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CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

REDWOOD COAST WATERSHEDS ALLIANCE, a California non-profit corporation, GREENWOOD WATERSHED ASSOCIATION, an unincorporated association and GUARDIANS OF ELK CREEK OLD GROWTH, an unincorporated association, Petitioners, vs. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, RICHARD WILSON, in his official capacity as Director of the California Department of Forestry and Fire Protection, and DOES 1 through 10, Respondents,	Case No CV78423 Intended Ruling on Petition
LOUISIANA-PACIFIC CORPORATION, a Delaware corporation and DOES 10 through 20, Real Parties in Interest.	

This matter was argued and submitted on October 1, 1999. Attorney Thomas N. Lippe appeared for petitioners. Deputy Attorney General Marc N. Melnick appeared for respondents (CDF). Attorney Frank Shaw Bacik appeared for the substituted real party in interest (new owner) Mendocino Redwood Company, LLC. (MRC).

I. NATURE OF REVIEW:

At oral argument and in their formal written request for a statement of decision filed that same day, petitioners limited their challenges to the legal procedures used by respondent in approving the three timber harvest plans (THPs) in question. To

the extent that petitioners' previous briefs and/or pleadings argue or raise factual "substantial evidence" issues (separately or mixed), those issues are deemed abandoned.

In regards to alleged procedural errors, CCP §1094.5(b) states "Abuse of discretion is established if the respondent has not proceeded in the manner required by law. . .". Case law further clarifies the standard for agency procedural error requiring it to be "prejudicial" in magnitude. Sierra Club v. State Board of Forestry (1994) 7 Cal. 4th 1215, at 1236.

II. BACKGROUND:

Two of the three challenged THPs are partially harvested and have a lengthy litigation history covering nearly a decade. The litigation history is referenced in the official responses (100 AR 270 – 271 and 145 AR 350 – 351) and in a published decision. Schoen v. Department of Forestry and Fire Protection (1997) 58 Cal. App. 4th 556, at 559 – 564.

While this is apparently the fourth separate piece of litigation related to these plans, it is more a consideration of a return on a writ issued pursuant to the Appellate Court's decision in Schoen (though apparently no writ was ever prepared and presented to the trial court in CV71248). As such, the language or instructions in Schoen control and must be strictly and completely followed.

Amendments #10 and #13 (from respectively THP 100 and 145) arise directly from the published decision and are respondents' and real parties in interest's attempt to comply with the appellate court's directives. The fact that another amendment (#14/THP 145) and a third THP (1-97-352 MEN) from a different watershed were combined in this new petition has little or no effect on this procedural review.

III. OFFERS OF EXTRA RECORD EVIDENCE AND RULINGS ON OBJECTIONS THERETO:

Petitioners are personally familiar with the general rule that administrative mandamus is limited to matters raised or existing in the administrative record. CCP §1094.5 (c); Western States Petroleum Assn. v. Superior Court (1995) 9 Cal. 4th 559; Schoen (supra), at 571; and Elk County Water District v. Department of Forestry and Fire Protection (1997) 53 Cal. App. 4th 1, at 14. Nevertheless, petitioners offer a number of items pursuant to CCP §1094.5 (e) and judicial notice provisions of Evidence Code §450 et. seq. Respondents and real parties in interest interpose a number of objections.

Without lengthy discussion, the rulings on the offers and objections from the hearing are:

Petitioners Exhibit #1	Overruled	Received
Petitioners Exhibit #2	Overruled	Received
Petitioners Exhibit #3	Overruled	Received
Petitioners Exhibit #4	Sustained	No due diligence shown
Petitioners Exhibit #5	Sustained	
Petitioners Exhibit #6	Sustained	
Petitioners Exhibit #7	Overruled	Received
Petitioners Exhibit #8	Sustained	

The matters received into evidence pursuant to CCP §1094.5(e) have been accepted chiefly to grant petitioners relief from the "Catch – 22" of attempting to prove the absence of a particular item in the administrative record either totally or at particular points in time. Some of these matters are otherwise subject to judicial notice, at least as to their existence in the public record outside of the administrative records here. The objecting parties shall have ten days from receipt of this decision to clarify or correct any of petitioners' presentations of those same matters.

As to the sustained objections, these documents are largely actions, opinions and rules of various federal agencies. While relevant, they do not control CDF's ultimate determinations on these specific THPs. They also pre-date the administrative records herein and as such do not fall under the exceptions allowed by CCP §1094.5(e). Additionally, these same concerns were mentioned by all of the parties in a number of places in the administrative records.

IV. REQUESTS FOR JUDICIAL NOTICE:

A. Petitioners Second Request for Judicial Notice (filed June 15, 1998)

Exhibit #1	Granted
Exhibit #2	Granted
Exhibit #3	Denied as moot
Exhibit #4	Granted
Exhibit #5	Granted
Exhibit #6	Granted
Exhibit #7	Granted
Exhibit #8	Denied as moot

B. Real Parties in Interest's (L.P.'s) Request for Judicial Notice (filed May 13, 1998)

Exhibit #A	Denied
Exhibit #B	Denied
Exhibit #C	Denied (can not consider)
Exhibit #D	Denied
Exhibit #E	Denied
Exhibit #F	Denied
Exhibit #G	Denied

C. Real Parties in Interest's (MRC's) Request for Judicial Notice (raised in brief filed on June 13, 1998, at page 2)

Case #78757(sic) Granted (78759)

The rationales for these grants and denials are generally the same as in Part III above.

V. EFFECT OF RECEIPT OF EXTRA RECORD EVIDENCE:

Since these are not cases where the court is empowered to exercise it's independent judgment, receipt of this extra record evidence, if accurate, would by itself require a remand to CDF for reconsideration of the agency's approval of these THP's in light of the extra evidence. CCP §1094.5(e) and (f) (see also, PRC §21005(a)). This court, for example, can not determine if the extra information pictorially presented in the map attached to the Cattalini declaration (Exhibit #3 attached to Petitioners Exhibit #1) would alter any of CDF's actions and/or approvals.

Nevertheless, it would seem useful to the parties for the court to continue to review the other aspects of the petition in order to prevent a fifth piece of litigation. With such additional rulings or suggestions, perhaps some finality, one way or another will ultimately be reached. (See also, PRC §21005 (c)).

VI. CLAIMS OF ESTOPPEL/RES JUDICATA:

Without discussion, this court is rejecting MRC's res judicata/estoppel arguments concerning case #78759.

VII. MITIGATION MONITORING:

The court is also rejecting petitioners' position that PRC §21081.6 somehow requires a mitigation monitoring program for THPs beyond the extensive conditions, inspections and enforcement options used and available for these THPs under the Forest Practices Act ("FPA" – Public Resources Code §4511 et. seq.) and the rules and regulations adopted thereunder. While more monitoring might be wise, it is not required under PRC §21081.6.

If Sierra Club is somehow interpreted to bring subsection (a) monitoring provisions into play for THPs (Sierra Club (supra) at 1231), the faces of these administrative records adequately show the existence of such by way of the multiple regulatory inspections, conditions imposed and enforcement options.

VIII. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED ACTIVITY/PROJECT:

There is merit to CDF's and MRC's arguments that "alternatives" to the proposed timber harvesting are quite limited in forestlands zoned TPZ and that an analysis need not be overly exhaustive, imaginative, and beyond reason. Laurel Heights II (1993) 6 Cal. 4th 1112, at 1142. However, recent cases have stressed the need for consideration of the THP alternatives. Sierra Club (supra) at 1230; Schoen (supra) at 567; Friends of Old Trees v. Department of Forestry and Fire Protection (1997) 52 Cal. App. 4th 1383, at 1404 – 1405. Mitigating changes in silviculture are not considered alternatives. Friends, Ibid. Feasible alternatives must still be considered even if the particular THP's significant environmental effects are expected to be eliminated by mitigation measures. Id.

The most glaring deficiency here is CDF's acceptance of LP's assertions without any analytical discussion or specific supporting facts that the alternatives of no project, delays in harvesting and/or alternate harvesting sites were not feasible. (See, 100 AR 69 – 70; 145 AR 76 – 77; 352 AR 32 and compare 100 AR 276; 145 AR 356; 352 AR 258 – 259). On the face of the record, without timely available information such as a (draft) statewide, countywide or even area wide sustained yield plan for L.P. holdings (even excluding ownership's of others [with possible private and public lumber

purchase/exchange alternatives listed][1], it is impossible to conclude that such analysis was done by CDF before approving these three THPs.

This lack of documentation[2] and analysis to support the general conclusions also holds true for the general economic statements made by L.P. (see, same AR cites immediately above). However, because of acceptance of L.P.'s other general conclusions, CDF never found it necessary to reach the question of possible "overriding economic, social or other conditions" which under PRC §21002 might, with further analysis, still allow a project to be approved. (Sierra Club (supra) at 1220 and 1225.)

IX. ASSESSMENT AND ANALYSIS OF PAST, PRESENT AND POTENTIAL CUMULATIVE IMPACTS/EFFECTS ON THE ENVIRONMENT:

The question, as framed by petitioners, is not whether substantial evidence exists in the record to support CDF's general conclusions that these three THPs, either in isolation or combined with other activities in the area(s), do not actually or potentially create or contribute to a significant (negative) effect[3] on the environment of the area(s). The substantial evidence test is not requested. The question presented is two parts:

1. Was the cumulative effects assessment done as defined by statutes, regulations and case law?

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[1] Every THP need not be treatise on all issues. Reference to other publicly disclosed studies may be made. Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal. App. 3d 604, at 628 – 629 ("EPIC").

[2] The timing of various undisclosed THP applications and plans seems to indicate an unwillingness on L.P.'s part to fully disclose the "big picture". (See, Part III above). The same issue was raised in Schoen (supra), at 560, 569 and 571, and should have been resolved in these amendments.

[3] The forestry rules define a "significant" effect on the environment to be "a substantially or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, . . ." Rule 895.1 (emphasis added).

2. Did CDF articulate its reasoning and findings supporting its general and specific conclusions about these THPs in a manner required by statutes, regulations and case law?[4]

There is no single absolutely legally correct way to write about/address cumulative effects of a particular activity on the environment. Within the context of THPs, the Sixth District in Laupheimer distinguishes between "analysis" and "assessment" (Laupheimer v. State of California (1988) 200 Cal. App. 3d 440, at 466). However, the litigants and court here are more directly controlled by the First District's outline of CDF's duties in EPIC (supra, at 628 – 629). Because the courts (lawyers and the general public) have no particular scientific expertise, deference is given to the decision of the agency, which has the expertise, in this case CDF (Laurel Heights I (1988) 47 Cal. 3d 376, at 393; Schoen (supra) at 576; Friends (supra) at 1395; 14 CCR §1051.1(d); PRC §21005). This deference includes disputed environmental issues. (Ibid.). But clear articulation of the reasons for an agency's decision with specific reference to the facts/documents supporting and leading to the agency's conclusions must be made. In this manner the court can then weigh the record with the substantial evidence test, and the public can scrutinize and (hopefully) gain confidence in or further challenge the agency's decision.

The First District in EPIC outlines CDF's duties in this regard:

> "*Gallegos v. State Board of Forestry*, supra, 76 Cal. App. 3d 945, set forth the controlling standard for the sufficiency of the required written responses to significant environmental objections. Adapting the

[4] These are legal/procedural questions presented in which the court never actually weighs the evidence in the record. See, discussion in Part V (above) concerning CCP §1094.5. This procedural approach has already been at least once dealt with in THPs 100 and 145 on a closely related but different issue. (See, Schoen (supra), at 565).

analogous criteria governing responses to objections to a proposed project requiring an EIR, the *Gallegos* court ruled that the responding agency (in that case, the State Board of Forestry) "need not respond to every comment raised in the course of the review and consultation process, but [the agency] must specifically respond to the most significant environmental questions raised in oppositions to the project." (*Id.*, at page 954; see *People v. County of Kern* (1974) 39 Cal. App. 3d 830 [115 Cal. Rptr. 67].) Such responses must include a description of the issue raised "and must particularly set forth in detail the reasons why the particular comments and objections were rejected and why the [agency] considered the development of the project to be of overriding importance." (*Id.*, at page 841).

The purpose of this requirement is to provide the public with a good faith, reasoned analysis why a specific comment or objection was not accepted. (9) For this reason, conclusory responses unsupported by empirical information, scientific authorities or explanatory information have been held insufficient to satisfy the requirement of a meaningful, reasoned response: conclusory responses fail to crystallize issues, and afford no basis for a comparison of the problems caused by the project and the difficulties involved in the alternatives. (citations omitted, emphasis added.)
Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal. App. 3d 604, at 628.

The Sixth District in Laupheimer (supra), at 460 – 467, while not accepting CEQA's EIR Guidelines as directly applicable to THPs in assessing cumulative environmental effects, gives similar guidance:

"In these broader terms one would reason that CEQA's specific cumulative-impact provisions constitute recognition of the abstract significance of cumulative impacts to an environmental inquiry, and that in this abstract sense significant cumulative impacts must be considered in the course of any environmental inquiry subject to CEQA's broad policy goals, whether or not also subject to CEQA's EIR requirements.

(21) We cannot quarrel with the proposition that Forestry, as it exercises its regulatory functions under the Act and Rules, must consider each timber harvesting

> plan in its full environmental context and not in a vacuum. To us the importance of seeing the entire environmental picture unaffected by labels developed under CEQA. The relevant question will be whether, in a given case, Forestry has adequately considered the entire relevant environmental picture. We agree with EPIC insofar as it may be read to say that in the timber harvesting plan review process Forestry must consider all significant environmental impacts of a proposed timber harvesting plan, regardless whether those impacts may be expected to fall on or off the logging site, and regardless whether those impacts would be attributable solely to activities described in the timber harvesting plan or to those activities in combination with other circumstances including but not necessarily limited to other past, present, and reasonably expectable further activities in the relevant area.
>
> Such a rule would require Forestry in every case to make at least a preliminary search for potential cumulative environmental effects, and, if any such effect were perceived, at least a preliminary assessment of its significance. Were Forestry to determine that there were one or more significant potential cumulative effects, then it would be obliged to give careful consideration to those effects in determining whether, and if so upon what conditions if any, to approve the timber harvesting plan." (Emphasis added.) Ibid., at 462 – 463.

In Laupheimer the court faced procedural questions similar to those presented here. At page 463, the court framed some of their procedural questions without addressing the merits of CDF's general factual conclusions.

While there are discussions in the present administrative records concerning cumulative effects on parts of the environment, these discussions appear too generalized to fulfill on their face even the somewhat lesser standards required by Laupheimer. Furthermore, CDF's conclusions, even if correct, are not articulated in a manner, which fulfills EPIC's standards (above). While "hedging" on an important environmental issue is discouraged (Friends (supra), at 1402), prescience as to every

environmental and cumulative effect is not expected (Laupheimer (supra), at 466). Effects, whether individual or cumulative, which can not be fully eliminated or feasibly mitigated, must be identified to the best ability of the agency and then measured in balance with the countervailing private and public interests identified in PRC §§4512, 4513, 4551 and 21002. The overall record does not clearly show on its face that this process has been done according to the legal standards set forth above. Rather, the approach here seems to match what was criticized in Laupheimer:

> "But the administrative record does not reflect that Forestry has done any of these things. Forestry's file reflects its awareness of the (other) Plan, but no attempt to relate the two plans in terms of environmental impact. The director's major issue statement effectively rebuts the concern that Coast's activities are simply a prelude to residential development, but does not otherwise respond to cumulative-impact issues. So far as can be learned from the administrative record, Forestry's approach appears to have been to minimize the adverse effects of logging operations on the 28 Plan site itself, and to assume that such minimization would sufficiently mitigate offsite impacts of whatever kind. Such an approach was expressly rejected, as "at odds with the concept of cumulative effect, which assesses cumulative damage as a whole grater than the sum of its parts," in *Epic, supra* 170 Cal. App. 3d at page 625." (Emphasis added).
> Laupheimer (supra), at 466.

Separate from this well-intentioned, necessary, but procedural error, CDF also repeatedly forecloses consideration of the cumulative effects of other neighboring plans and even the previously harvested parts of THPs 100 and 145 once they are "recorded by the department as completed and stocked" (e.g., - 145 AR 356, concern #7; 145 AR 360 – 361, concern #12).

By way of example, at 100 AR 13 under "Past", what does it mean to say "Out of all this past logging no remaining adverse environmental effects can be identified

'on the ground'"? Does this skirt the issue of logging's historical contribution to the decline in fisheries? What led to this and the other generalized and perhaps overly broad conclusions in this old 1989 section? Further information at 100 AR 65 – 102 is beneficial. But again, the general conclusion at 100 AR 76 that "The proposed operations are not 'expected' to negatively impact" coho salmon (see also bottom of 100 AR 252 – "do not feel") are hedged general conclusions arrived at from no clear, specific, factual, analytical trail.

The official response incorporates this unsupported Conclusory style. For example, "I do not 'anticipate' that this would cause adverse impacts on this THP" (at bottom of 100 AR 278) – is not even the full question. At 100 AR 284 re: Concern #17, the official response references a single year's higher fish count without critical analysis. The reference is taken from 100 AR 91 which first speaks about the "inherent problems" in monitoring fish populations accurately. What does the single year's statistic mean? A recovery? If so, what level of recovery? An enhancement? If so, an enhancement from what? Endangerment? Improved methods of counting? A statistical aberration? A partial recovery based on better forest practices? What are the cumulative effects of logging on the coho salmon population?

Again, there is no single format that fulfills these assessment requirements. Expanding on Laupheimer inquiries, for each assessment topic[5] sample questions might be:

1. What are the historical environmental effects of logging on the fisheries/watersheds in general?

- in California?

- in Mendocino County?
- in the specific watersheds of these THPs?
- for particular methods of silviculture such as "clear cutting"?

2. What are the expected actual and potential present environmental effects of logging on the fisheries/watersheds if these THPs are approved?

- as applied?
- as feasibly mitigated?
- For the particular method of silviculture used (e.g. – "clear cutting" – THP 352)?

3. What are the expected actual and potential cumulative[6] environmental effects despite using the most advanced and environmentally protective silviculture methods currently considered feasible?

- are the environmental effects still significant?
- are there overriding/counterbalancing considerations?

The Forest Practice Rules require that the timber harvest plan identify "any past, present, or reasonably foreseeable probable future projects" and state whether the proposed project "in combination with past, present and reasonably foreseeable probable projects [will] have a reasonable potential to cause or add to significant cumulative impacts." (14 C.C.R. §912.9, emphasis added.) The overall, adjacent, nearby and reasonably foreseeable projects which LP had active and planned in these THPs' watersheds apparently were not fully disclosed or assessed (see, Parts III and XIII).

[5] See, Rule 912.9 for a list of "resource subjects" to be assessed in a THP approval process.

Adjacent and nearby THPs bring into question the actual size of LPs "project". Laupheimer notes the disfavored "piecemeal" approach without fully adopting CEQA definitions for THPs:

> "The Guidelines also provide a definition of "cumulative impacts": " 'cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.
>
> "(a) The individual effects may be changes resulting from a single project or a number of separate projects.
>
> "(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (Guidelines, §15355.)
>
> This and other courts have dealt with the cumulative impact concept in the CEQA context. (20) One judicially recognized function of the concept is to assure that potential environmental impacts will not be misleadingly minimized by "chopping a large project into many little ones. . ." (Citations omitted, emphasis added.) Laupenheimer (supra), at 461.

Assuming that the blended reading of the Forest Practices Act and CEQA allow for small THPs from a large ownership to slowly cover entire watersheds, the only effective assessment and control would come from full disclosures of overall logging plans and proper "big picture" assessments of cumulative environmental effects and feasible alternatives.

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[6] It is difficult to argue adequate consideration when even the belatedly requested information is still incomplete. Compare 100 AR 263 – 264 and 145 AR 344 – 345, with Part III, Part IV and footnotes 2 & 7.

Relying on EPIC (supra) at 616, counsel for the real party in interest argues that logging is a "dirty business," but that public policy as set forth in PRC §4513(a) overrides other concerns – emphasizing only the first twelve words of that subsection and ignoring the environment balancing factors of the rest of the section and sections 4512 and 4551. CDF has conceded in other litigation that "it would be difficult to argue that any THP – even a modified THP subject to a substantial list of mandatory mitigation measures" – would be an activity or project "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Friends (supra), at 1394 – 1395. This would seem to hold true even more so where a series of THPs have blanketed entire watersheds over the years.

Perhaps it is time for thorough answer to suggested question #3 (above) as requested by petitioners. Some guidance might be come from some of CDF's own instructions to a private forester quoted by the California Supreme Court:

> "The RPF['s complete thought process should be demonstated in the plan. He should explain what impacts there may be on the wildlife and why they are considered to be significant or insignificant." (Emphasis added.)
> Sierra Club (supra) at 1222.

X. PRIOR PUBLIC ACCESS TO INFORMATION RELIED ON BY CDF:

In view of all of the above (especially Part V), this court need not sort through each allegation of the petitioners concerning prior public access to documents and information relied on by CDF in making their decisions. There is a strong argument that full and adequate prior access did not occur.[7] While all incidents may not have constituted procedural and/or prejudicial error, and all would be moot upon a reconsideration of or reapplication for these amendments/THPs, the courts and legislature

have continuously stressed prior public access to information so that public input can be meaningful, correct and/or cause adjustments in agency actions, and explain and engender trust in governmental actions.

The Schoen court quoted Friends in re-emphasizing:

> "The court in *Friends of the Old Trees, supra*, 52 Cal. App. 4th at page 1402 stressed the critical need to recirculate to the public all information relating to a cumulative effects analysis prior to adding the documents to the agency file. "[P]ublic review and comment. . .ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise in timber resources and conservation." (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal. App. 4th 499, 525 [63 Cal. Rptr. 2d 118].) Thus public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources.
>
> The necessity for public review does not diminish simply because the forester and CDF determine the change in operation will not have any environmental impact. Under CEQA, even when the agency determines a project will have no significant environmental impact, the agency must prepare a negative declaration. The documents supporting this decision are still subject to public review. (Cal. Code Regs., tit. 14, §15071, subd. (c).)" (Emphasis added.)
> Schoen (supra), at 574 (see also, EPIC (supra), at 627 – 630)

It can not be the intent of the legislature or the courts to allow an agency to substantially create (or "pad") an administrative record with documents and justifications which the public has had no real chance to scrutinize or to respond. "Streamlining" procedures in this way is not authorized. Ibid., at 577.

XI. CONCLUSION:

[7] See, Appendix #1 to Petitioners' Brief (filed August 11, 1998)

Within twenty days each party may address by brief any issue which the party feels is incorrect, misunderstood or missed altogether. Within seven days thereafter any responses are due but not required. Disagreement is recorded without the necessity of such filings.

If no such briefs are filed within twenty days, petitioners shall propose and circulate any necessary statement, orders and/or judgment. Given the age of the two older THPs 100 and 145, should the new owner wish to pursue harvesting of the remaining portions of those locations, the Laupheimer court's suggestion (supra) at 467, for re-starting at the beginning, seems appropriate.

So Ordered.

Dated: January 5, 2000

VINCENT T. LECHOWICK

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

REDWOOD COAST WATERSHEDS ALLIANCE, a California non-profit corporation, GREENWOOD WATERSHED ASSOCIATION, an unincorporated association and GUARDIANS OF ELK CREEK OLD GROWTH, an unincorporated association, Petitioners, vs. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, RICHARD WILSON, in his official capacity as Director of the California Department of Forestry and Fire Protection, and DOES 1 through 10, Respondents.	Case No. CV78423 Final Ruling on Petition
LOUISIANA-PACIFIC CORPORATION, a Delaware corporation and DOES 10 through 20, Real Parties in Interest.	

An intended decision was issued on January 5, 2000. Opportunity to raise issues by brief was granted within twenty (+ seven) days. Petitioners filed a formal brief on January 25, 2000 requesting certain new or different rulings. The real party in interest lodged letters which indicated that, as the new owner, the real party in interest was withdrawing and canceling the three THP's which were the subject of this ruling. For a second time the real party raised a question of mootness.

The petitioners are entitled to a judgment in their favor at this late point in the litigation, if they so choose. The same issues are likely to remain in controversy, if not with the present landowner, then with the respondent the petitioners and other landowners. However, the prior mootness ruling as to THP #445 (filed November 24, 1998) shall remain unchanged and be set forth in any final judgment.

As to the two additional modifications requested by petitioners:

1. Petitioners did in fact fail to raise in oral arguments and in their Request for Statement of Decision (filed at oral arguments) anything other than the procedural aspects of abuse of discretion as defined in CCP §1094.5(b). As such, other types of defined "abuse of discretion," if claimed elsewhere in the pleadings, were abandoned.
2. The record does support a general finding that as to each of the three remaining THPs, respondent CDF failed to make significant information and documents (which were relied upon by CDF in their decision making process) available for prior public review and comment such that the public input process was presumptively prejudiced.

Petitioners' counsel shall prepare any necessary statement, orders and judgment.

So Ordered.

Dated: February 7, 2000

VINCENT T. LECHOWICK

FILED

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CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

REDWOOD COAST WATERSHEDS ALLIANCE, a California non-profit corporation, GREENWOOD WATERSHED ASSOCIATION, an unincorporated association and GUARDIANS OF ELK CREEK OLD GROWTH, an unincorporated association, Petitioners, vs. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, and RICHARD WILSON, in his official capacity as Director of the California Department of Forestry and Fire Protection. Respondents. LOUISIANA-PACIFIC CORPORATION, Real Party in Interest.	Case No. CV78423 Judgment Granting Petition for Writ of Mandate and Permanent Injunction

The Petition filed herein, as amended, came on for hearing on October 1, 1999, in the above-entitled court, the Honorable Vincent T. Lechowick, Judge, presiding without a jury.

Thomas N. Lippe, Esq. appeared for petitioners Redwood Coast Watersheds Alliance, Greenwood Watershed Association, and Guardians of Elk Creek Old Growth. Mark Melnick, Esq. appeared for respondents California Department of Forestry and Fire Protection and current Director Andrea Tuttle. Frank S. Bacik, Esq. appeared for real party in interest (new landowner) Mendocino Redwood Company. The court having considered the written and oral arguments of counsel and the evidence submitted by the parties, and the matter having been submitted for decision,

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The court hereby issues a peremptory writ of mandate (which this judgment shall constitute) remanding the proceedings to respondents and commanding respondents to set aside the decision of March 5, 1998 approving Amendment 10 to Timber Harvest Plan 1-89-100 MEN and the decision of March 5, 1998 approving Amendments 13 & 14 to Timber Harvest Plan 1-89-145 MEN and the decision of March 12, 1998 approving Timber Harvest Plan 1-97-352 MEN; and to reconsider the decisions in light of this Court's January 5, 2000 Notice of Intended Decision and February 7, 2000 Final Ruling on Petition, which the court hereby adopts and incorporates herein by reference; and to take any further action, specially enjoined upon respondents by law; and to make, file and serve on all parties a return to this writ, setting forth what has been done to comply with this judgment and writ. Petitioners shall have 30 days after the filing and service on petitioners of such return to object to or request a hearing on the compliance of the return with this Judgment and writ.

2. Timber operations on Timber Harvest Plans 1-89-100 MEN, 1-89-145 MEN and 1-97-352 MEN are permanently enjoined pending further order of this Court. In addition, real party in interest is enjoined from conducting any timber operations (as defined in Public Resources Code §4527) on any land area within the boundaries of Timber Harvest Plans 1-89-100 MEN, 1-89-145 MEN or 1-97-352 MEN (excepting therefrom compliance activities in conformance with any applicable stocking, erosion control or other preventive, remedial or restorative conditions, rules or regulations for any areas of these THPs on which timber operations have previously commenced) until compliance has been demonstrated, by way of a return to this Court served on all parties, of any future amendments or timber harvest plan(s) for any of these areas with this judgment and writ. Petitioners shall have 30 days after the service on petitioners of such return to object to and request a hearing on the compliance of the return.
3. As stated in the Court's Ruling on Petitioner's Motion for Judgment pursuant to CCP §1094 entered in this action on November 24, 1998, the First Cause of Action of Petitioner's Errata Corrected First Amended Petition for Writ of Mandate is dismissed as moot.
4. Petitioners shall recover their costs of suit jointly and severally from respondents and real party in interest.

5. Petitioners may bring a motion for attorney fees.

So Ordered.

Dated: May 23, 2000

VINCENT T. LECHOWICK