PUBLIC LAW RESEARCH INSTITUTE

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REPORT: PLRI WORKING PAPERS SERIES, Fall 1996-06

LEGAL ANALYSIS OF THE CONFLICTS BETWEEN THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND THE FOREST PRACTICES ACT: AN ANALYSIS OF CASE LAW

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INTRODUCTION

Historically, private litigants and courts have played a significant role in the regulation of timber harvesting in California, often propelling major changes in the state's forestry and environmental laws. Perhaps at no point has this been more true than after

the enactment of the California Environmental Quality Act ("CEQA") and the Z'Berg Nejedly Forest Practice Act ("FPA") in the early 1970's. This paper provides an overview of litigation involving timber harvest practices since that time to the present, focusing on recurring issues that have compelled private parties to seek judicial review. Of principal concern to litigants have been the adequacy of cumulative environmental impact assessments, evaluation and mitigation of impacts on wildlife, perceived violations of agency authority and abuse of discretion, and the interaction of CEQA with the FPA. Although this paper categorizes litigation within these areas for ease of review and analysis, it should be noted that most cases involve a significant amount of overlap.

LITIGATION OF TIMBER HARVEST PLANS IN CALIFORNIA

I. Litigation Leading to the Current Forest Practices Act

One of the first notable examples of judicial influence over the regulation of timber harvesting in recent times is the Court of Appeal decision in Bayside Timber Co., Inc. v. Board of Supervisors of San Mateo County,[1] involving an attack on the constitutionality of the 1945 Forest Practice Act, the precursor of the current FPA. Under the 1945 Act's self-regulatory system, private timber owners had exclusive authority to promulgate rules governing forest practices, with few mechanisms to ensure protection of the environment.[2] The court held that by delegating such broad legislative power to persons with a pecuniary interest in logging, the Act violated the state and federal Constitutions and "[d]enied due process of law to the interested and affected public."[3] The Legislature responded to this decision by enacting the Z'Berg Nejedly Forest Practice Act of 1973[4] ("FPA" or "Act"), which was designed to establish a constitutionally sound framework for balancing the needs of the California timber industry with the public's concern for environmental protection.[5] As discussed in greater detail in Part II of this report, the FPA requires timber operators to submit a timber harvest plan ("THP") to the California Department of Forestry and Fire Protection ("CDF") for review for conformance with the Act and the Forestry Rules[6] and an evaluation of adverse environmental effects on the covered area.[7]

II. Litigation Under the Current Forest Practices Act

Since the enactment of the FPA in the early 1970's, THPs have been litigated in California courts over 30 times.[8] This figure does not include criminal rule violation cases or civil cases in which the suit was dropped, dismissed, settled or otherwise disposed of before a trial on the merits.[9] THP litigation has typically involved claims that the CDF violated substantive provisions of the California Environmental Quality Act ("CEQA"),[10] abused its discretion in approving plans without properly assessing cumulative environmental impacts or considering adverse effects on threatened wildlife, or otherwise exceeded its authority under the FPA and Forestry Rules.[11] Still other cases have turned on largely procedural questions such as the applicability of specific time limitations for the judicial review of claims.

A. Litigation of Cumulative Impacts

Conflicts between the requirements of CEQA and the FPA began to emerge in the 1980's with respect to the assessment of cumulative environmental impacts.[12] Whereas the FPA did not provide for the evaluation of adverse effects of more than one project at a time, CEQA mandated that agencies consider *all* effects on a covered area which, though alone minor, could prove "collectively significant."[13] The Court of Appeal addressed this discrepancy in Environmental Protection Information Center, Inc. v. Johnson,[14] in which it

set aside a Georgia-Pacific Corporation THP covering virgin old-growth redwoods in Mendocino County on grounds that the CDF failed to assess the impact of past and future logging in the plan area. In rendering its decision, the court affirmed prior appellate court rulings that the substantive and policy requirements of CEQA apply to the regulation of timber harvesting under the FPA and Forestry Rules, and found that the CDF's approach of analyzing adverse effects solely on individual operations was contrary to the CEQA Guidelines emphasis on considering past, present and future impacts on the environment as a whole.[15]

Three years later, in Laupheimer v. California,[16] the Court of Appeals affirmed its holding in EPIC v. Johnson that the CDF must assess the cumulative impacts of timber harvesting in evaluating THPs. Laupheimer involved a challenge by homeowners to the CDF's approval of two THPs for logging in the Santa Cruz Mountains.[17] The homeowners lost at the trial court level, and logging under the first THP was completed.[18] On appeal, the homeowners sought to set aside the second THP (for which logging had not commenced) on the grounds that it, *inter alia*, failed to adequately consider cumulative impacts as required by CEQA and the CEQA Guidelines.[19] The Court of Appeal ruled in the homeowners' favor, reaffirming EPIC v. Johnson's holding that CEQA's substantive provisions and “broad policy goals" of environmental preservation apply to timber harvests in California.[20] The court stated that in evaluating THPs, the CDF "must consider all significant environmental impacts . . . regardless whether [they] may be expected to fall on or off the logging site, and regardless whether [they] would be attributable solely to activities described in the [THP] or to those activities in combination with other circumstances including but not necessarily limited to other past, present, and reasonably expectable future activities in the relevant area."[21] However, the court cautioned that the CDF need not engage in speculation about possible cumulative risks, nor make its analysis available to the public; rather, it need only "have looked for and in some reasonable manner assessed potential cumulative environmental effects, and . . . given sufficient consideration to any such effect it should reasonably have considered significant."[22] Thus, at a minimum, the CDF was required to respond to the cumulative impact issues raised by the homeowners and the public when it approved the THPs.[23] Since the CDF failed to do this, its approval of the plan was invalid.[24]

Cumulative impacts were also addressed in Californians for Native Salmon and Steelhead Assn. v. Department of Forestry.[25] Although the appeal turned on a procedural question, the underlying case involved a claim for declaratory relief for the CDF's continued failure to promptly respond to public comments and to assess and mitigate cumulative impacts in approving THPs.[26] In overturning the lower court's dismissal of the plaintiff's action, the Court of Appeal created a cause of action for declaratory relief for engaging in a "pattern and practice" of violating CEQA and the FPA.[27]

This cause of action would later emerge in East Bay Municipal Utility District v. California Department of Forestry and Fire Protection,[28] in which the plaintiff, a utility which provides water to Alameda and Contra Costa counties, sought to establish that the CDF engaged in a pattern and practice of improperly assessing the cumulative impacts of timber operations in violation of CEQA. Both the trial and appellate courts rejected the plaintiff's claim because the plaintiff had failed to present sufficient evidence that the CDF's methods of evaluating cumulative impacts were so defective as to be "legally

infirm."[29] The utility had also challenged the CDF's approval of a specific THP prepared by Georgia-Pacific Corp., which it claimed would adversely affect downstream fisheries and drinking water supplies.[30] The trial court upheld this challenge on the grounds that the CDF failed to properly assess the cumulative impacts of the project.[31] The CDF did not appeal that ruling.[32]

B. Evaluation and Mitigation of Impacts on Wildlife

Much THP litigation[33] has also addressed the sufficiency of the CDF's and the timber industry's efforts to consider and mitigate adverse effects of logging operations on threatened wildlife.[34] For instance, Public Resources Protection Association of California v. California Department of Forestry and Fire Protection[35] raised the question whether a THP prepared by Louisiana Pacific Corp. and approved by the CDF was required to comply with subsequently enacted emergency regulations concerning the protection of the northern spotted owl. The regulations, which were later made permanent, mandated that "[e]very proposed timber operation" within the range of the spotted owl contain sufficient information to allow the CDF to determine if the operation would result in a "taking" of the bird in violation of the Endangered Species Act.[36] The Supreme Court ruled that the Board of Forestry had authority under the Public Resources Code to require compliance with subsequent changes to the Forest Practice Rules, and since Louisiana-Pacific had not yet commenced logging, its operation was still a "proposed" plan within the meaning of the Regulations.[37] Accordingly, Louisiana-Pacific had to comply with the rules by either resubmitting its plan for approval, amending the THP to reflect measures taken to comply, or, if the measures deviated only nominally from the original THP, notifying the CDF of the deviation in writing.[38]

Another case addressing adverse effects on wildlife was Sierra Club v. State Board of Forestry,[39] which involved two THPs prepared by Pacific Lumber Co. and approved by the CDF for logging of old-growth forest in Humbolt County. Following submission of the plans, the Department of Fish and Game determined that the proposed operations could have a significant impact on old-growth dependent species, including the goshawk, Olympic salamander, tailed frog, red tree vole, Pacific fisher, spotted owl, and marbled murrelet.[40] Fish and Game then requested the CDF to obtain additional information from Pacific Lumber on the presence of those species so that it could properly evaluate the THPs and recommend appropriate mitigation measures.[41] Although Pacific Lumber refused to fully comply with the request, the Board of Forestry ultimately approved the plans.[42] Plaintiffs subsequently filed suit alleging that the Board had abused its discretion and violated the provisions of CEQA and the FPA in accepting the THPs without sufficient information on threatened wildlife.[43]

The Supreme Court held in favor of the plaintiffs.[44] The Court found that in approving THPs, "the board must conform not only to the detailed and exhaustive provisions of the [Forest Practice] Act, but also to those provisions of CEQA from which it has not been specifically exempted by the Legislature."[45] Since CEQA grants authority to public agencies to request information necessary to identify adverse impacts on the environment, the Board and CDF could demand data not otherwise required under the FPA in connection with the evaluation of a THP.[46] Moreover, insofar as CEQA mandates that the Board identify adverse environmental impacts before imposing mitigation measures, proposing alternatives, or approving a plan on grounds of "economic, social,

or other conditions," the Board failed to comply by approving Pacific Lumber's THPs without the requisite information.[47] At the same time, the Court acknowledged that the CDF may only request such further information from timber operators as is necessary to evaluate "significant" environmental effects under CEQA.[48]

Similarly, in Sierra Club v. Department of Forestry and Fire Protection,[49] plaintiffs challenged two THPs prepared by Pacific Lumber Co. for logging of virgin old-growth timber in Owl Creek and the Headwaters Forest. The CDF had approved the THPs without requiring Pacific Lumber to implement mitigation measures proposed by the Department of Fish and Game to reduce adverse impacts on several old-growth dependent species, namely, the marbled murrelet, spotted owl, northern goshawk, red tree vole, Olympic salamander, and tailed frog.[50] The court affirmed the lower court's ruling that the CDF abused its discretion in accepting the plans, since the Forestry Rules require THPs to include "all feasible mitigation measures necessary to substantially lessen any potential significant environmental impacts, including impacts to sensitive species. . . . "[51]

Lastly, in Environmental Protection Information Center, Inc. v. Maxxam Corp.,[52] plaintiff challenged the approval of two THPs, claiming that the CDF had failed to adequately respond to the Department of Fish and Game's concerns that the plans did not consider adverse effects on the spotted owl, marbled murrelet, osprey, northern goshawk, Pacific fisher, and red tree vole. The plaintiff obtained a preliminary injunction with respect to logging under one THP (which had already been partially completed), and the parties subsequently agreed to modify the injunction to cover part of the second THP.[53] The court was then left with the question whether to grant plaintiff further injunctive relief on the grounds that the CDF "breached its obligation to consult with the [Department of Fish and Game] and failed to respond to [its] contentions regarding cumulative adverse impacts and mitigation measures affecting threatened bird and mammal species."[54] The court declined to do so, noting that the CDF had since changed its policies with respect to consultation with other agencies and had approved regulations concerning assessment of cumulative impacts and protection of wildlife.[55]

C. Other Violations of CEQA, the FPA and Forestry Rules

In addition to suits concerning the CDF's evaluation of cumulative environmental impacts and effects on wildlife, THP cases have dealt with violations of other substantive provisions of CEQA, the FPA and the Forestry Rules.

1. Interpretations of Board of Forestry and CDF Authority under the FPA and Forestry Rules

In Environmental Protection Information Center v. California Department of Forestry and Fire Protection,[56] the Court of Appeal held that a regulation promulgated by the Board of Forestry to exempt timber operations on land of less than three acres in size from the requirement of filing a THP was invalid. The court noted that although the FPA grants the Board broad authority to adopt rules and regulations pertaining to timber operations and THPs, it only permits the Board to exempt from the THP requirement those activities specified in section 4584 of the Act.[57] That section, which the Legislature has amended several times since its enactment in 1973, authorizes exemptions for, *inter alia*, removal of trees for constructing or maintaining utility lines, harvesting Christmas trees and trees for use as firewood, ornamentation, or for minor forest products, and removal of dead, dying or diseased timber.[58] Insofar as section 4584 does not specifically authorize an

exemption for timber harvesting on land less than three acres in size (other than for one-time conversion to non-timber use), the court held that the Board's adoption of such an exemption was improper.[59]

Conversely, the Court of Appeal did not find a violation of the Act or Forestry Rules in T.R.E.E.S. v. Department of Forestry and Fire Protection.[60] In T.R.E.E.S., plaintiffs claimed that the CDF abused its discretion under the FPA by refusing to require Louisiana-Pacific Corporation to amend a THP in response to plaintiffs' written request.[61] Plaintiffs alleged that Louisiana-Pacific had been harvesting hardwoods in the plan area, which was not approved under the THP, and thus was required to amend the plan to consider additional adverse environmental impacts.[62] The Court of Appeal upheld the lower court's dismissal of the plaintiffs' action, finding that neither the FPA nor the Forestry Rules mandate that the CDF compel amendments to THPs in response to public demand.[63] Rather, the court found that "[t]he only §duty' on the department is to determine that an amendment, if submitted, complies with the Act and Forestry Rules."[64] It is solely up to the timber operator, the court indicated, to prepare amendments as needed or suffer the penalties set forth in the FPA.[65]

2. Applicability of CEQA's Requirements to Timber Harvesting

Since the enactment of the FPA in 1973, the question whether CEQA's requirements are applicable to the regulation of forest practices in California has been the source of much contention. The first case to squarely address this issue was the landmark decision in Natural Resources Defense Council, Inc. v. Arcata National Corp.,[66] involving a challenge by an environmental group and others to THPs submitted by Arcata National Corporation, Louisiana-Pacific Corporation and the Simpson Timber Company without environmental impact reports ("EIRs"). Plaintiffs alleged that the substantive terms of CEQA, and particularly its mandate that all agencies prepare EIRs for projects that may have a significant environmental impact, applied to the THP regulatory program under the FPA.[67] The defendants vigorously opposed this idea, arguing that the FPA was the "functional equivalent" of CEQA and as such solely governed timber harvesting practices in the state.[68]

The Court of Appeals found for the plaintiffs. According to the court, the language of CEQA and the FPA, far from being contradictory, can in fact be harmonized so that the terms of "CEQA are deemed to be a part of the [FPA] . . . ."[69] The court also rejected the defendants' assertion that the FPA was a "functional equivalent" of CEQA, since THPs under the FPA "do not address the same issues" as EIRs under CEQA, and unlike CEQA, the FPA does not make protection of the environment its chief concern.[70] At the same time, the court acknowledged that subsequent legislative developments -- specifically, the addition of section 21080.5 to CEQA in 1976 -- while not granting complete immunity from CEQA, did provide timber operators with "a limited exemption . . . [requiring] the filing of an abbreviated EIR."[71] Section 21080.5 exempts qualified programs from chapters 3 and 4 and section 21167 of CEQA, which pertain to the requirements for EIRs and the time for filing challenges to agency determinations.[72] The court observed that during the pendency of the appeal the Secretary of Resources had certified the THP regulatory system as a qualifying program under section 21080.5, so timber operators no longer needed to prepare "full scale EIRs" under CEQA.[73]

The basic premise of Arcata -- that the provisions of CEQA (other than those exempted

by section 21080.5) apply to the regulation of timber harvests in California -- has been followed in a number of cases, most notably in EPIC v. Johnson, Laupheimer v. California, and Sierra Club v. State Board of Forestry,[74] which dealt with CEQA's cumulative impact and information gathering requirements.[75]

In addition, other cases have addressed questions concerning the applicability of CEQA's public response and judicial review provisions to THPs. For instance, in Gallegos v. State Board of Forestry,[76] the Court of Appeal set aside the approval of a THP because the Board of Forestry provided an insufficient response to the public's concerns regarding the plan's impact on their water supply and increased fire danger. The court found that the official response was necessary for a THP to qualify as the "functional equivalent" of an environmental impact report under CEQA, and interpreted CEQA as requiring the response to "evince a good faith and reasoned analysis why specific comments and objections were not accepted."[77] At the same time, the court noted that the CDF "need not respond to every comment raised in the course of the review and consultation process, but it must specifically respond to the most significant environmental questions raised in opposition to the project."[78]

The standards for the CDF's official response set forth in Gallegos were followed in Libeu v. Johnson,[79] in which the court set aside the approval of two Louisiana-Pacific Corp. THPs for logging of second-growth redwood and Douglas fir in Sonoma County. In Libeu, members of the public and other state agencies had raised significant questions regarding the cumulative effect of past, present and future logging on coastal watersheds in the covered areas.[80] Applying the criteria in Gallegos, the court found that the CDF's response to these concerns "[was] confusing, contradictory, and [provided] little hard data or clear information for the benefit of the public."[81] The court noted that in the absence of a complete response, CEQA's goal of providing the public with oversight over environmental decisions would be thwarted and the THP would not function as the equivalent of an environmental impact report.[82]

Lastly, in Dakin v. Department of Forestry and Fire Protection,[83] the trial court dismissed plaintiff's petition challenging the CDF's approval of a THP prepared by Louisiana-Pacific Corp. on grounds that plaintiff had failed to request a hearing within 90 days of filing. On appeal, plaintiff claimed that the 90-day rule, set forth in Public Resources Code section 21167.4, did not apply to judicial review of THPs.[84] The appellate court disagreed, noting that "[t]he underlying legislative policy of the 90-day rule, the expeditious judicial resolution of CEQA challenges, applies with equal force to THP review. . . . Open-ended delay of judicial review of THP's is inconsistent with the legislative concern over employment and economic vitality in the timber industry."[85] However, since the court's ruling was only to apply prospectively, the court reversed the order of dismissal.[86]

CONCLUSION

Although litigation of forest practices in California has steadily increased over the past decade, reaching a peak in 1991, there is some debate as to the extent it has actually hindered timber harvest operations on private lands. The answer to that question is beyond the scope of this paper. Nevertheless, it is clear that litigants' concerns have remained nearly constant, emphasizing such recurring themes as cumulative impact assessment, evaluation and mitigation of adverse effects on wildlife, and compliance with the provisions and policies of CEQA and the FPA. The fact that debate has persisted with

respect to these issues may reflect problems in the implementation of the forestry act and rules by the Board and CDF, or an increase in environmental activism, or a combination of the two. Still other cases may be explained by evolving interpretations of CEQA and the FPA and of the extent of CEQA's applicability to the regulation of timber harvests. Whether litigation of forest practices in California continues to steadily increase as it has since the early 1980s, or to slowly decline, may depend upon which of these root causes applies.



Footnotes

1. 20 Cal. App. 3d 1 (1st Dist. 1971). back to text

2. Id. at 436-38; see also Sharon E. Duggan, Citizen Enforcement of California's Private Land Forest Practice Regulations, 8 J. Envtl. L. & Litig. 291 (Spr. 1994). back to text

3. 20 Cal. App. 3d, at 439; Duggan, supra note 2, at 291-92. back to text

4. Pub. Resources Code § 4511 et seq. back to text

5. Duggan, supra note 2, at 291. Section 4513(b) of the Act expresses the Legislature's goal of "[achieving] maximum sustained production of high quality timber products . . . while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment." back to text

6. Cal. Code Regs., ti. 14, § 895 et seq. back to text

7. Assembly Office of Research, California 2000: Biological Ghettos, ch. IV, at 32 (July, 1991); M. Anne Jennings and John Davidson, The State's Program for Regulating Timber Harvesting on Private Land: Issues with Still Developing Answers, CBA Environmental Law Section, Environmental Law Institute at Yosemite, at 2 (Oct. 20, 1995). back to text

8. For a list of cases, see Appendix A. back to text

9. According to the Little Hoover Commission's 1994 report, Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs (hereafter, "Little Hoover Commission Report"), 85 civil lawsuits were filed during the period from 1983 through 1993. Of these, 32 cases were dropped, dismissed, or settled, 11 cases were still pending in 1994, and in 7 cases the THP was withdrawn. In addition, 462 criminal rule violation cases were pursued from 1989 through 1993. back to text

10. Pub. Resources Code § 21000 et seq. back to text

11. See Little Hoover Commission Report, supra note 9, at 59. back to text

12. Forty-eight percent of THPs returned by the CDF to submitters in 1993 contained inadequate cumulative impact assessments. See Little Hoover Commission Report, supra note 9, at Table 5. back to text

13. Jennings and Davidson, supra note 7, at 5. back to text

14. 170 Cal. App. 3d 604 (1st Dist. 1985). back to text

15. Id. at 614-15, 620, 624-25. The court also noted that the CDF failed to comply with CEQA by neglecting to consult with another agency about the impact of the THP on a Native American archaeological site in the covered area. Id. at 626. back to text

16. 200 Cal. App. 3d 440 (6th Dist. 1988). For a case applying principles from Laupheimer, decided the same day, see Lexington Hills Assn. v. California, 200 Cal. App. 3d 415 (6th Dist. 1988) (overturning an injunction against logging in Santa Clara County). back to text

17. 200 Cal. App. 3d at 447. back to text

18. Id. at 448. back to text

19. Id. back to text

20. Id. at 462. back to text

21. Id. back to text

22. Id. at 466. back to text

23. Id. back to text

24. Id. back to text

25. 221 Cal. App. 3d 1419 (1st Dist. 1990). back to text

26. Id. at 1423-24. back to text

27. Id. at 1422, 1424; Duggan, supra note 2, at 306-07. back to text

28. 43 Cal. App. 4th 1113 (1st Dist. 1996). back to text

29. Id. at 1131. back to text

30. Id. at 1119-20. back to text

31. Id. at 1120. back to text

32. Id. back to text

33. Twelve percent of THPs submitted in 1993 were returned by the CDF for failure to provide sufficient wildlife protection measures. See Little Hoover Commission Report, supra note 9, at Table 5. back to text

34. In at least one instance, a litigant sought to compel the Department of Fish and Game, rather than the CDF, to comply with rules concerning the assessment of impacts on wildlife in THPs. See Albion River Watershed Protection Assn. v. Department of Forestry and Fire Protection, 235 Cal. App. 3d 358 (1st Dist. 1991) (ordered depublished by the California Supreme Court on Jan. 16, 1992). The court rejected this claim, stating that "[a]llowing a cause of action against an advisory agency such as [the Department of Fish and Game] . . . will do nothing more than engender and prolong needless litigation against a party with no duty or responsibility to issue or deny the THP under litigation." Id. at 386. back to text

35. 7 Cal. 4th 111 (1994). back to text

36. Id. at 115, 118. back to text

37. Id. at 121-22. back to text

38. Id. at 123. Louisiana-Pacific Corp. v. Department of Forestry and Fire Protection, 22 Cal. App. 4th 648

(1st Dist. 1993), review granted Oct. 21, 1993 (SO28951), 1993 Cal. LEXIS 5581 (dismissed Aug. 18, 1994), also upheld the CDF's authority to require amendments to THPs to conform to later-enacted spotted owl and cumulative impact rules. back to text

39. 7 Cal. 4th 1215 (1994). For a thorough analysis of this case, see Jose Antonio Egurbide, California Supreme Court Survey: A Review of Decisions: September 1993 - October 1994, 22 Pepp. L. Rev. 1266 (Apr. 1995). back to text

40. 7 Cal. 4th at 1221. back to text

41. Id. at 1221-22. back to text

42. Id. at 1222-24. back to text

43. Id. at 1224. back to text

44. Id. at 1220. back to text

45. Id. at 1228. THPs have only been exempted from chapters 3 and 4 and section 21167 of CEQA, which deal solely with the requirements for an Environmental Impact Report and the time in which challenges to agency determinations under CEQA must be filed. Id. at 1230. back to text

46. Id. at 1228. back to text

47. Id. at 1233. back to text

48. Id. at 1234. back to text

49. 21 Cal. App. 4th 603 (1st Dist. 1993). This opinion was ordered de-published by the California Supreme Court on March 18, 1994. Sierra Club v. Department of Forestry and Fire Protection, 1994 Cal. LEXIS 1388 (1994). back to text

50. 21 Cal. App. 4th at 606. back to text

51. Id. at 608. In 1990, in response to the Court of Appeals' decisions in EPIC v. Johnson and Laupheimer, the Board of Forestry adopted rules requiring the CDF and timber operators to evaluate cumulative impacts on the environment and threatened species in accord with the CEQA Guidelines. Jennings and Davidson, supra note 7, at 6. These rules became effective in 1991 and mandate that operators provide "'information on the presence and protection' of wildlife individuals or species that may be affected by the [THP]." Id. back to text

52. 4 Cal. App. 4th 1373 (1st Dist. 1992). back to text

53. Id. at 1379-80. back to text

54. Id. at 1381. back to text

55. Id. at 1382. A later case, Environmental Protection Information Center v. State Board of Forestry, 20 Cal. App. 4th 27 (1st Dist. 1993), also involved a challenge to the CDF's approval of a Pacific Lumber THP because it contained insufficient mitigation measures and information on the presence of a threatened species, the marbled murrelet. The lower court set aside the THP and thereafter the Board reconsidered and reapproved the plan. Id. at 29. Plaintiff subsequently attempted to overturn the approval, but its efforts were rejected by the trial and appellate courts on procedural grounds. Id. at 32. back to text

56. 43 Cal. App. 4th 1011 (1st Dist. 1996). back to text

57. Id. at 1022. back to text

58. Id. at 1015, 1022-23. back to text

59. Id. at 1023. California Licensed Foresters Assn. v. State Board of Forestry, 30 Cal. App. 4th 562, 567 (3d Dist. 1994), also concerned the validity of CDF emergency regulations and guidelines approved in late 1991 and 1992 that "[increased] the requirements of a THP and [shifted] the emphasis of the Forest Practice Act from production of lumber to protection of wildlife." However, following the adoption of permanent regulations in 1993, plaintiff dismissed its suit voluntarily before trial, so neither the trial nor appellate courts passed on this issue. Id. at 568. back to text

60. 233 Cal. App. 3d 1175 (1st Dist. 1991). back to text

61. Id. at 1179. back to text

62. Id. back to text

63. Id. at 1182. back to text

64. Id. at 1182-83. back to text

65. Id. at 1182. back to text

66. 59 Cal. App. 3d 959 (1976). back to text

67. Id. at 963-64. back to text

68. Id. at 964. back to text

69. Id. at 965. back to text

70. Id. at 974-75. See also Wildlife Alive v. Chickering, 18 Cal.3d 190 (1976), in which the state Supreme Court ruled that CEQA applies to the Fish and Game Commission. As in Arcata, the court found that the Commission's regulatory program was not the functional equivalent of CEQA, and thus the Commission was required to prepare EIRs when engaging in activities that could have significant environmental effects. 18 Cal.3d at 198, 206. However, the court noted that the Commission could qualify for the "limited exemption" from CEQA under section 21080.5, if it required submission of "written plans of proposed projects with alternatives and mitigation measures," allowed for public review and consultation with other agencies, drafted "written responses . . . to 'significant environmental points raised during the evaluation process," and rejected projects when more feasible and environmentally sound alternatives were available. Id. at 196. back to text

71. 59 Cal. App. 3d at 973. back to text

72. Duggan, supra note 2, at 295; see also supra note 45. back to text

73. 59 Cal. App. 3d at 976-77; Duggan, supra note 2, at 297. back to text

74. See supra. back to text

75. See also Seghesio v. County of Napa, 135 Cal. App. 3d 371 (1982) (holding that county could not demand submission of an EIR in addition to a THP under its local forest practice rules, since the THP regulatory program is exempt from CEQA's EIR requirements on both the state and local levels). back to text

76. 76 Cal. App. 3d 945 (1st Dist. 1978). back to text

77. Id. at 953-54. back to text

78. Id. at 954. back to text

79. 195 Cal. App. 3d 517, 240 Cal. Rptr. 776 (1st Dist. 1987). back to text

80. 195 Cal. App. 3d 517, 240 Cal. Rptr. at 778. back to text

81. 195 Cal. App. 3d 517, 240 Cal. Rptr. at 781. back to text

82. 195 Cal. App. 3d 517, 240 Cal. Rptr. at 779-780. back to text

83. 17 Cal. App. 4th 681 (1st Dist. 1993). back to text

84. Id. at 683. back to text

85. Id. at 687. back to text

86. Id. at 687-88. Similarly, in Albion River Watershed Protection Assn. v. Department of Forestry and Fire Protection, 20 Cal. App. 4th 34 (1st Dist. 1993), the appellate court reversed the dismissal of plaintiff's challenge to a Louisiana-Pacific Corp. THP on grounds that it was not covered by the 90-day rule set forth in Dakin, since that rule only applied prospectively. back to text

Appendix A

Bibliography of Post-1973 Timber Harvest Litigation in California (non-inclusive):[1]

Albion River Watershed Protection Assn. v. Dep't of Forestry and Fire Protection, 20 Cal. App. 4th 34 (1st Dist. 1993) (see supra).

Albion River Watershed Protection Assn. v. Dep't of Forestry and Fire Protection, 235 Cal. App. 3d 358 (1st Dist. 1991) (see supra).

Big Creek Lumber Co., Inc. v. County of San Mateo, 31 Cal. App. 4th 418 (1st Dist. 1995) (holding that county zoning ordinance that regulated where timber harvesting could occur was not preempted by the FPA).

Californians for Native Salmon and Steelhead Assn. v. Dep't of Forestry, 221 Cal. App. 3d 1419 (1st Dist. 1990) (see supra).

California Licensed Foresters Assn. v. State Board of Forestry, 30 Cal. App. 4th 562 (3d Dist. 1994) (see supra).

Children for Old Growth v. California Dep't of Forestry, No. 92-0677 (Del Norte County Superior Ct. April 12, 1993) (rejecting challenge to THP on grounds the CDF failed to evaluate cumulative impacts of harvesting old growth timber in an already heavily logged area), appeal withdrawn, No. A061466 (May 13, 1993), due to appellate court's refusal to issue a stay order.

Coastal Headwaters v. California Dep't of Forestry, No. 60344 (Mendocino County Superior Ct. Jan. 2, 1991) (setting aside THP on grounds the CDF failed to evaluate cumulative impacts on plan area).

Coastal Headwaters v. California Dep't of Forestry, No. 91CP0162 (Humboldt County Superior Ct. Jun. 11, 1991) (setting aside THP because the CDF failed to adequately evaluate cumulative impacts and mitigate adverse effects on downstream fisheries).

Dakin v. Dep't of Forestry and Fire Protection, 17 Cal. App. 4th 681 (1st Dist. 1993) (see

supra).

East Bay Municipal Utility District v. California Dep't of Forestry and Fire Protection, 43 Cal. App. 4th 1113 (1st Dist. 1996) (see supra).

Environmental Protection Info. Ctr. v. California Dep't of Forestry and Fire Protection, 43 Cal. App. 4th 1011 (1st Dist. 1996) (see supra).

Environmental Protection Info. Ctr. v. Johnson, 170 Cal. App. 3d 604 (1st Dist. 1985) (see supra).

Environmental Protection Info. Ctr. v. Maxxam Co., 4 Cal. App. 4th 1373 (1st Dist. 1992) (see supra).

Environmental Protection Info. Ctr. v. State Board of Forestry, 20 Cal. App. 4th 27 (1st Dist. 1993) (see supra).

Friends of Freshwater v. California Dep't of Forestry, No. 92DR0322 (Humboldt County Superior Ct. March 25, 1993) (rejecting challenge to THP on grounds the CDF failed to evaluate and mitigate cumulative impacts on critical fishery habitat), appeal withdrawn, No. A061240 (April 29, 1993) due to appellate court's refusal to issue a stay order.

Gallegos v. State Board of Forestry, 76 Cal. App. 3d 945 (1st Dist. 1978) (see supra).

Jacoby Creek Protection Ass'n v. California Dep't of Forestry, No. 91CP0869 (Humboldt County Superior Ct. Dec. 28, 1993) (setting aside THP).

Laupheimer v. California, 200 Cal. App. 3d 440 (6th Dist. 1988) (see supra).

Lexington Hills Assn. v. California, 200 Cal. App. 3d 415 (6th Dist. 1988) (see supra).

Libeu v. Johnson, 195 Cal. App. 3d 517, 240 Cal. Rptr. 776 (1st Dist. 1987) (see supra).

Little River Alliance v. California Dep't of Forestry, No. 92CP0326 (Humboldt County Superior Ct. May 11, 1992) (rejecting challenge to six THPs covering salmon and bald eagle habitat), affd. Nos. A058614, A060228 (Cal. Ct. App. Dec. 21, 1993) (unpublished opinion).

Louisiana Pacific Co. v. Dep't of Forestry and Fire Protection, 22 Cal. App. 4th 648 (1st Dist. 1993), review granted Oct. 21, 1993 (SO28951), 1993 Cal. LEXIS 5581 (see supra), dismissed Aug. 18, 1994.

Louisiana Pacific Co. v. Friends of the Enchanted Meadow, No. 64726 (Mendocino County Superior Ct. 1991).

Marbled Murrelet v. Babbitt, No. C931400 (N.D. Cal. Jan. 31., 1994).

Mattole Salmon Support Group v. California Dep't of Forestry, No. 83221 (Humboldt County Superior Ct. filed Oct. 27, 1988) (THP withdrawn).

Natural Resources Defense Council, Inc. v. Arcata Nat'l Co., 6 ELR 20623 (Ct. App. 1976) (see supra).

Public Resources Protection Assn. of California v. California Dep't of Forestry and Fire

Protection, 7 Cal. 4th 111 (1994) (see supra).

Seghesio v. County of Napa, 135 Cal. App. 3d 371 (1st Dist. 1982) (see supra).

Sierra Club v. Dep't of Forestry and Fire Protection, 21 Cal. App. 4th 603 (1st Dist. 1993) (see supra).

Sierra Club v. State Board of Forestry, 7 Cal. 4th 1215 (1994) (see supra).

Sierra Club v. State Board of Forestry, No. 951041 (San Francisco Superior Ct. filed April 14, 1993).

Sprowl Creek Watershed Ass'n v. California Dep't of Forestry, No. 92DR0379 (Humboldt County Superior Ct. filed Dec. 13, 1991) (involving challenge to two THPs approved for harvesting in salmon spawning habitat), settled on Jan. 12, 1993.

Tom Long Creek Ass'n v. California Dep't of Forestry, No 92DR0005 (Humboldt County Superior Ct. filed Jan. 6, 1992) (involving challenge to THP on grounds the CDF did not evaluate cumulative impacts on old growth timber and old growth dependent species in the plan area), settled July 10, 1992.

T.R.E.E.S. v. Dep't of Forestry and Fire Protection, 233 Cal. App. 3d 1175 (1st Dist. 1991) (see supra).

Vidaver v. Superior Court, No. A062477 (Cal. Ct. App. argued Aug. 25, 1993, THP set aside by trial court on Oct. 27, 1993) (setting aside THPs due to the CDF's failure to make its evaluation of impacts on the Northern Spotted Owl available for public review) (unpublished opinion).

Wildlife Alive v. Chickering, 18 Cal. 3d 190 (1976) (see supra).

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Footnotes

1. See Sharon E. Duggan, Citizen Enforcement of California's Private Land Forest Practice Regulations, 8 J. Envtl. L. & Litig. 291 (Spr. 1994). back to appendix