

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

* * *

Ukiah Branch

ENDORSED-FILED

MAR 27 2000

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

REDWOOD COAST WATERSHEDS)
ALLIANCE, et al.)

Petitioners,)

vs)

CALIFORNIA DEPARTMENT OF FORESTRY)
and FIRE PROTECTION, et al.)

Respondents.)

MENDOCINO REDWOOD COMPANY, et al.)

Real Parties)

No. CV 81923

Attachment (H)

PCA-GWA Letter 12/5/00
Re TWP 1-00-357 MEN
1-00-228 MEN

JUDGMENT GRANTING PERMANENT INJUNCTION

The Petition for Writ of Mandate filed herein, as amended, came on for trial on March 24, 2000, in the above entitled court, the Honorable Conrad L. Cox, 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 Malnick, Esq. appeared for respondents California Department of Forestry and Fire Protection and Andrea Tuttle. Frank Bacik, Esq. appeared for real party in interest Mendocino Redwood Company. The court having considered the written and oral arguments of counsel, and the evidence submitted by the parties and the Motion In Limine to Dismiss Case as Moot submitted by real party in interest Mendocino Redwood Company, the matter having been submitted for decision; and the court having issued an Order On Motion In Limine Re Mootness,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Court finds that CDF prejudicially abused it's discretion in approving TWP 1-97-445 MEN on September 8, 1999 in that:

- (1) CDF failed to circulate THP 445 Spotted Owl documents for public review and comment as required by the California Environmental Quality Act at Pub. Res. Code §21080.5(d) (3) (B), the Forest Practice Act at Pub. Res. Code § 4582.6 and Forest Practice Rules 1037.3 and 919.9 (14 CCR §§1037.3, 919.9). These documents include spotted owl survey data sheets for the THP 445 area that the California Department of Fish and Game provided the U.S. Fish & Wildlife Service on January 13, 1999 (at AR 328-416); the February 8, 1999 U.S. Fish & Wildlife Service letter to respondent California Department of Forestry (at AR 419-420), The July 2, 1999 U.S. Fish & Wildlife Service letter to respondent California Department of Forestry (at AR 436-437); the additional Spotted Owl surveys that real party in interest Mendocino Redwood Company provided to the U.S. Fish & Wildlife Service referenced at AR 436-437; real party in interest Mendocino Redwood Company's July 13, 1999 letter to respondent California Department of Forestry (at AR 439) and the updated Spotted Owl information dated July 15, 1999 (at AR 12.); and
- (2) The cumulative impacts assessment in THP 445 is unlawful because the plan does not justify the selection of the watershed assessment area as required by Forest Practice Rule 912.9.

2. Timber operations on Timber Harvest Plan 1-97-445 MEN are permanently enjoined pending further order of this Court. In addition, Mendocino Redwood Company is enjoined from conducting any timber operations (or defined in Public Resources Code § 4527) on any land area that was within the boundaries of Timber Harvest Plans 1-97-445 MEN until either it or CDF have demonstrated to this Court by way of a return to this Court served on all parties, showing compliance of any future Timber Harvest Plan for this area with the California Environmental Quality Act, Forest Practice Act and Forest Practice Rules. 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 with all applicable California laws and regulations.

3. Petitioners Redwood Coast Watersheds Alliance, Greenwood Watershed Association, and Guardians of Elk Creek Old Growth shall recover their costs of suit jointly and severally from respondents California Department of Forestry and Fire Protection and Real Party Mendocino Redwood Company.

4. Petitioners Redwood Coast Watersheds Alliance, Greenwood Watershed Association, and Guardians of Elk Creek Old Growth may bring a motion to recover their attorneys fees.

5. The Clerk is directed to return the two \$1,000.00 injunction bonds (for a total of \$2,000) posted by Petitioners in this matter by tendering a check in the amount of \$2,000 made payable to the Law Offices of Thomas N. Lippe in trust for Redwood Coast Watersheds Alliance.

Dated: March 27, 2000

CONRAD L. COX

Conrad L. Cox

Copies to counsel March 27, 2000

Thomas N. Lippe
Michael Neville
Frank Bacik

drv

I, DOREEN R. VENTURI, DECLARE:

I am employed in the County of Mendocino, State of California; I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 996, Ukiah, California, 95482.

I am familiar with the County of Mendocino's practice whereby each document is placed in an envelope, the envelope is sealed and placed in the office mail receptacle. Each day's mail is collected and appropriate postage affixed thereto and deposited in a U.S. mailbox at or before the close of each day's business.

On the date of this declaration, I served copies of the attached document on the below listed persons by placing a true copy thereof in the United States Mail, addressed as follows

Thomas N. Lippe, Esq., Attorney at Law, One Market Plaza, Steuart Tower, Sixteenth Floor, San Francisco, CA 94105

Marc N. Meinick, Dep. Attorney General, 1515 Clay Street, 20th Floor, Oakland, CA 94612-1413

Frank Bacik, Esq., Attorney at Law, P.O. Box 720, Ukiah, CA 95482

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was made on the 27th day of March, 2000.

DOREEN VENTURI

Doreen R. Venturi

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

* * *

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ORDER ON MOTION IN LIMINE RE MOOTNESS

On December 15, 1999, the court issued an Order Granting Preliminary Injunction. On December 16, 1999, the court issued a briefing schedule which required petitioners to file opening points and authorities on or before January 14, 2000, the respondents and the real parties to file points and authorities on or before February 10, 2000, and the petitioners to file closing points and authorities on or before February 24, 2000. The matter was set for trial on March 17, 2000. Petitioners filed opening points and authorities. On February 10, 2000, the day that real party's points and authorities were due, the real party submitted a letter to the court by hand indicating that it had been mailed to counsel for the petitioners and counsel for respondent. The letter stated that the real party "... has taken steps to withdraw and cancel THP 1-97-445.

On March 21, 2000, real party filed a Motion in Limine to Dismiss Case as Moot. On March 23, 2000, the respondent filed a joinder in the real party's motion in limine. The real party advised the court that it conceded that THP 445 was approved in error. On March 23, 2000, the petitioners filed a response to the motion.

The matter came before the court on March 24, 2000, for trial. The motion in limine was argued and the matter was submitted for decision.

It is noted that this is not the first time that a THP for this same parcel of real property has been before the court. On each of the prior occasions, the petitioners were required to proceed with great urgency to obtain a temporary restraining order and to file a petition for a writ of mandate. In each case before the temporary restraining order could be obtained, some trees had been harvested. In each prior case the, THP was at some stage withdrawn before the hearing on the writ of mandate. Now the real party some fifty-five days after the preliminary injunction was issued the, real party does not admit an error in THP 445 but simply takes action to cancel the plan.

The court finds that the proceedings with relation to the particular parcel of property described in THP 445 to be unique and to require special processing in order to be fair to each side. After considering the oral arguments and the points and authorities submitted by the respective parties, the court finds the reasoning of the petitioners persuasive and it has this day signed a judgment in a form substantially similar to the one presented by counsel for the respondent.

Dated: March 27, 2000

CONRAD L. COX

Conrad L. Cox

Copies to counsel March 27, 2000

Thomas N. Lippe

Michael Neville

Frank Bacik

drv

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was made on the 27th day of March, 2000.

DOREEN VENTURI

Doreen R. Venturi