forestry agencies such as the USDA Forest Service have discovered, new professional disciplines within the organization do not always embrace the philosophies and professional values held by foresters.

StrengthenlnQ Public SupDort

From our perspective, the pattern of unfavorable court rulings is best viewed as a symptom of an underlying erosion of public support and endorsement of some of the more visible aspects of industrial forestry in California. And because CDF administers the primary law and program that regulates industrial forestry in the State, the Department is also suffering from an eroding support base. While the forestry community may be comforted by interpreting the opposition to the industrial forestry agenda as the agitation of the radical fringe, we cannot endorse that view. In a State with a population of 28 million people, and growing at an increasing rate, it is an unavoidable reality that even the most rural counties are undergoing fundamental changes associated with urbanization; changes that bring an increasingly critical public focus on the actions of the timber industry and the agencies who regulate it. The harsh truth is that the majority of the State's population does not, and increasingly will not, support Nbusiness as usualN policies such as the rapid liquidation of the remaining privatelyheld old growth stands and the conversion of sizable portions of the State's timberlands to a wood fiber industry.

As the recent events in Mendocino County associated with the planned relocation of processing capacity to Mexico clearly demonstrate, public concern

and opposition is not limited to the major metropolitan areas. Beyond geographic diversity, public concern and opposition is not limited to ug environmental comm~~~~yfl but, rather, includes local labor leaders, some county supervisors, Congressional delegations, state assembly members, and the natural resources professional and academic community. With respect to "old growth lssuesN, the forestry community is perilously isolated from the general sentiments and values of the California and national electorate.

More to the point, it is our opinion that the public support for the forest practices program has eroded to a degree that threatens its operational viability. In too many circles, the program and its administration by CDF is perceived as generally failing to adequately regulate the actions of the timber industry. The Board and, to a lesser extent, the COF are perceived as overly sympathetic to the corporate goals behind industrial forestry actions and insensitive to the public resource obligations of industrial land owners. As long as these perceptions persist--or, more accurately, intensify- efforts to improve the litigation track record will experience very limited success, at best.

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In our view, the Department is at a crisis point with respect to the administration of the forest practices program. Bold action aimed at recapturing public support is called for. We believe these actions should be pursued on two related fronts:

- establishing a greater degree of independence from the industry it regulates,
- asserting a stronger leadership role in forestry matters in California.

Rightly or wrongly, too many peqple perceive COF as not aggressively enforcing the intent of the Forest Practices Act and the requirements of CEQA. While tt is vital to maintain a working relationship with the industry, it is equally important to visibly demonstrate to the industry and the public that the statutory obligations of assuring adequate environmental consideration in the management of private forestlands cannot be compromised and that the Department is committed to its regulatory obligations even if it angers the industry. Past CDF actions have failed to demonstrate this. In areas such as the determination of significant impacts, the identification of appropriate mitigations, and currently, the development of a new rule package for wildlife and cumulative impacts, the Department is operating in a manner that fails to establish a public perception of appropriate independence from the industry it regulates.

We are not unaware of the complexities of interactions with the industry and, particularly, the Board. CDF does not make the rules; it is charged with administering them. But as a key agency staking claim to a leadership position in the forestry and wildland management affairs of California, the Department needs to begin taking more independentlyderived positions that may not march in close step with either the Board or the industry. We believe that the current rulemaking actions afford an excellent opportunity to begin this transitional process. In our opinion, CDF's interests are not adequately served by the present rule proposal. At a minimum, the Department should strongly urge the Board to postpone re-noticing of any new package until the findings and recom-mendations of the Wildlife Taskforce are released and can be integrated into the proposed rules. Standing by (or, more accurately, trying to modify on the margin) while the industry-backed rules are moved through the rule-making process without the benefit of the Taskforce's input does not advance the Department's public image as a forestry leader and will result in a rule change that will exacerbate its efforts at improving' the administration of the forest practices program and its litigation track record.

PAGE 15 Show Image