

Ebbetts Pass Forest Watch

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Ebbetts Pass Forest Watch Comments on Timber Harvest Plan No. 4-08-23/TUO 2 McKee Hill)

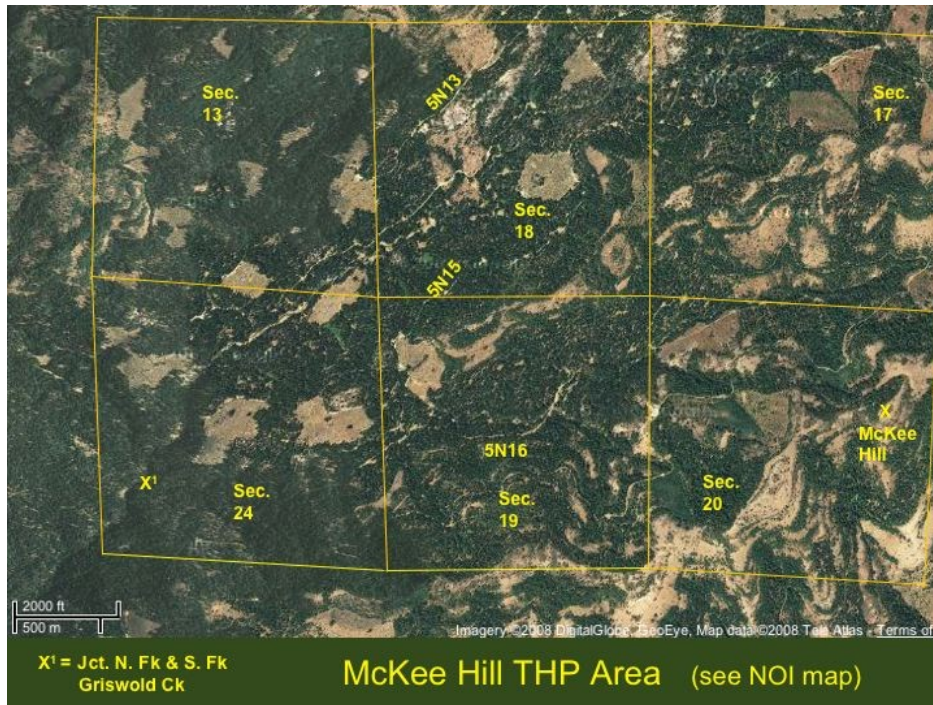
June 24, 2009

To whom it may concern:

These comments are submitted on behalf of Ebbetts Pass Forest Watch (EPFW). These comments detail ways in which Timber Harvest Plan (THP) No. 4-08-23/TUO 2, hereafter referred to as **McKee Hill**, does not meet the intent of the **1973 Z'Berg-Nejedly Forest Practice Act (FPA)¹** or the requirements of the **California Environmental Quality Act (CEQA)²**. Until these areas of concern are redressed and the THP appropriately modified, **the Hermit Crab THP must be denied**. In addition to these comments EPFW separately submitted our support for the two comment letters from John Buckley (CSERC).

¹ detailed comments begin on page 3 of this comment letter

² detailed comments begin on page 14 of this comment letter



EPFW has been active in monitoring and commenting on THPs in the Sierra Nevada for the past nine years. During that time, the number of THPs submitted by Sierra Pacific Industries (SPI) which call for a majority of harvest though evenaged management has continued to grow across the Sierra Nevada. The California Department of Forestry and Fire Protection (Cal Fire) has consistently approved these THPs after reviewing each one in isolation as if it were not part of a larger system. The result has been a constantly-expanding range-wide landscape of clearcuts and near-clearcuts. Recent THPs propose removing units adjacent to recent clearcuts in areas where pictures taken from small aircraft do not even reveal meaningful regrowth in the earlier clearcuts (see photo “SPI Clearcuts/Plantations along Forest Ck. and Winton Road” submitted on the Hermit Crab THP). McKee Hill is no exception with 545 acres (85% of a square mile) to become essentially deforested until regrowth is established (excluding native plants killed with herbicides). A GIS map attachment of proposed McKee Hill THP was submitted separately from this comment letter via email as an attachment to this letter and it shows the existing negative logging impact in the vicinity of this THP).

So far, Cal Fire has not found one instance of a potential or actual significant cumulative impact from this widespread, intensive harvest across the Sierra Nevada. Nor has Cal Fire established any thresholds of significance for water, wildlife, habitat disturbance, climate, fire threat, or any other possible impact from which agency or public reviewers could gauge the threat to resource protection posed by any THP, McKee Hill included. Unfortunately, this situation is unchanged from that in 1990 when LSA Associates assessed the THP process for Cal Fire³ (then CDF) and found, among other findings, that:

³ “Conclusions and Recommendations for Strengthening the Review and Evaluation of Timber Harvest Plans.” Prepared for California Department of Forestry and Fire Protection. LSA Associates, Inc. March 1990.

- To date, a THP with a positive determination of significance has been submitted in only the rarest of occasions (well less than .1% of all THPs). We were not able to uncover an instance in which CDF rejected the RPF's judgement. So in effect, the THP has evolved into the functional equivalent of a "mitigated negative declaration", applied categorically. With respect to possible wildlife impacts, we believe the Department's tacit endorsement of the almost-categorical judgement of non-significance is both practically and factually untenable.
- To categorically hold to the position that impacts are not significant, as the Department has essentially done to date, increasingly puts the credibility of the THP review process in jeopardy. Some RPF's have argued, and the CDF has accepted, that for non-listed species, significant impacts occur only if viability of the species is threatened. Relative to definitions of significance in both the forest practice rules and the CEQA guidelines, we find this standard to be overly restrictive and without the support of widespread professional biological opinion. Where the case-specific facts merit it, we feel that it is necessary for the Department to take issue with the RPF's determination of non-significance. Either by not accepting offending THPs for filing or by returning them unapproved, it is important that the Department take steps to end its tacit endorsement of categorical non-significance.
- In our professional judgement, we believe that significant adverse cumulative impacts on wildlife (and other) resources can occur from a broad range of "development" activities including timber harvesting. We note that the preponderance of professional wildlife management opinion is consistent with our perspective. We further note that in the context of other planning processes such as EIR preparation, that a positive determination of significant cumulative impacts is increasingly common.
- In contrast to the status of cumulative impacts analyses in other planning processes, of those that we examined we were not able to identify a THP in which the RPF or review team concluded that a significant cumulative impact on wildlife or their habitat would occur. With respect to other resources, the occurrence of a positive determination was only slightly higher and was generally limited to water quality impacts. So, as with significant on-site impacts, the aggregate implication of the conclusions reached in THPs to date is that there are essentially no cumulative wildlife impacts, and very little other resource cumulative impacts associated with state and private timber harvests in California. In our judgement, the implied position that the Department has assumed with respect to cumulative impacts lacks credibility and represents a significant weakness in the overall administration of the forest practices program. We believe that responsible agencies (e.g., DFG), the public, and the courts are increasingly focusing on cumulative impacts and that continued adherence to the Department's present position places the viability of the THP process in jeopardy.
- Our conclusion is that the present situation results from the inadequate cumulative impact analysis methodology that is currently in place. The use of boilerplate responses projects the undesirable and unfortunately accurate impression that the review team is not affording an adequate level of attention to their cumulative

impact assessment responsibilities. For both the RPFs' and review teams' responsibilities, it is apparent that the process suffers from a lack of adequate direction and guidance on how to accomplish a meaningful cumulative impacts analysis. When coupled with the widespread sense within the forestry profession that acknowledging the possibility of a significant impact is tantamount to a kiss of death for the THP, it is not surprising that so few THP preparers and reviewers reach an affirmative conclusion.

CAL FIRE included the LSA Report as an attachment in our comments on the Hermit Crab THP.

The following are EPFW's detailed comments.

The McKee Hill THP must be denied because it does not meet the intent of the 1973 Z'Berg-Nejedly Forest Practice Act (FPA)

The FPA sets forth the intent of the legislature and the framework for timber harvest on private forestlands in California:

4512. Findings and declarations.

(a) The Legislature hereby finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection.

(b) The Legislature further finds and declares that the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.

(c) The Legislature thus declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations.

(d) It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

4513. Intent of Legislature. It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to assure that:

(a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.

(b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.⁴

⁴ Z'BERG-NEJEDLY FOREST PRACTICE ACT 213 Division 4, Chapter 8, Public Resources Code

As summarized in the January 5, 2009, “Advice Regarding Board of Forestry’s Regulatory Authority to Provide of the Restoration of Resources” letter from the Office of the Attorney General:⁵

In sum, the plain intent of the Legislature in enacting the FPA was to require the Board to view the forests of the state as a complete working ecosystem, and not only as a producer of high-quality timber, but also as forest lands valuable in their own right as a public resource.

The intent of the FPA was further clarified in the California Forest Practice Rules (FPR): **897b**) In determining whether a THP conforms to the intent of the Act, the Director shall be guided by the following principles:

(1) The goal of forest management on a specific ownership shall be the production or maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants, in which trees are grown primarily for the production of high quality timber products and which meet the following objectives:

(A) Achieve a balance between growth and harvest over time consistent with the harvesting methods within the rules of the Board.

(B) Maintain functional wildlife habitat in sufficient condition for continued use by the existing wildlife community within the planning watershed.

(C) Retain or recruit late and diverse seral stage habitat components for wildlife concentrated in the watercourse and lake zones and as appropriate to provide for functional connectivity between habitats.

(D) Maintain growing stock, genetic diversity, and soil productivity.

(2) Individual THPs shall be considered in the context of the larger forest and planning watershed in which they are located, so that biological diversity and watershed integrity are maintained within large planning units and adverse cumulative impacts, including impacts on the quality and beneficial uses of water are reduced. ⁶

However, despite these clear mandates from the FPA and the FPR, THPS are reviewed and approved in a piecemeal fashion with a bias to maximum timber yield as the primary value that overrides all others. The failure of this piecemeal approach to THP review and approval to protect resources was a central conclusion of the bi-partisan 1994 Little Hoover Commission investigation⁷:

The authorizing statutes for the Timber Harvest Plan set the stage for logging while acknowledging the need to protect natural resources, including waterways, wildlife, fish, native plants, scenic views and recreational areas. Despite timber industry complaints

⁵ Rudd, Anita. Department of Justice, State of California. Office of the Attorney General. Attorney-Client Communication and Work Product

⁶ California Forest Practice Rules 2009. Compiled by the California Department of Forestry and Fire Protection. Sacramento, CA. January 2009. p. 23.

⁷ Little Hoover Commission. “Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs” (Report #126, March 1994). State of California

<http://www.bsa.ca.gov/lhcdir/126rp.html>

<http://www.lhc.ca.gov/lhcdir/126es.html>

about the process, harvesting on private land has declined only marginally in the past five years and plans are routinely approved -- both signs that economic interests are being met. But the plan process has proven less effective in protecting the environment, as demonstrated in three areas:

- The process looks at potential damage on a site-by-site basis rather than across entire ecosystems, making it difficult to assess cumulative impacts over time and throughout watersheds.
- Litigation rather than resolution is often the focus of the participants, leading to a strained decision-making process and lack of consensus.
- Resources and priorities are devoted to issues of process rather than outcome, with the result that people are more interested in dotting i's and crossing t's than in how effective mitigation measures are.

The entire Little Hoover Commission Report is included as an attachment to this comment letter.

Specific ways in which McKee Hill THP does not meet legislative intent

“The Legislature thus declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations.”

This clear statement by the legislature in 1973 was a restatement of their commitment to the Public Trust Resource Doctrine and set the bar for timber harvest approvals in the state. McKee Hill as proposed does not meet this standard.

The McKee Hill THP proposes essentially 545 acres of clearcutting (with a few trees kept for the purpose of “visual retention” called visual retention) and selectively harvesting of 35 acres. This logging is in addition to the harvest that has already occurred in this watershed and in the Tuolumne Game Refuge (including the recent Cow Camp THP which also affects the Beaver watershed) in the recent past and that is anticipated in the foreseeable future. This is not indicative of “prudent and responsible forest resource management”; or does it meet the other “Implementation of Act Intent” requirements delineated in the FPR.

RPFs who prepare plans shall consider the range of feasible silvicultural system [sic], operating methods and procedures provided in these rules in seeking to avoid or substantially lessen significant adverse effects on the environment from timber harvesting.⁸

SPI has pre-determined that “a majority” of their harvest activity across their ownership will be by evenaged methods. This is overtly stated by them in THPs and in public. Their activities

⁸ FPR, section 897. p. 23.

since 1998 have certainly borne out this intent, which seems to be a blanket decision based on economic considerations and not specific resource conditions of specific sites. THP by THP, there is no consideration of “the range of feasible silvicultural system [sic], operating methods and procedures” available to them through the FPR.

maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants....Maintain growing stock, genetic diversity, and soil productivity⁹

Harvesting like that in McKee Hill which removes adjacency areas between recently-harvested clearcuts and creates large tracts of land with few older trees and limited biodiversity certainly does not meet the FPR principle of “maintenance of forests which are healthy and naturally diverse, with a mixture of trees and under-story plants.” The use of herbicides in conjunction with the clearcutting assures that understory plants are not an element of the ecosystem for a significant amount of time, perhaps indefinitely.

SPI and CAL FIRE continue to allege that after clearcutting and extensive use of herbicides that beneficial early successional growth occurs. In fact for EPFW and others continue to submit photographic evidence that in show that this is not the case in many plantations that the public can easily observe. In these plantations there is limited native vegetation in the previously clearcut and herbicide treated areas. Wildlife suffers for decades with a loss of all kinds of needed habitat. SPI and its foresters and CAL FIRE’s foresters know this is true. RPFs and the even the general public have personally seen the difference between native vegetation in non-evenaged forests and the limited native plant regeneration in clearcut and herbicide-treated evenaged forests. In Calaveras County, where there are young USFS forest plantations that have not had herbicide treatment, the observable wildlife, native vegetations, and birds calls, etc. are astounding in contrast to that of SPI’s plantations. Despite the observable differences both CAL FIRE and SPI RPFs continue to make statements that imply that SPI spends a large sum of money on expensive herbicides which really don’t work. Such claims are misleading and do not reflect reality. Logically, the herbicides used must be having a significant impact or else SPI would not invest in these expensive agricultural chemicals and accept the risks of the demonstrated toxicity of atrazine and other agricultural chemicals.

The removal of all naturally-occurring vegetation on 545 acres of land within McKee Hill and replacement with limited-species of trees is not calculated to result in a “naturally diverse” forest or a forest with “genetic diversity.” Page 141 of the THP indicates that approximately 60% of the surface area of this THP will be completely stripped of vegetative cover. Anyone who owns any property knows that heavy rains will result in negative soil and water impacts from bare soil particularly in hillside areas. The maintenance of McKee Hill’s “soil productivity” in large exposed tracts, including poorly-regenerated adjacent clearcuts, under climate change’s anticipated warmer and drier condition is potentially problematic. Any assertions by SPI or Cal Fire that this is not the case as we enter a climatic situation in the Sierra Nevada unlike any past model are unsubstantiated and indefensible.

⁹ *Ibid.*

Achieve a balance between growth and harvest over time

Looking at the photo/graphic of McKee Hill as proposed, it is obvious that there is not a balance between growth and harvest on this landscape. In a short time period, a majority of the forest is slated to be removed through harvest of all vegetation on the site. The regrowth portion of the “growth and harvest” equation takes decades and means that the greater forest will be similar in its age range, limiting wildlife options, for instance, at all stages of this long continuum. The natural “balance” implied in the principle is being perverted to a pendulum swing from one extreme to another.

Maintain functional wildlife habitat in sufficient condition for continued use by the existing wildlife community within the planning watershed

Looking at the visuals for the proposed McKee Hill THP, it is evident that large swaths of habitat have been removed in the recent past and now 901 will be disrupted 545 of those acres through clearcutting, which removes all habitats on that land. There is no way there can be “continued use by the existing wildlife” within much of this landscape.

The McKee THP shows that there have been 2,591 acres of logging in the watershed assessment area of approximately 10,125 acres. Acreage of the BAA is not provided in this THP. SPI has logged over 26% of this watershed in the last 10 years and now plans to log/disturb another 901 acres bringing the total significant disturbance in this watershed to approximately 34%.

- **This THP fails to detail the specific acreage of each silviculture method in past THPs/**
- **Furthermore this THP does not detail anticipated future logging within the assessment areas as was done in the recent Hermit Crab THP. SPI has detailed long range plans which likely include this area.**
- **Both of the above are failures to disclose known information that is required under CEQA for cumulative impacts analysis.**

The McKee THP fails to provide adequate information and assessments on the potential or actual occurrences of special status species for various tree bats. No measures to identify or protect these species have been discussed in this THP.

SPI states that snags and oaks will be maintained, but specific inventories are not cited nor steadfast commitments made. Based on SPI’s actions since 2000, EPFW is skeptical that significant snag or oak habitat will in fact be retained. Cal Fire must demand such inventories and commitments to achieve compliance with legislative intent. Lacking these, it is just one more reason that McKee Hill must be denied.

Protection of the Rail Road Flat Deer Herd is a Calaveras County priority, as set forth in the

County General Plan. However, this is not assured under the McKee Hill THP. This is especially true when one considers the effects of this THP with those from earlier and foreseeable future timber harvests.

Generally, there are two categories of deer that inhabit Calaveras County: those that are year-round residents and those that are part of the migratory group known as the Rail Road Flat deer herd. The resident deer have wide-spread habitats and are fairly adaptable to human uses of the land. The deer herd is more sensitive to human encroachment, and is especially vulnerable to loss of habitat and disruption of migration routes through building and development efforts

The herd can adapt to most habitat types, but optimum habitat has food and cover types arranged in close proximity. The winter range is considered to be a key factor in the health and size of the migrating deer herd.

A detailed study by Department of Fish and Game in 1973, estimated the size of the herd at that time as being between 6,000 and 9,000, with the population trend in decline (as has been the case since at least the 1960s). The study found both the condition of the herd and of their range to be poor. **Reasons given for the poor condition and downward population trends were: poor quality of summer range, overuse of available forage, plant succession and fire suppression, habitat deterioration, human encroachment, and drought. These issues continue to be of concern today.**

Current Department of Fish and Game policy regarding deer herds is to restore and maintain critical habitats. Because of the population decline in the Rail Road Flat deer herd, only grazing and timber harvesting are considered compatible land uses. In certain cases, these uses can actually increase the quality of the habitats if overgrazing or **removal of large stands of forest are minimized**.¹⁰ (emphases added)

An additional factor that limits “functional wildlife habitat” in McKee Hill is the wide variety of herbicides that “will likely” be used. Again, based on SPI’s actions since 1995 that EPFW has tracked, it is essentially a surety that an array of herbicides will be used. A summary of SPI herbicide usage in Calaveras County 1995-2006 is included as an attachment with this comment letter. From it, the array and amount of chemicals used is presented, and allows an educated guess as to use on McKee Hill. Among the usage is 4,459 pounds of Atrazine, a chemical now banned in other countries and irrefutably linked by numerous studies, including those by the US EPA (<http://www.epa.gov/espp/litstatus/effects/redleg-frog/index.html#atra...>), to serious damage to amphibians and their habitat. Long Ridge THP comments are included as an attachment to this comment letter and provide further data on herbicide issues related to McKee Hill as well as other SPI THPs.

Neither Cal Fire nor SPI cite any meaningful and credible scientific data about habitat and diversity for the McKee Hill assessment area following clearcutting and conversion of forests

¹⁰ Calaveras County General Plan. December 9, 1996. Page V-9.

into tree plantations.

An example is the recent Aubrey et al research paper¹¹ in *Forest Ecology and Management* which concluded that retention of even 15 percent basal area retention of green trees in each clearcut harvest unit was not sufficient to support normal forest ecological processes and species viability. This was true whether or not the trees were retained as clumps, or spread out through the units (dispersed retention). The researchers found that “For taxa that are particularly sensitive to changes in temperature or humidity, even high levels of dispersed retention may be inadequate, and persistence within harvest units may be limited to the centers of relative large (more than 1.0 hectare) [note that 1.0 hectare = 2.47 acres] intact forest patches.”

The study also has wildlife implications in the face of a growing climate crisis. Even within the wetter, cooler Pacific Northwest where this study was conducted, the researchers found that “retaining live green trees in 15 percent of each harvest unit does little to achieve the intended goal of microclimatic amelioration; considerably greater levels of retention are needed to effectively reduce solar radiation and air or soil temperatures.” These results are even more significant when considering the hotter, drier conditions of the Sierra Nevada. Such information must be considered by Cal Fire in making management decisions for California’s forests and must be made available to agency and public reviewers of THPs. Given the inadequacy of data considered in the McKee Hill THP, the plan must be denied for not having shown definitively that it has considered appropriate data on which to defend its conclusion that wildlife and habitat are adequately protected.

With no thresholds of significance or credible scientific data presented by Cal Fire or SPI in McKee Hill for all these habitat issues, adequate public review such as that conducted by EPFW is impossible. Like other reviewers, we are left to draw our own conclusions. Given the variety of issues around habitat, we conclude that there is a significant negative impact to wildlife posed by this THP that have not been addressed and that do not meet the mandates of legislative intent.

<p>The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.</p>

The FPA is clear in its intent to protect “values relating to recreation regional economic vitality, employment, and aesthetic enjoyment.” SPI’s massive clearcutting in a county such as Calaveras County and across the Sierra Nevada negatively impacts all of these crucial values. McKee Hill significantly adds to the negative cumulative impact for all these values and must be

¹¹ Aubry, Keith B. (USDA Forest Service, Pacific Northwest Research Station, 3625 93rd Ave. SW, Olympia, Washington 98512 USA). Halpern, Charles B. (*College of Forest Resources, Box 352100, University of Washington, Seattle, Washington 98195 USA*). Peterson, Charles E. (*USDA Forest Service, Pacific Northwest Research Station, 6200 SW Main St., Suite 400, Portland, Oregon 97205 USA*). 2009. *Forest Ecology and Management*. In press. “**Variable-retention harvests in the Pacific Northwest: a review of short-term findings from the DEMO study**”. 2009.

denied.

Calaveras County's economy in the nineteenth century and into the twentieth century was based on resource extraction, initially mining and subsequently logging. However, in the last decades of the twentieth century, the economy moved into an economy based on recreation, tourism, and an amenities-based lifestyle appealing to second homeowners and retirees. In the twenty-first century, this economy-base is the one driving the bulk of the county. With no milling infrastructure in the county, few forest workers and all industrial forestlands in a lowered tax bracket, logging has become a minimal part of the county's financial picture.

“The West has, and continues to, evolve. The era of economic dependency on resource extraction has long since passed. The logging industry has been a fraction of the economy of the Sierra's rural counties for decades. Even in the counties where significant logging industry infrastructure remains and where the economies are the least diversified, timber employment is a bit player.”

“The West and its old industries cannot return to those heydays of yesteryear even if we wanted to. The transition was, and its affects continue to be, wrenching. People and places still feel the displacement. Whether that will be an asset or liability depends, at least in part, on purposeful leadership. But we cannot deny the effects and power of the marketplace. The throes of the transition have passed and today's West is our future. We can rail against it and be swallowed or guide it and prosper.”¹² (Testimony of former Montana Congressman, Pat Williams, at a recent hearing on the topic of the “Evolving West” in the House Natural Resources Committee.)

The intensive clearcutting logging that has become the predominant management method in the forests impacts recreation enjoyment, scenic views, local economic vitality and therefore employment. EPFW receives calls from prospective homeowners who are leery of buying a home in an area being clearcut. Recreational retailers report customers unhappy with the scenic degradation and hesitant to return to the county. Individuals tell us they no longer fish at their traditional fishing spots because of the ugliness. Homeowners believe their home value has been devalued by the scenic damage and some have received tax relief from the county based on this damage. Calaveras Big Trees State Park hosts over 2 million visitors each year from around the world; they now look out on a multitude of clearcuts from the “scenic” overlook. Travelers along the Highway 4 Federal and State Scenic Byway are seeing exposed clearcuts at numerous sites. And commercial airline passengers are seeing a patchwork of deforestation across the entire Sierra Nevada region as they fly through California.

The January Attorney General's Advice letter cited earlier is clear that all values intended for consideration are of equal value. Maximum timber yield does not trump everyone else's interests. Cal Fire continues to ignore the regional economic, aesthetic, and recreational values in a number of ways, one of which being that there is not a “significant” number of people being affected by it. This is blatantly untrue. Also, they have said that on the highways people are

¹² http://www.sierraforestlegacy.org/CF_TheEvolvingWest/TheEvolvingWest.php

traveling fast so they only see the clearcuts for a brief time so it is not significant. This is also a fallacious defense. Finally, Cal Fire clings to the argument that if the clearcuts are more than three miles away from the viewer, they are not significant. Anyone who has looked down from 30,000 feet of altitude in a commercial plane knows this is not true.

Significant numbers of people are affected by the clearcuts. They are a negative economic factor to the entire region. Every clearcut adds to the cumulative negative effect that is being experienced by millions. In the face of the reiteration of values in the Attorney General's letter, Cal Fire can no longer dodge this issue. McKee Hill THP must be denied due to its negative impact on recreation, regional economic vitality, employment, and aesthetic enjoyment.

Some evidence of the importance of this issue follows:

The importance of this issue is clarified in the Sierra Business Council's *Sierra Nevada Wealth Index: Understanding and Tracking our Region's Wealth*.¹³ The following are some statements that speak to this issue:

- **What defines the Sierra Nevada, more than any fact or figure, is the dramatic beauty and ecological uniqueness of our landscape....**These natural wonders are our treasures; they are to California what the Pyramids are to Egypt, the Louvre to Paris, and the Golden Temple to Kyoto.” .” (7)
- [T]he Sierra Nevada's economic well-being depends on more than just financial capital.” (6)
- To understand the economy of the Sierra Nevada, it is important to assess and track three types of wealth: 1) social or human capital; 2) natural or natural resource capital; and 3) financial capital. Each must be conserved and increased if the Sierra Nevada economy is to be prosperous, stable, and sustainable. (8)
- Each form of capital supports the economy, and the diminishment of any one will undermine the others...Deteriorating natural assets, such as polluted streams or marred scenery, reduce property values, drive away new businesses, and undermine the quality of life for current residents.”
- The bottom line is that the Sierra Nevada's exceptionally high natural and social capital are the magnets holding and attracting financial capital to our region. Our outstanding environmental quality, attractive towns, and good schools are no longer simply nice amenities: they are essential elements for business retention and investment.”
- The *Sierra Nevada Wealth Index* “reminds us that our region's prosperity depends directly on our willingness to make wise use of our assets and to act swiftly to prevent their diminishment.” (6)
- Recent economic research has led to new, more inclusive and useful definitions of wealth. Wealth is not just monetary worth, but the different types of capital that, taken together, sustain a region.
- The Sierra Nevada's wealth will grow only to the extent that public and private decision

¹³ Sierra Business Council. *Sierra Nevada Wealth Index: Understanding and Tracking our Region's Wealth; 1999-2000 Edition*. 1999.

makers invest resources carefully and wisely to expand that wealth. Wiser decisions are made when local leaders understand and act on long term trends.” (8)

- ...polls of Sierra Nevada voters and interviews of Sierra Nevada business owners, which demonstrate, time and time again, that the primary motivation for most people to live in the Sierra Nevada is the region’s outstanding quality of life and exceptional natural environment.” (11)
- This diminishment of natural capital, if it continues, will ultimately drive financial capital from our region to places with effective long-term plans to safeguard their natural capital as population increases.” (11)
- In the last twenty-five years, the Sierra Nevada’s economy has changed perceptibly. The percent of people employed in traditional natural resource industries such as timber, mining and agriculture has declined. (58)
- **Tourism Accounts for Fifteen Percent of Sierra Nevada’s Payroll**
Tourist spending accounts for 15% of total payroll in the Sierra Nevada, compared to 3% of total payroll in California. The importance of tourism to local wages varies considerably across the Sierra Nevada, [comprising] approximately 28% in the south Central Sierra... [**note: Calaveras County is in the South Central region of the Sierra Nevada**]
- In 1997, visitor spending accounted for over \$3.3 billion in revenues to Sierra Nevada communities.” Tourist spending: \$880 million/year in South Central Sierra (2nd highest of regions noted) (64)
- Tourism spending [in Calaveras County] topped \$190 million in 1996, accounting for 31% of total payroll.” (95)
- 1996 Tourism spending reached \$110 million, or 12% of the payroll, in Amador County. (94)
- *Why is it important?*
- The multi-billion dollar travel industry is a vital part of the Sierra Nevada’s economy. The industry is represented by retail and service firms, including lodging establishments, restaurants, retail stores, gasoline service stations, outdoor recreation providers, agricultural and cultural tourism businesses, and other types of businesses that sell their products and services to travelers. The travel spending figures included herein are estimates of destination travel spending; these estimates include all travel spending except for air transportation and travel arrangements.
- Visitors are attracted to places with outstanding natural and social capital. The Sierra Nevada’s blue skies, wide open vistas, rushing streams, healthy forests, and lovely historic towns draw visitors from around the world. These visitors help build the Sierra’s financial capital by supporting local jobs and generating billions of dollars in revenue for the private and public sectors.” (64)
- **Tourism Tax Contributes Millions to Local Government**
- Between FY1993-4 and FY1997-98, the total transient occupancy tax (TOT) collected by cities and counties in the Sierra Nevada grew by 31%, from \$25 million to \$33 million. The TOTO collected in each subregion grew at different rates...in the South Central by 23%...Over the five year period, TOT receipts provided an average of \$7 million to local

governments in ...the South Central Sierra...Most of the growth in TOT receipts was due to increased spending on overnight accommodations, not changes in tax rates.... (65)

- *Why is this important?*
- Transient occupancy tax (TOT) receipts, the taxes collected by cities and counties for overnight lodging, are an indicator of the level and distribution of travel-related economic activity in the Sierra Nevada. Tourism is an important contributor to the Sierra Nevada economy and will continue to play a critical role in the region's future. The TOT is one way travelers to the Sierra help pay for the public services they require when visiting the region. (65)

The Sierra Business Council's *2005-2006 Wealth Index* reiterates and elaborates on their earlier points that help to illuminate the dynamic of the amenities-driven economy. Here are a few excerpts:

In the last decade, rapid improvements in communications and transportation, and the explosive growth of knowledge-based industries, have transformed the fundamental relationship between customer, product, producer, and place in our economy. The Internet, Federal Express, UPS, and fax machines have freed many businesses from the need to locate adjacent to suppliers and customers, giving business owners greater flexibility when selecting locations for their operations. And today's business owners are taking full advantage of their new found flexibility. Every year hundreds of individuals move their businesses, their financial resources, and their families to the Sierra Nevada to enjoy our superb quality of life. At the same time, local business owners who once might have been forced to leave the region to expand their operations are finding it possible to grow their businesses from within the Sierra.

Sierra Nevada's exceptionally high natural and social capital are the magnets that hold and attract financial capital to our region. Our outstanding environmental quality, attractive towns, and good schools are no longer simply nice amenities; they are essential elements for business retention and investment. In today's economy, talented people do not move to, or stay in, communities where their children cannot receive an excellent education or where their air is contaminated with toxic chemicals. In fact, the opposite is true. Business owners and skilled workers move to the communities with the most outstanding schools, the best health care, the most vibrant artistic culture, the lowest levels of crime and poverty, and the very highest environmental quality.

The Sierra Nevada's natural capital also plays another, even more fundamental role in our region's economy: It is the life support system that makes our very existence as a society possible. Healthy natural systems provide, free of charge, a variety of ecosystem services essential to life in this region and worldwide, services such as air purification, soil formation, nitrogen fixation, water filtration and storage, biological pest control, and plant pollination, to name just a few. Researchers recently estimated that the global value of these ecosystem services is at least \$33 trillion a year, close to the gross world product. For most of these services, however, there is no known substitute at any price.

Another source documenting the importance of scenic qualities is the US Forest Service's EIS for the Sierra Nevada Framework for Conservation and Collaboration:

Recent national and State visitor survey data found that sightseeing and driving for pleasure are among the most popular outdoor recreation activities. According to the 1994-1995 National Survey for Recreation and the Environment (NSRE), sightseeing has one of the highest participation rates of any recreation activity, with approximately 56.6 percent of the respondents participating (Cordell, et. al. 1997). Results from the 1999-2000 update of the NSRE indicated 63 percent of the respondents participated in driving for pleasure activities during the previous year (USDA Forest Service 2000).

The State of California's 1997 survey found that 68.3 percent of all respondents drove for pleasure, accounting for 48.1 million activity days (California Department of Parks and Recreation 1998).

According to Forest Service data, over eight million visitors enjoyed auto travel within the Sierra Nevada Region in 1996.

Driving for pleasure is a popular recreational activity, accounting for approximately 21 percent of the RVDs on the national forests in 1996 (USDA Forest Service 1996). With the exception of the Plumas National Forest, all of the Sierra Nevada national forests show increases in motorized and mechanized travel between 1987 and 1996. The Stanislaus and Humboldt-Toiyabe National Forests have had the most significant increases in this recreation category (194 and 61 percent, respectively).

Scenic landscapes contribute to the quality of life and economic health of Sierra Nevada communities. The stunning beauty and distinctive landscape character are often the main reason that people live in or visit the Sierra Nevada. Scenic landscapes promote a variety of recreational pursuits such as sightseeing. The economic impact from scenic byways is examined as an example of the value of high quality scenery.

Scenic highways serve both recreational and transportation purposes. The economic advantages of a scenic highway are discussed in a 1990 report by the Federal Highway Administration (FHWA). This report used five studies to determine the impact of scenic byways on the local economy. The report found that:

- The attractiveness of a highway corridor influences visitors to choose driving as their travel mode.
- Travelers prefer natural scenic landscapes to those characterized by roadside development.
- Travelers prefer and seek out low stress routes such as scenic byways.
- Travelers are looking for educational experiences as well as recreation and leisure.
- Visitors are attracted to officially designated scenic routes because they feel they will be guaranteed quality in their sightseeing experience.

- The number of visitors attracted to a particular scenic route is related to the public awareness of its existence (California Department of Transportation 1996).

The five studies revealed that the average overnight stay for travelers along a scenic highway was 3.6 days with an average daily expenditure of \$174 (Table 5.6.g). Daily spending was the highest in California. The average revenue attributed to scenic highways is \$32,500 per mile. **[note: Calaveras County’s Highway 4, studded with clearcuts, is a Federally- and State-designated Scenic Byway. Also note that these dollar numbers are in 1990 dollars. Current amounts would be much higher]**

Failure to review THPs from the perspective as “forests as complete working ecosystems”

This section ends by referring back to an earlier quote from the January 5, 2009, “Advice Regarding Board of Forestry’s Regulatory Authority to Provide of the Restoration of Resources” letter from the Office of the Attorney General:¹⁴

In sum, the plain intent of the Legislature in enacting the FPA was to require the Board to view the forests of the state as a complete working ecosystem, and not only as a producer of high-quality timber, but also as forest lands valuable in their own right as a public resource.

The McKee Hill THP as written places a higher value on maximum timber yield than on the other required (and equal) values of consideration mandated by legislative intent. Unless it is modified to meet the Attorney General’s standard, it must be denied.

The McKee Hill THP must be denied because it does not meet the requirements of the California Environmental Quality Act (CEQA)

“The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC Section 21080.5.”¹⁵ The January Attorney General’s letter reaffirms that the requirements and guidelines for CEQA must be adhered to in the THP process. However, in many ways, the McKee Hill THP does not meet the requirements of CEQA and must therefore be denied.

CEQA requirements are not met in the McKee Hill THP because there are no thresholds of significance and inadequate substantial evidence

¹⁴ Rudd, Anita. Department of Justice, State of California. Office of the Attorney General. Attorney-Client Communication and Work Product

¹⁵ Forest Practice Rules, p.23.

Thresholds of significance to determine potential environmental or cumulative impacts are mandated by the State CEQA Guidelines:

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

Note: Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21082 and 21083, Public Resources Code.¹⁶

As well, McKee Hill lacks adequate **substantial evidence**. CEQA guidelines are clear in their insistence that “[t]he decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.”¹⁷

Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.¹⁸

Without that “substantial evidence in the record,” EPFW and others are precluded from meaningful and adequate participation and review.

Thresholds of significance:

CAL FIRE has not established thresholds of significance for analysis of THPS like McKee Hill THP for any impact, whether water affects, climate, fire threat, habitat, or wildlife. Without this factual guidance, it becomes difficult or impossible to judge if or when cumulative impacts become significant.

SPI has been rapidly pursuing their business plan of turning a majority of their diverse, mixed-age forests into tree plantations. When taken in conjunction with other past projects in the area, other present projects, and foreseeable future projects, is THP's

¹⁶ Title 14. California Code of Regulations. Chapter 3. Guidelines for Implementation of the California Environmental Quality Act. Article 5. Preliminary Review of Projects and Conduct of Initial Study. Sections 15060 to 15065. http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html. Section 15064.7 (a) (b).

¹⁷ Ibid, 15064(3)f

¹⁸ Ibid, Section 15064 (f)(5).

901 acres (including 545 acres of clearcutting) significant? If not, how much additional clearcutting until it would be? So far, Cal Fire has not determined at which point—if any—that intensive management will result in meaningful impacts. It is possible that, due to no real assessment, it may already have done so.

The use of the THP as a de facto neg dec has already been discussed. Because of this, little or no impact assessment is conducted by Cal Fire. However, independent experts and analysts feel that current practice does not necessarily protect resources. For instance, the University of California Committee on Cumulative Watershed Effects has said¹⁹:

We emphasize that Cumulative Watershed Effects cannot be predicted through the existing parcel-by-parcel analysis for Timber Harvest Plan applications, even if it were based on the best current understanding. Nor can future effects be predicted on the basis of short-term empirical studies of past events, although long-term monitoring of post-project effects would gradually build a database for improving and facilitating modeling efforts.

This document, prepared for Cal Fire by a committee of experts, gives extensive guidance on how to develop watershed assessments leading to the development of thresholds of significance. However, in the eight years since this lengthy and useful report was prepared at taxpayer expense, no meaningful progress has been made by Cal Fire in implementing it.

There are other examples of places Cal Fire could go to get unbiased and knowledgeable assistance in developing thresholds of significance. One of these is the US Forest Service that methodologies that they use in assessing water and wildlife effects.

Although examples and support exists in the public arena for development of thresholds of significance, Cal Fire has postponed even beginning a process by which to assess a large-scale activity (clearcutting across the Sierra Nevada region). This postponement is unacceptable and illegal. Until these thresholds of significance are in place, Cal Fire must deny all THPs employing intensive management, including the McKee Hill THP.

Substantial Evidence:

EPFW has previously requested that CAL FIRE make available SPI's water monitoring data and study protocols etc. This was requested for McKee THP and in the McKee THP comments – see below. It is a violation of CEQA for This data to be referenced and used as evidence of no adverse herbicide impacts without the Public having access. This same data is again referred to and again not available on page 193. This violates CEQA and EPFW has the right to inspect and review the protocols and data re this monitoring per our requests below.

Our original email request and follow-up request is below:

¹⁹ University of California Committee on Cumulative Watershed Effects. 2001. A scientific basis for the prediction of cumulative watershed effects . University of California Wildland Resource Center Report No. 46. Berkeley, CA. 107 pp.

From: Susan Robinson [mailto:srmw@comcast.net] **Sent:** Friday, May 22, 2009 11:53 AM
To: 'Browder, Chris'
Subject: EPFW request for referenced non published study/results in Hermit Crab THP 4-08-33/CAL-6

To: Chris Browder

Re: Hermit Crab THP 4-08-33/CAL-6

Request for referenced SPI study and study protocols for water monitoring for herbicides

Ebbetts Pass Forest Watch requests that CAL FIRE make available for our review a written report of the “monitoring and effectiveness program related to our [SPI’s] use of herbicides” referenced on page 128 of Hermit Crab THP 4-08-33/CAL-6 re-circulated.

Please provide us with the program’s results as documented by data as well as study protocols, including but not limited to:

- all chemicals and degradates sampled
- analytical methods
- detection limits
- sampling protocols for statistical validity and how they were determined (for example, whether or not Dr. Cajun James made field visits to determine the protocols for statistical validity and, if not, how the sampling locations were determined)
- additional study protocols, including
- method of sampling
- date
- time of day
- distance from sample to herbicide treatment area
- time of sample related to time of herbicide application
- whether or not strychnine was sampled for in locations where this chemical was used
- any other relevant parameters needed to assess the study

We are also requesting any reports, summaries, reviews or analyses that have been undertaken internally by SPI or by CAL FIRE of the SPI “monitoring and effectiveness program related to herbicides.”

We would like this information as soon as possible, preferably electronically. Please let me know as soon as you can about the availability of this information. The deadline for public comment on this THP is June 4th and this important information is not available

publically to our knowledge. Please let me know if you have any questions. Thank you for your prompt help in addressing this matter.

[Signature provided on original]

Susan A. Robinson

Ebbetts Pass Forest Watch

From: Susan Robinson [mailto:srmw@comcast.net] **Sent:** Monday, June 01, 2009 4:03 PM

To: 'Browder, Chris'**Cc:** 'Addie Jacobson'**Subject:** RE: EPFW request for referenced non published study/results in Hermit Crab THP 4-08-33/CAL-6

Chris – I received your email back on this matter - if this note is still confusing as to what we are requesting please call me on 209-795-5569 so we can discuss. See my original note below.... we are requesting the protocols for the water monitoring and the other items in yellow. We all know that no company creates over 3,500 water sampling data points without also creating reports and “protocols” for how the monitoring is to be done. It was even referenced in the THP that Dr Cajun James oversaw the protocols. You can’t have employees out and about monitoring without “protocols”/directions for how and when to do the samples etc as well as some tabular database electronically or other “report” that analyzes/contains the data so that management and scientists can assess the data.

SPI has a long history of water monitoring/discharge and air monitoring violations that are public record. We believe we cannot judge whether or not their extensive water monitoring for herbicides was done properly and has valid results unless we have access to the data CAL FIRE is accepting the assertion that there are never any herbicides detected in extensive water monitoring therefore there is no problem and we would like to see how the sampling is set up and the data to verify that that is a believable conclusion.

As you are fully aware SPI recently had the largest air pollution fine in the history of CARB. The press release and other legal documents from CARB contain extensive evidence of tampering and falsification of air pollution monitoring.

I believe our request is reasonable and is in alignment with CEQA making available referenced materials.

Please call me if you wish to discuss.

Susan Robinson

Oaks:

McKee Hill THP asserts that some oak resources will be maintained to lesson the impact of 545 acres of clearcutting. In order, however, for mitigations to be valid under CEQA they should be specific and enforceable. This is not the case in McKee Hill THP

In order to provide complete information about the current number of oaks in the assessment areas, the THP should include such data as:

- an inventory detailing the approximate number of oaks currently within the plan area with some descriptions as to condition, age, and size
- the estimated number/% of Oaks that have been eliminated from the assessment areas in the last 10-15 years of harvest in the biological assessment area
- the number and general condition of oaks in the proposed clearcutting units and the estimated number/% of oaks that will be retained, including an estimate of the % that will probably be “safety” hazards or may subsequently die from herbicide exposure
- Special considerations for oaks for the Rail Road Flat Deer Herd discussed earlier in this comment letter
- Post-harvest monitoring plans to demonstrate compliance

This information will allow adequate and informed public assessment of the impact and will ensure that there are measurable standards by which the outcomes/mitigations can be judged and monitored.

CEQA Mitigation for THP impacts to wildlife and plants

In the McKee THP as well as other THPS SPI’s detailed explanation about nearby USFS land and practices seem to imply that nearby USFS land will serve as the “ark” for all of the species it displaces in the watersheds and biological assessment areas until SPI’s clearcuts grow into mature forests. There is however, no memorandum of understanding with the USFS and the US public that our lands will be the “mitigation” for their environmental damage. Nor have any there impact assessment reports been prepared that showing the consequences to public USFS land from nearby SPI clearcutting and other habitat destruction. Under CEQA SPI must be able to support its own mitigations and they must be enforceable CAL Fire does not have jurisdiction to rely on these mitigations on public lands.

The McKee Hill THP does not properly assess cumulative impacts from traffic and noise, and available mitigations are not required.

The McKee Hill THP fails to provide any assessment of impacts to residents adjacent to Highway 4 who will hear logging trucks as early as 3:30 am. It offers some potential mitigation only to residents of one community. However no such consideration is given to upwards of hundreds of families in communities near Hwy 4 that can hear logging trucks and Jake Brake

caused muffler noise from the cumulative impacts of the 40 trucks/day of this THP combined with other concurrent planned THPS. No mitigation is provided nor is any assessment provided. Additionally, residents near the new Angels Camp Bypass will now hear logging trucks and they were not on "historic routes". No assessments not mitigations have been made for these residents who will be impacted significantly from the cumulative impacts of this THP combined with others

Conclusion:

EPFW respectfully submits these comments on the McKee Hill THP. We have pointed out some of the ways in which the document fails to meet legislative intent or CEQA requirements. We trust Cal Fire will consider these points seriously and deny approval of McKee Hill THP until it has been modified to be in compliance with these crucial standards.

EPFW also objects to CAL FIRE's granting of clearcut size exceptions in the McKee THP which result in clearcuts over 20 acres just for convenience despite the immediate impact of those clearcuts to wildlife habitat . This is yet another example of CAL FIRE's failure to use the tools provided in the FPA to protect resources.

Thank you.

Feel free to notify me if you have further questions.



Susan A. Robinson
For Ebbetts Pass Forest Watch

