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State Supreme Court releases long-awaited decision on clearcutting litigation

After seven years of litigation, the California State Supreme Court released a decision today that directly affects clearcut logging plans by Sierra Pacific Industries (SPI) in the Sierra Nevada region. The Court's decision favored the lumber company in its claim that it does not need to do a more thorough job of assessing the cumulative impacts of clearcuts on wildlife across its vast timberlands in the State. Rather than ruling on the merits of whether or not clearcuts were harmful to wildlife or whether herbicide spraying caused environmental damage, the Court narrowly focused on technical points concerning adequacy of review.

In its ruling, the Court determined that while the lumber company hadn't formally considered a range of assessment areas for evaluating impacts on wildlife, as regulations specify, it had submitted enough information throughout its logging plans to meet the letter of the law. Likewise, the Court ruled that while State Forestry officials incorrectly claimed that they didn't have authority to judge herbicide safety, they nevertheless had still gone ahead and sufficiently evaluated the potential for risk from SPI's widespread herbicide use.

Two Sierra Nevada conservation groups – Ebbetts Pass Forest Watch (EPFW) and Central Sierra Environmental Resource Center (CSERC) – challenged the California Department of Forestry (CDF) in 2001 over three timber harvest plans filed by SPI. Those three plans targeted a total of more than 1,100 acres of clearcuts or similar logging treatments across a broad area of forest near Calaveras Big Trees State Park.

When those plans were approved by the California Department of Forestry, CSERC and EPFW protested that the state was failing to protect a wide range of wildlife species. With no other recourse to challenge the effects of the clearcuts, the two local conservation groups filed a lawsuit. The key issues in the litigation focused on SPI's failure to consider the widespread effects that clearcuts cause for many wildlife species, and also on SPI's minimal analysis of the chemical spray treatments the company uses on hillsides after the trees are logged.

In 2006 the Fifth District Court of Appeal halted the three logging plans and agreed with the two local conservation groups, but SPI and CDF appealed that court decision to the State Supreme Court.

On March 5th, 2008 the case was heard before the California Supreme Court in San Francisco.

Tom Lippe, an attorney for EPFW and CSERC, explained the key points of the lawsuit to the Supreme Court justices. Attorneys for SPI and CDF assured the court that clearcut logging is benign for the environment and that SPI only sprays herbicides on an acre once in 80 years. Conservation activists have in the past been told directly by SPI employees that, in reality, SPI often applies three or four times to a site in just the first 10 years – not one time in 80 years. After the hearing, local environmental representatives who attended the hearing shared frustrations that such incorrect information became the basis for SPI's claims.

The court decision today appears to allow SPI to continue its clearcutting practices and widespread herbicide use in the current manner that the State has been allowing. The ruling is a clear setback for environmental community efforts to pressure SPI to reduce clearcuts on grounds that wildlife and water resources are being harmed. However, both of the conservation groups involved in the case plan to continue their diverse range of efforts to curtail clearcutting in order to reduce harm to water, wildlife and scenic values.

John Buckley, CSERC's executive director, noted: "No one is trying to stop SPI from logging – only from doing it without adequately protecting the environment. In this modern age, clearcuts should be phased out in California. Despite today's technical, procedural ruling that accepts the current level of paperwork analysis, we hope that Californians will eventually decide to stop clearcuts in our state in order to better protect water and wildlife resources."

John Trinkl, President of EPFW stated: "In addition to concerns about herbicide use and wildlife protection, there is mounting evidence that clearcutting contributes to increased fire danger and global warming. The ultimate solution is to draw the practice of clearcutting to a close and replace it with the type of selective harvesting that has been practiced in California for generations. We don't have to choose between healthy, sustainable timber practices and a healthy environment and economy—they complement one another."

It is not fully clear at this point whether the three contested logging plans will immediately be allowed to proceed or whether there will be further judicial review at the Appellate Court level. The Supreme Court decision today reverses the previous Court of Appeal decision that had favored the environmental litigants, but the decision also remands the matter back to that court for further proceedings consistent with the Supreme Court's opinion.