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5 extra pages

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21 pages of text

(as listed in document list - Attachment g)

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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF MENDOCINO**

10 **GREENWOOD WATERSHED**
11 **ASSOCIATION**

12 Petitioner,

13 vs.

14 **CALIFORNIA DEPARTMENT OF**
15 **FORESTRY AND FIRE PROTECTION, and**
16 **DOES I thru X**

17 Respondents

18 **MENDOCINO REDWOOD COMPANY, and**
19 **DOES XI thru XX**

20 Real Parties in Interest

Unlimited Civil

No. SC UK CVPT 0185331

NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION

DECLARATIONS OF ALLEN
COOPERRIDER, MARY PJERROU,
KIRK HANDLEY, GERALD
HUCKABY, BEN MACMILLIAN AND
ANTHONY LEWIS

Date: 6/1/2001

Time: 9:30

Dept. E

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I. INTRODUCTION

The Greenwood Creek watershed has a total acreage of 16,448 acres, including a commercial logging ownership of 9,862 acres and a variety of smaller landowners, in a redwood forest area of the Mendocino coast near the town of Elk (AR 620-659). Seventeen logging plans have been approved in this small watershed just since 1998 (AR 50). Timber Harvest Plan 1-00-357 MEN (hereafter "THP 357" or "logging plan 357"), was approved on February 9, 2001 (AR 318). This logging plan covers 77 acres in a steep unstable area of Greenwood Creek, a watershed that supplies water to the town of Elk, supports threatened coho salmon and steelhead trout, and where a community based watershed restoration project worked three years to restore fish habitat and water quality, including erosion control and stream restoration work within and adjacent to the logging plan 357 area.

The Elk County Water District, five government agencies and thirty-five landowners cooperated in the watershed restoration project, which was funded by multiple government agencies and private donors. Extensive work was done to repair roadways that were impacting the creek, and to improve creek crossings and restore stream banks, in several areas of the watershed, with intense work in the Sky Ranch Estates area (the immediate THP 357 plan area), in nearby areas of Greenwood Ridge Vineyards, and along Maple Basin Road. The work included replacement of a failing culvert by a flatcar bridge at a major crossing (AR 402-409) and construction of many erosion control structures on three miles of Sky Ranch roads.

Logging plan 357 proposes to significantly negate the benefits of the restoration project to other landowners and to natural resources, by logging in and adjacent to the restoration area (AR 22-23, 464), which will inevitably create additional sedimentation despite

1 the mitigations, even by the logging plan's own admission (see AR 57), without allowing
2 sufficient time for habitat recovery, and further, without providing any cumulative impacts or
3 costs/benefits analysis of the restoration work. The economic value of road maintenance and
4 clean drinking water for the many landowner donors and cooperators has not been considered
5 in the approval of this THP, along with the THP's lack of proper consideration and assessment
6 for the natural resources that are risk.

7 According to past records and reports, this area has historically been inhabited by a
8 number of species now listed as endangered or threatened, including coho salmon, steelhead
9 trout, northern spotted owl and marbled murrelet. The previous owner's Sustained Yield Plan
10 lists all four of these as present in Greenwood Creek watershed. (AR 640) There are
11 unresolved disputes between the proponents of logging plan 357, and concerned and
12 knowledgeable local citizens, including neighboring landowners, and there are serious factual
13 errors and omissions in the THP record, regarding the past and current presence of coho
14 salmon in Greenwood Creek, the location of fish survey sites, the location of steelhead
15 populations, the purpose of the restoration project bridge, the extent of the restoration work, the
16 presence of marbled murrelet, the content of the previous owner's Sustained Yield Plan, the
17 right-of-way on the affected road, and the geography of Greenwood Creek. In regard to each
18 of these issues, the California Department of Forestry ("CDF"), in its approval of THP 357, has
19 relied on information not made available to the public, or has arbitrarily ignored authoritative
20 sources.
21

22
23 Respondent CDF and real party Mendocino Redwood Company ("MRC") acknowledge
24 that past intensive logging has destroyed most of the habitat for listed species in the Greenwood
25 Creek watershed (AR 48-49). There is a general claim by MRC's professional forester ("RPF")
26

1 and CDF in its official responses ("ORs") that the practices and mitigations adopted in logging
2 plan 357 will enable the restoration of lost habitat over time; however, the cumulative impact
3 assessment necessary to support this claim lacks any specific information to determine whether
4 the incremental effects of THP 357, in combination with other past, present and reasonably
5 foreseeable future projects, will have effects which are cumulatively significant for the
6 Greenwood Creek Watershed, as required under PRC sec.21083(b), 15064(i)(1), 15065(c).

7 A court should evaluate two interrelated questions when deciding whether to issue a
8 preliminary injunction: (1) Is there a reasonable probability that plaintiffs will prevail on the
9 merits?; and (2) Will plaintiffs suffer greater injury from denial of the injunction than
10 defendants will from its grant? (Robbins v. Superior Court (1985) 38 Cal. 3d 199, 206). In
11 striking this balance, the court should consider the advancement of the public interest. (County
12 of Inyo v. City of Los Angeles (1976) 61 Cal. App. 3d 91, 100; Cosney v. California (1970)
13 10 Cal. App. 3d 921, 924).

14 Herein, Petitioners will demonstrate a high likelihood of success on the merits.
15 Further Petitioners will suffer more harm from denial of the injunction than defendant would
16 from its grant, because defendant MRC would not be substantially prejudiced by a slight delay
17 in logging if it prevails on the merits, whereas Greenwood Watershed Association would have
18 its case mooted if injunctive relief is denied and MRC logs before the case is heard on the
19 merits. See AR 50, 562-592, 548-561, for ten other Timber Harvest Plans in this watershed
20 alone, that CDF has recently approved for MRC. MRC has no lack of approved logging
21 permits.
22

23 The legal and factual basis showing Petitioners' probability of prevailing on the
24 merits is set forth below.
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- 1) CDF failed to provide the public with all the documents and private sources of information on which it based its approval of THP 357.
- 2) The THP and the OR contained numerous false, misleading and confusing statements on critical issues.
- 3) CDF failed to adequately respond to significant concerns raised in public comments, including its refusal to consider credible sources of information known to the public.
- 4) CDF failed to provide an adequate analysis of the cumulative impacts of logging plan 357.
- 5) CDF failed to evaluate a reasonable range of alternatives to the project.

CDF thus violated the California Environmental Quality Act ("CEQA"), the California Forest Practice Act ("FPA") and the California Forest Practice Rules ("Rules" or "FPR's").

II. STATEMENT OF FACTS

The public comment letters for THP 357 repeatedly raise questions concerning the absence of documents which would provide a more accurate picture of the natural resources in the THP area and would make possible a more reliable assessment of the potential impacts of logging plan 357. There are requests for consideration of information in prior timberland owner Louisiana Pacific's Sustained Yield Plan ("SYP"). There are strong concerns raised about inaccurate information on threatened fisheries, lack of protection for public drinking water, the absence of Northern Spotted Owl surveys, the need for more complete data on the

1 Marbled Murrelet, and impacts on roads, community restoration projects and neighboring
 2 properties. There are strong concerns about the failure to disclose the number of old growth
 3 trees currently present in the THP area and the number proposed for harvest.

4 CDF's general response to the above concerns was to use the current lack of habitat
 5 or purported absence of threatened species--often based on questionable data--as a basis for
 6 requiring a less thorough evaluation. Instead of the depletion of natural resources due to past
 7 logging "ringing an alarm bell" to require the most detailed, rigorous assessment of current
 8 conditions and potential impacts, the depletion is used as a justification for requiring less
 9 information.

10
 11 There are contradictory statements in these THP documents regarding the level of
 12 proposed logging, and there are serious factual errors regarding the location and status of
 13 federally listed coho salmon and steelhead. CDF disputes the accuracy of authoritative sources
 14 of information that contradict CDF's conclusions, and does so based on private conversations
 15 and surveys withheld from the public.

16 CDF provides vague and conclusory responses to vital public concerns such as the
 17 safety of domestic water sources, sedimentation of watercourses, harm to restoration project
 18 road erosion control structures, and the need for a long term management plan for the
 19 Greenwood Creek Watershed.

20
 21 Petitioner will show how the above and other deficiencies in THP 357 contributed to
 22 the fundamental inadequacy of the cumulative impacts analysis.

23 Finally, Petitioner will address the failure of the alternatives analysis of logging plan
 24 357 to assess the benefits of the community restoration project and evaluate the feasibility of
 25 delaying logging in the restoration area until habitat recovery is achieved.

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III. ARGUMENT

A. CDF FAILED TO MAKE IMPORTANT DOCUMENTS AND OTHER SOURCES OF INFORMATION AVAILABLE FOR PUBLIC REVIEW

As part of the official response to public concerns about the disputed presence of coho salmon in Greenwood Creek, CDF's OR cites a year 2000 electroshock fish survey in which MRC's forester participated, which allegedly found no coho in Greenwood Creek (AR 335). This study was not included in the THP nor made available to the public in any manner, to provide an opportunity to review its findings and the reliability of its procedures, yet it was clearly relied on by the RPF and CDF.

Previous owner LP's Sustained Yield Plan ("SYP") states that "coho populations are present within the upper and lower Greenwood Creek planning watersheds" (AR 627) In response to public concern over the exclusion of this evidence, CDF's OR questioned the accuracy of the SYP, and claimed that the SYP writers did not mean Greenwood Creek when they said "Greenwood Creek," but were actually referring to streams in another area, called "Cuffey's Point." This claim is clearly refuted by the declaration of Mary Pjerrou, who points out that there is a 140 foot drop to the ocean at the bottom of "Cuffey's Point" at Highway One (an impossible jump for the migrating coho salmon). The OR offers as corroboration for this obvious and serious error, hearsay information from unnamed "former LP employees now working for MRC," as reported to CDF by MRC's forester on 1/31/01, almost two months after the close of public comment. (AR 335).

CDF's OR claims that there are no steelhead in the THP area (the South Fork and main stem of Greenwood Creek), because a waterfall downstream of this area creates an alleged "barrier" to anadromous fisheries. (AR 347) CDF further states that "all fish above

1 [the 'barrier'] are resident, non-salmonid trout, not steelhead," and that new rules regarding
2 greater protection for anadromous fisheries (coho, steelhead) therefore do not apply in the THP
3 area. (AR 333, 347) The THP itself says nothing about a "barrier" and in fact identifies "the
4 THP area" as "Steelhead habitat" (AR 45), and includes a page of L-P fish data showing 10 to
5 40 Steelhead in the South Fork of Greenwood Creek (the THP area) in 1996. (AR 106) On the
6 new information about the alleged "barrier" and its relevance to the new rules, CDF makes
7 reference to oral and written communications involving the logging company RPF and CDF
8 staff forester Wendy Wickizer, dated 1/31/01, almost two months after close of public
9 comment on the plan. The public had no opportunity to review this important cumulative
10 effects information.

11
12 A fundamental purpose of CEQA is to allow the public the opportunity to review
13 project proposals and to submit comments which may affect the ultimate decision. (Pub. Res.
14 Code sec. 21080.5). Under CEQA (at Pub. Res. Code sec. 21080.5(d)(3)(ii), the Forest
15 Practice Act (at Pub. Res. Code sec. 4582.6) and Rules (at 14 CCR sec. 1037.3). The THP
16 must be available for a reasonable time for review and comment by the general public. In
17 addition, EPIC v. JOHNSON (1985) 170 CAL.APP.3D. 604,629 squarely holds that CDF
18 commits prejudicial abuse of discretion if it responds to a public comment by referring to a
19 document that was not available to the public.

20
21 These principles are applied with particular force in SCHOEN V. CDF, (1997) 58
22 CAL.APP.4th 556, where the court held that:

23 "Public review is essential to CEQA. The purpose of requiring public review is to
24 demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and
25 considered the ecological implications of its action" (id. At 571). (Citing SIERRA
26 CLUB 7 Cal. 4th at p. 1229)

1 The above references in the OR to information not made available to the public clearly
2 constitute prejudicial abuse of discretion. CDF's claim that "MRC is treating the stream as if it
3 contained coho salmon" (AR 335) does not give CDF discretion to deny information to the
4 public that CDF relied upon in its decision. Further, the environmental mitigations of a logging
5 plan must be based on accurate information about the resources that are at risk. If the
6 information in the cumulative effects assessment is wrong, misleading or inadequate, or if the
7 public has been denied information, review of the assessment cannot take place, and
8 mitigations based on that assessment cannot be relied upon.

9 Adequate opportunity for public review is provided only when all information relied on is
10 made available in the record prior to the close of public comment. Close of public comment
11 for this plan occurred on December 6, 2000. (AR 318) CDF's OR (dated February 9, 2001) is
12 published after close of public comment and after the plan has been approved. Nowhere in the
13 statutes or the case law is it stated that reliance and subsequent reference in the OR to
14 information not provided to the public is cured by mitigations which the company forester and
15 CDF find adequate to reduce impacts to less than significant. Treating the stream "as if it
16 contained coho salmon" does not moot the issue of coho presence. If CDF really believed that
17 the coho issue was moot, they would not have gone to such lengths to challenge and exclude
18 evidence contradictory to their conclusions.
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22 **B. LOGGING PLAN 357 AND THE OFFICIAL RESPONSE CONTAINED NUMEROUS**
23 **FALSE, MISLEADING AND CONFUSING STATEMENTS ON CRITICAL ISSUES**

24 Page 2 of THP 357 describes the plan as proposing to "...harvest hardwoods in an
25 attempt to convert hardwood forest back to conifer forest while harvesting a minor amount of
26

1 conifers." (AR 2) The silviculture method is designated as "alternative" prescription on THP
2 page 5 (AR 5); however, THP p. 33 states: "The proposed alternative prescription most closely
3 resembles the clearcutting regeneration method"(AR 37), and "The majority of the mature
4 conifers and hardwoods will be harvested" (AR 37).

5 In response to public concern over the lack of recruitment of marbled murrelet habitat
6 in THP 357, the OR, acknowledging that habitat continuity is not currently present, cited THP
7 page 63 stating that "elements in the stand that may be conducive for murrelet habitat in the
8 future are being retained" (AR 339); but two paragraphs later, CDF quotes California
9 Department of Fish and Game ("DFG") Environmental Specialist Stacy Martinelli, as follows,
10 from page 6 of her Pre-Harvest Inspection ("PHI") report:
11

12 "Portions of the harvest units were inspected for presence of potential marbled
13 murrelet habitat. Trees with appropriate limb structure that could support a marbled
14 murrelet nest were not observed. When the RPF was asked whether there were any
15 potential marbled murrelet nest trees that should be inspected by the department, the
16 RPF replied there were none" (id) (AR 339)

17 Thus the public is told that there is a policy to retain trees which may be conducive to
18 future habitat, and at the same time is told that there are no such trees (as reported by the RPF).
19 The presence/absence of such habitat is relevant to the public's concern about marbled
20 murrelets. The THP reveals that there were five marbled murrelet radar detections in 1999, but
21 suggests that they were not murrelets but rather "Band-tailed pigeons" (AR 66). CDF, in its
22 OR, then adds the new information that, in "the recent Greenwood Creek marbled murrelet
23 detections," the bird was "flying south along the coast" rather than up the creek into the THP
24 area—this, based on a telephone discussion with MRC forester Russ Shively, not subject to
25 public review. (AR 339) The public was thus denied two important pieces of information: that
26 the detection was thought to be a marbled murrelet (not Band-tail pigeons), and that an MRC

1 forester said it wasn't in the THP area. The public was not given this new information, vital to
2 its concern, until almost two months after close of public comment.

3 Based on these hedged, confusing and contradictory statements, CDF's response
4 concludes that protections in the plan "will help to ensure that wildlife will not be significantly
5 adversely impacted," and finally instructs the public that "Local extinction is properly termed
6 extirpation" (AR 339)

7 Cited above, under Argument A, are false and misleading statements, and denial of
8 information to the public, on the presence and location of coho salmon and steelhead, and
9 related issues. (Also see declarations of Dr. Allen Cooperrider and Mary Pjerrou for additional
10 discussions of these matters.).

11 Under FPR 898.2 SPECIAL CONDITIONS REQUIRING DISAPPROVAL OF
12 PLANS, section (c) mandates disapproval of a THP if "There is evidence that the information
13 contained in the plan is incorrect, incomplete or misleading in a material way, or is insufficient
14 to evaluate significant environmental effects."

15 The above examples of false and misleading statements, withholding information
16 from the public, and mishandling information, on three federally listed species, are conclusive
17 evidence that CDF has prejudicially abused its discretion by relying on false, misleading and
18 insufficient information in approving THP 357. Therefore, the court should set aside CDF's
19 approval of the plan.
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1 C. CDF FAILED TO ADEQUATELY RESPOND TO SIGNIFICANT CONCERNS
2 RAISED IN PUBLIC COMMENTS

3 Petitioners' likelihood of prevailing is supported by CDF's failure to adequately
4 respond to concerns about the impact of THP 357 on the Town of Elk water supply.

5 "The written response shall describe the disposition of significant environmental
6 issues raised. There must be a good faith, reasoned analysis in response. Conclusory
7 statements unsupported by factual information will not suffice." ((Guidelines CCR
8 15088(b); People v. County of Kern (1974) 39 Cal.App. 3d 348)).

9 Comments from the Elk County Water District called for the postponement of any
10 further logging in the Greenwood Creek Watershed until a watershed analysis is conducted and
11 the results made public. The sole source of water for the town of Elk is two wells near the
12 mouth of Greenwood creek which have been adversely affected by upstream activities in the
13 watershed. The level of turbidity has been high enough to require a "Boil Water Order" from
14 the District. (See declaration of Gerald Huckaby, Board President, and Ben MacMillan, Vice
15 President.) Disastrous flooding has occurred, threatening the physical safety of the wells and
16 adding to the cost of clean water (AR 393). The OR responds to this serious public health and
17 economic concern with a paragraph from the THP, as follows:

18 "Turbidity problems at the Elk County Water District (ECWD) intake in the
19 Greenwood Creek have been reported during periods of high flow, usually following
20 prolonged heavy rainfall. Although one may contend such turbidity is solely due to
21 current timber harvest activity, it is more likely a combination of sources including the
22 residual effects of past land management practices (especially pre-FPA operations) and
23 the natural instability of a geologically young coastal watershed....Although these
24 earlier practices resulted in impacts that are still continuing to some degree ...the
25 watershed as a whole is recovering to a point that watercourse canopies are returning,
26 old skid trails are revegetating with conifers, etc. The practices currently employed in
Timber Harvest Plans are continuing to restore watercourses by moving roads to ridge
top areas and away from their protection zones. These operations, coupled with
continued cooperation between various agencies and neighborhood groups with interest
in the watershed, will only work to improve the conditions of Greenwood Creek and its
watershed" (AR 328)

1 Petitioners quote at length because the above language is such a classic example of
2 "conclusory statements unsupported by factual information" (County of Kern, supra). Clearly
3 this response falls far short of a good faith attempt to respond to the reasonable request of the
4 Water District for a delay in logging until an adequate water quality study is completed and a
5 monitoring program set in place.
6

7 A public comment letter on THP 357 calls for:

8 "...a long term plan for this watershed that lays out logging plans over a period of
9 time, as discussed in the ruling for Sup. Ct. Case No. 78423, preferably for two
10 decades into the past, current plans and plans at least five years into the future.
11 Future plans need acreage, silviculture, amount of road construction, mapping and
12 other specifics. What are the volume /acre (BF), growth, conifer stocking (BA), and
13 species composition numbers for the future plans. For past THPs?" (AR 529)

14 CDF's OR responds in part:

15 "The Forest Practice Rules do not require volume/acre, stocking/acre or species
16 composition for past or future plans assessment. At the time of the submission of
17 this plan, MRC's Option A document was made part of Section V of the plan. The
18 document shows how the company will achieve maximum sustained production of
19 high quality timber products over the next 100 years." (AR 327)

20 The Option A document does not provide the kind of watershed specific information
21 requested in the public concern, which is necessary for an adequate assessment of cumulative
22 impacts on wildlife habitat and other resources. (AR 127-210) The mere fact that it's not
23 required by the FPR is not conclusive. The case law is clear that CEQA is the governing
24 statute and that the FPA and FPR are subject to the policies underlying CEQA.

25 "CEQA and its substantive criteria for the evaluation of a proposed project's
26 environmental impact apply to the timber harvesting industry, and are deemed part
of the FPA and the [Forest Practice] Rules." EPIC v. JOHNSON (1982) 170
Cal.App.3d 604, 620.

1 CDF's response makes no good faith attempt to answer the public concern about long
2 term impacts of multiple THPs in the Watershed, but merely recites boiler plate language and
3 refers the public to other equally inadequate responses. (AR 327-328)

4 The public requested that details of a plan that CDF had already approved (back on
5 October 10, 2000), near to THP 357, be included in THP 357's cumulative impacts assessment.
6 CDF refused, and stated that what CDF terms the THP's "legal description" (map sections) is
7 adequate (AR 324), leaving out silviculture, acreage, logging method, road construction and all
8 cumulative impacts information. The public asked for cumulative road impacts information for
9 the plan submitter's portion of the watershed, as was collected by the restoration project for
10 small landowners (AR 423-479). CDF's answer is completely unresponsive. (AR 338).
11

12 The public asked for details of the plan submitter's future plans, instead of the vague
13 descriptions in the THP. (AR 52-53) CDF responds that asking for details of future plans is
14 "not a reasonable request under 898.2(c)." (AR 328)

15 The public asked various questions and raised concerns about natural resource
16 information contained in the previous owner's SYP. CDF responds that, "Questions related to
17 the SYP are not addressed herein, as intricacies of a withdrawn document do not have direct
18 bearing on the review of or operations on this THP" (AR 322)--this, even while CDF itself, in
19 the same OR, engages in interpreting the SYP writers' meaning of "Greenwood Creek."
20

21 The public asked about recent company fish surveys. CDF's response was to withhold
22 that information from the public, and to use just a bit of it (that no coho were found) to support
23 its own arguments, well after the close of public comment.
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1 These and many other answers in CDF's OR are unresponsive, conclusory and
2 wholly inadequate. In making such responses, CDF abuses its discretion and fails to even
3 minimally satisfy the requirements of CEQA, the FPA and the FPR's.
4

5 D. LOGGING PLAN 357 FAILED TO PROVIDE AN ADEQUATE ANALYSIS OF
6 CUMULATIVE IMPACTS

7 The court in EPIC v. Johnson, supra, 170 Cal.App.3d at 624-625, held that CDF must
8 evaluate the cumulative impacts of a THP pursuant to CEQA and the CEQA Guidelines,
9 emphasizing that the cumulative impacts assessment is critical to ensure that the broad policy
10 goals of CEQA are achieved. The cumulative impact analysis bears directly on the scope of
11 potential adverse environmental impacts, the necessity for mitigation measures, and ultimately
12 the appropriateness of project approval. CITIZENS TO PRESERVE the OJAI v. Bd. Of
13 Supervisors (1985) 176 Cal.App.3d 421, 431.
14

15 The CEQA Guidelines explain that a **mandatory** finding of significance is required
16 when "environmental effects which are individually limited are cumulatively considerable"
17 PRC sec.21083(b) 15064(i)(1) 15065(c). The cumulative impacts assessment of THP 357
18 acknowledges that past logging has seriously impacted the watercourses of the area with
19 sediment, especially the "cat logging" which introduced the ability to displace large quantities
20 of soil. (AR 48) The THP claims that recent less destructive yarding methods and erosion
21 control measures have avoided "significant environmental impacts associated with more recent
22 timber harvesting in the watershed" (id). The RPF misses the issue raised by cumulative
23 impacts analysis, which is not whether significant impacts from individual projects can be
24 avoided, but whether even relatively minor impacts of individual projects taken together over
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1 time are cumulatively significant. (14 CCR sec. 895.1(FPRs), sec. 15355 (Guidelines) . The
 2 Court in Sierra Club (supra) affirmed that CDF is required to thoroughly assess cumulative
 3 impacts before allowing additional impacts. In the watershed assessment section of the
 4 cumulative impacts analysis for logging plan 357, the THP states that a 1995 stream survey of
 5 Greenwood Creek disclosed that "The mean pool filling by sediment was 25%" (AR 56) The
 6 THP states that sediment production potential is greatest where steep slopes are tractor logged
 7 and on unstable areas. The THP then goes on to list measures intended to "minimize"
 8 sediment production" (AR 57). Here again we see the fallacy of purporting to analyze
 9 cumulative impacts by discussing measures which allegedly "minimize" the impacts of an
 10 individual project . Under the Forest Practice Rules and CEQA. CDF must assess cumulative
 11 impacts of THPs according to the following definition:

13 "The cumulative impact from several projects is the change in the environment
 14 which results from the incremental impact of the project when added to other
 15 closely related past, present and reasonably foreseeable probable future projects.
 16 Cumulative impacts can result from individually minor but collectively significant
 17 projects taking place over a period of time." (14 CCRsec.895.1(FPRs) sec.
 18 15355(Guidelines).

17 The approach which proposes to avoid cumulative impacts, by minimizing individual
 18 impacts, is an approach that "allows the approval of projects which, when taken in isolation
 19 appear insignificant, but when viewed together, appear startling." Kings County Farm Bureau
 20 v. City of Hanford 221 Cal. App.3d at 722. In the recently decided case of Redwood Coast
 21 Watersheds Alliance v. California Department of Forestry Superior Court Case No. CV78423
 22 (a case involving another Greenwood Creek logging plan (AR 497-526, 578)), Judge
 23 Lechowick acknowledges that courts give deference to agency expertise on disputed
 24 environmental issues, and states further: "But clear articulation of the reasons for an agency's
 25

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1 decision with specific references to the facts/documents supporting and leading to the agency's
2 conclusions must be made" (id. At p. 8)

3 The deficiency most often cited in public comments on logging plan 357 is its failure
4 to provide an adequate cumulative impacts analysis. (AR 370, 392, 527) In part Petitioner has
5 already addressed, in the above sections, some of the watershed assessment information
6 lacking in logging plan 357, including recent fish survey data, LP SYP information regarding
7 anadromous fish, disclosure of evidence that is positive for Coho salmon (not just evidence that
8 is negative), accurate and complete information on the location and status of salmonids,
9 accurate geographical information, a more intelligible assessment of marbled murrelet presence
10 and habitat, northern spotted owl survey data, water quality monitoring, and cumulative road
11 impacts information.
12

13 Dr Allen Cooperrider, a Ph.D. in zoology with over thirty years of experience as a
14 wildlife biologist, has emphasized the importance of tree diameter as a component of wildlife
15 forest habitat. (See Cooperrider declaration). THP 357 acknowledges that most of the large
16 diameter conifer habitat in Greenwood Creek watershed has been destroyed by past logging.
17 (AR 48) Yet the logging plan fails to provide any reliable, fact based assessment of the effects
18 of past, present and reasonably foreseeable future projects on present and future levels of
19 mature conifer habitat in the watershed containing the THP area. The OR justifies this lack of
20 information by arguing that it is not "reasonable and necessary" to evaluate late succession
21 forest stands in this logging plan because the area does not satisfy the structural requirements
22 for this category. (AR 341) In other words, since there is too little old growth habitat
23 remaining to qualify as late succession stands, there's no need to clearly determine the present
24 number of mature conifers in the area or how many are proposed for harvest.
25
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1 Instead, the public is provided with the general assertion that improved logging
 2 practices and retention policies will support mature conifer regeneration, while only a few old
 3 growth trees will be harvested under the proposed plan to pay for clearing the predominant
 4 hardwoods. (AR 2) This is typical of a particularly insidious pattern of reasoning employed by
 5 MRC and CDF throughout this THP, whereby they justify their non-assessment of habitat
 6 impacts by claiming that there is either insufficient habitat remaining to justify evaluating
 7 impacts, or that species of concern no longer inhabit the area. Since there is little left to protect,
 8 less thorough evaluation is required, according to this questionable logic.

9 The public is offered the speculative projections of an Option A document which
 10 presents MRC's ownership-wide logging goals and general policies (AR 127-210), instead of a
 11 watershed specific sustained yield plan-a long term management plan detailing the current
 12 condition of the resources, past impacts and future plans for the watershed over a period of
 13 years. LP's Sustained Yield Plan, incorporated by reference into the record by Petitioner,
 14 contains total road mileage for the watershed, the number of stream crossings, erosion hazards,
 15 a formula for projecting erosion from future logging operations, wildlife habitat relationship
 16 data for the current and future periods, an extensive summary of information on the presence of
 17 species, and numerous maps showing fish survey sites, stream channel sensitivity, tree species,
 18 late seral and other wildlife habitat. (AR 620-659)

19 None of the above watershed assessment information is provided in the Option
 20 A document, nor is it found in the cumulative impacts assessment analysis for logging plan
 21 357, which merely lists past and present THPs in the Watershed Assessment Area (an
 22 incomplete list) with no evaluation of cumulative incremental impacts from the various
 23 projects over time. (AR 48-76) There is a general assessment of present conditions in the
 24
 25
 26

1 creek and watershed, lists of proposed measures to protect non timber resources, and a general
2 conclusion that :

3 "Based on current regulation and MRC standards, it can be assumed that all present
4 and future timber harvesting in the Greenwood Creek watershed on MRC land will
5 be designed to employ modern, environmentally sensitive methods for harvesting
6 conifer species in conjunction with rehabilitation of understocked stands and other
7 sensitive areas." (AR 52).

8 Judge Lechowick, in REDWOOD COAST v. CDF (supra) finds that :

9 "While there are discussions in the present administrative records concerning
10 cumulative effects on parts of the environment, these discussions appear too
11 generalized to fulfill on their face even the somewhat lesser standards of
12 LAUPHEIMER. Furthermore, CDF's conclusions, even if correct, are not
13 articulated in a manner which fulfills EPIC's standards." (supra at p. 10) (AR 506)

14 Judge Lechowick goes on to quote LAUPHEIMER v. STATE OF CALIFORNIA
15 (1988) 200 Cal. App.3d 440, for a finding that is on point for both REDWOOD and the instant
16 case:

17 "Forestry's file reflects its awareness of the other Plan, but no attempt to relate the
18 two plans in terms of environmental impact. ...So far as can be learned from the
19 administrative record, Forestry's approach appears to have been to minimize the
20 adverse effects of logging operations on the 28 plan site itself, and to assume that
21 such minimization would sufficiently mitigate offsite impacts of whatever kind"
22 (REDWOOD at p. 11, citing LAUPHEIMER at 466). (AR 507)

23 Judge Lechowick concludes his rationale for finding CDF's cumulative impact
24 analysis inadequate as follows:

25 "Assuming that the blended reading of the Forest Practices Act and CEQA allows
26 for small THPs from a large ownership to slowly cover entire watersheds, the only
27 effective assessment and control would come from full disclosures of overall
28 logging plans and proper big picture assessments of cumulative environmental
29 effects and feasible alternatives" (id at 12) (AR 508)

30 Here, MRC is clearly planning to do extensive logging in the Greenwood Creek
31 watershed over the coming years. (AR 50-53) As judge Lechowick has noted, "the only
32 effective assessment and control would come from full disclosures of overall logging plans and

1 proper 'big picture' assessments of cumulative environmental effects and feasible alternatives"
2 (AR 510)—the sort of assessment that is sought by Petitioners and the public comments.

3 Having failed to provide such an analysis, CDF has prejudicially abused its discretion.

4
5 E. CDF FAILED TO ANALYZE A REASONABLE RANGE OF ALTERNATIVES TO
6 THE PROJECT

7 In FRIENDS OF OLD TREES v. CDF (1997) 52 Cal.App.4th 1383, the Court of
8 Appeal held that THPs must comply with the requirement of CEQA to discuss a reasonable
9 range of project alternatives.

10 THP 357 analyzes four alternatives to the proposed project, including a No Project
11 Alternative and Alternative Timing, i.e., a five to ten year delay of the proposed project. In its
12 brief analysis of both alternatives, the THP cites, as potential adverse impacts of adopting these
13 alternatives, the loss of improvements to and maintenance of the road system. (AR 30) At no
14 point is there any discussion of the restoration project, which conducted extensive
15 improvements to the road system that the logging plan proposes to use. (See AR 471-479,
16 Greenwood Creek Road Survey, and declaration of Mary Pjerrou).

17
18 There were requests in the public comment for a "cost-benefit" analysis to evaluate
19 the potential impacts of the proposed logging on restoration project work. There are concerns
20 by the public regarding impacts to road stabilization and specifically to the restoration project
21 flat-car-bridge and to the stream banks on which it rests, and to the many other restoration
22 project erosion control structures on the Sky Ranch Road that will see heavy logging traffic.
23 (See declarations of Kirk Handley and Mary Pjerrou). If the analysis of the delayed project
24 alternative had included an assessment of the value of the restoration project, the potential
25
26

1 impacts on the restoration project, and the possibility of increased monitoring and maintenance
 2 by the considerable number of community members involved in the restoration project, the
 3 relative value of delaying the project to allow for habitat recovery could very well have
 4 emerged as a preferred alternative.

5 This was a reasonable alternative analysis requested by the public, which CDF failed
 6 to require, without providing any rationale for not requiring it. Failure to consider this
 7 alternative could result in significant avoidable impacts to the restoration project, and loss of
 8 benefits to other landowners, water district customers and fisheries. By not considering it,
 9 CDF has prejudicially abused its discretion.

10
 11
 12 **F. PETITIONER WILL SUFFER GREAT OR IRREPARABLE INJURY UNLESS REAL
 PARTY IS PRELIMINARILY ENJOINED**

13 1. Irreparable damage: Petitioner's evidence demonstrating irreparable harm is found
 14 in the declarations of Dr. Allen Cooperrider, a wildlife biologist, Mary Pjerrou, the director of
 15 the Project restoration work, Kirk Handley, President of Sky Ranch Estates, Gerald Huckaby
 16 and Ben MacMillan, President and Vice President of the Elk County Water District Board of
 17 Directors, and Anthony Lewis, director of Bolinas Lagoon Watershed Team, filed in support of
 18 the present application. The irreparable damage is directly related to the imminent destruction
 19 of biologically important mature trees that will be cut down, the immediate threat of increased
 20 erosion from unstable hillsides, immediate harm to the interests of the Elk water users whose
 21 wells are already seriously impacted, immediate harm to adjacent landowners and their road
 22 system, immediate harm and threat of imminent destruction of the community's numerous
 23 erosion control structures in the area, and immediate harm to the habitat of the precarious
 24 population of coho salmon and other listed species.
 25
 26

END OF RCWA 9
(p. 21 of 21 pages)

2. Public Interest: The public interest in environmental protection favors resolution of these issues before this damage occurs and the case is rendered moot by destruction of the environmental values petitioner is seeking to protect.

3. Balance of Hardship: The balance of hardships strongly favors petitioner because:
(1) Real Party MRC may harvest the trees just as easily after the conclusion of this suit as before if the suit is unsuccessful; (2) MRC has no right to harvest timber in violation of California and federal law; (3) if the Court does not grant a preliminary injunctive relief, petitioner will not receive its day in court because after the trees are cut, the damage will be done; and (4) as the record shows, MRC has no lack of logging permits in other areas of the watershed. Petitioner will suffer great and irreparable injury if the requested relief is not granted. A preliminary injunction, in place until the matter can be heard on noticed motion, will not adversely affect Real Party MRC in comparison to the harm that will befall Petitioner and the environment. If relief is not granted, the fisheries will suffer additional adverse impacts, the survival of other listed species dependent upon mature forest structure will be significantly compromised, the quality of the domestic water supply of the town of Elk will suffer additional impacts, and three years of landowner, community and government funded restoration work to control road erosion and sedimentation of the stream will have been wasted, making the case moot.

Dated:

Jerry Bernhaut
Jerry Bernhaut
Attorney For Petitioner

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

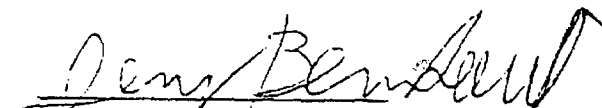
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

NOTICE IS HEREBY GIVEN that on June 1, 2001 at 9:30 a.m. or as soon thereafter as the matter may be heard, in Department E of the Mendocino Superior Court, located at 100 North State St., Ukiah California, Petitioner will move the court for an order pursuant to CCP section 526,527(d), enjoining and restraining Mendocino Redwood Company, Real Party in Interest, and their officers, agents, employees, representatives, and all persons acting in concert or participating with them, from performing, permitting or engaging in timber harvest activities, including, but not limited to felling of timber, road construction and reconstruction, cable yarding corridor construction, heavy equipment use and alteration of stream crossings, on the site described in Timber Harvest Plan 1-00-357-MEN and the appurtenant road adjacent to the South Fork of Greenwood Creek (Sky Ranch Estates).

The motion will be made on the grounds that Petitioner will suffer irreparable harm if the motion is not granted, and that harm to Respondent and Real Party if the motion is granted is much less than harm to Petitioner if the motion is not granted. Harm to Petitioner can not be compensated by money damages.

The motion will be based upon this notice of motion, on the attached memorandum of Points and Authorities, on the attached declarations of Allen Cooperrider, Mary Pjerrou, Gerald Huckaby, Ben MacMillan, Anthony Lewis and Kirk Handley, and on all the papers, pleadings and records on file in this action.

Dated: May 2, 2001


Jerry Bernhaut
Attorney for Petitioner

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6

B. Logging plan 357 and the official response contained

numerous false, misleading and confusing statements on

critical issues

8

C. CDF failed to adequately respond to significant concerns

raised in public comments

11

D. Logging plan 357 failed to provide an adequate analysis

of cumulative impacts

14

E. CDF failed to analyze a reasonable range of alternatives

to the project

19

F. Petitioner will suffer irreparable injury unless real party

is restrained, and balance of hardships favors Petitioner

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