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Doug Piirto, Chair  
California board of Forestry Management Committee  
State Board of Forestry & Fire Protection  
P.O. Box 944246  
Sacramento, CA 94244-2460

RE: Proposed Modified Timber Harvesting Plan (MTHP) for Fuel Hazard Reduction

Dear Chairman Piirto, Committee members, and Board Staff:

Ebbetts Pass Forest Watch (EPFW) welcomes the chance to comment on the proposed Modified Timber Harvesting Plan (MTHP) for Fuel Hazard Reduction, currently under discussion in the Management Committee. After careful consideration of the proposal, EPFW submits the following comments for the committee's consideration.

**Incomplete focus of proposal on fuel hazard reduction:**

Although the proposal's Initial Statement of Reasons (ISOR) concentrates to a great degree on California's wildfire situation and means of reducing it, the accompanying proposal lacks a focus and concentration on fuel hazard and fire hazard reduction. Instead, the proposal is in most part standard timber harvest rules not related to fire considerations.

The ISOR speaks about managing fuels on a "broader landscape basis" and the fundamental need to do so across the "broadest possible landscape." However, the landscape level terminology in the initial ISOR has been amended to simply a "project" level standard. Not making the MTHP part of an integrated, large-scale plan for fuel and fire reduction greatly lessens the potential effectiveness and value of acres treated under this methodology. The scatter-shot, random approach which would result is not backed up by any convincing evidence that partial and isolated treatments provide enough significant reductions in fire threat to consider the proposed lessening of environmental safeguards.

The ISOR states that:

As has been well established by various research efforts, fire behavior may be greatly influenced by the quantity, density and spatial arrangement of existing

natural fuels such as trees, shrubs and grasses. Vegetation treatment that reduces surface and ladder fuel accumulations while increasing spacing between residual tree and shrub species can be very effective in reducing the potential for uncontrollable conflagrations.

However, no real emphasis within the proposed rules language assures that these activities will be undertaken through the MTHP process. Unlike the details in the FPA's other existing regulations for Fire Prevention and Fuel Hazard Reduction, this rules package is conspicuously devoid of such detail.

The failure to limit the diameter of trees to be harvested and the ability to harvest "large old trees" is counter-productive to fire threat reduction and leads to a conclusion that this package is more about relaxing harvest rules than true fire prevention. Allowing the most fire-resistant trees to be harvested perhaps makes economic sense but does not meet the stated aim of fire threat reduction. The Board is well aware of the heightened risk of younger trees as evidenced in the Tahoe Basin Emergency Rules Package (June 2005):

Extensive harvest in the late 1800s and early 1900s resulted in an overall young forest. There is concern that these changes have contributed to an increased likelihood of severe fire. Younger forests are more susceptible to mortality from fires. This is due to the lower height and size of small trees. Their bark is thinner, and their crowns are lower to the ground, making them more susceptible to lethal heating by flames of a low height.

Among other things, realistic fire prevention rules would limit the harvest of larger trees rather than just dictate a resultant canopy closure.

Moreover, the ISOR states that the landowner must develop and explain site-specific "fuel modification prescriptions" "that result in quantifiable, beneficial changes to the density and spatial arrangement of surface and ladder fuels," but EPFW finds no procedure outlined in the proposed rules of the way in which these rules would be set forth, particularly for public review. Therefore, there is no assurance that such prescriptions would in fact be made or be able to be assessed. And no performance standards are delineated in the rules from which to judge the efficacy of the MTHP in relation to its stated goal of fuel hazard and fire reduction.

**Inadequate inter-disciplinary review requirement:**

The ISOR at times seems to state that inter-disciplinary review would be assured with the MTHP as in the following statement:

The requisite review by personnel from local, state, and federal agencies representing the public interest ensures that the fuel modification treatments prescribed by the RPF are appropriate to the project site and that potential impacts of proposed operations have been assessed.

However, the actual rules language is typically precatory, stating that “Consultation with CDFG personnel is recommended.” EPFW strongly concurs with DFG testimony in the January 2009 Management Committee meeting that consultation with a DFG fire ecologist would be a necessity.

**10% rehabilitation area not justified or consistent with proposal stated goal:**

EPFW sees the 10% rehabilitation clause in the proposed rules as arbitrary and counter-productive. It appears, like other portions of this regulation, to have been imported wholesale from the earlier, smaller-scale MTHP rules. There is no reason to believe that rehabilitation would or should need to be part of any or all THPs. In this case, rehabilitation methods would likely be most like an evenaged harvest resulting in a stand that is more fire-prone than a diverse forest stand. Allowing such harvest within a project supposedly aimed at fire reduction is inconsistent and counter-productive.

**Inappropriate and Illegal Cumulative Impacts Assessment Procedure:**

EPFW believes the cumulative impacts assessment procedure proposed in the MTHP, that of replacing a standard assessment by a “fair argument” standard,” is both inappropriate and illegal. While it is understandable that the original MTHP was adopted without the requirement for a standard cumulative impacts assessment due to its small plan size, there is no way that this procedure can be used on plans of larger size. The MTHP Pleading states that:

Operations conducted according to this section are **presumed** to be unlikely to cause a significant adverse impact to the environment due to the specific restrictive mitigations required in (1)-(15) above. [emphasis added]

There is no evidence presented for the Board’s presumption. The CEQA guidelines, however, 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.<sup>1</sup> “Substantial evidence” is defined in the State CEQA Guidelines in the following way:

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.<sup>2</sup>

It is untenable and unacceptable to even consider abandoning CEQA (and CEQA equivalent) requirements for cumulative impacts assessments due to simple and

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<sup>1</sup> 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](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html). Section 15064(3)f

<sup>2</sup> Ibid, Section 15064 (f)(5).

unsubstantiated presumptions.

The plans anticipated in the MTHP are obviously as large as 5,000 acres, which is easily half or more of a planning watershed. There is without doubt a “fair argument” that such plans are going to have impacts.

EPFW asks the Board to set forth where the CEQA analysis is to support the creation of their presumption. It appears that there will need to be a programmatic EIR or equivalent document for all lands affected by this regulation (i.e., all the private forestlands of California) in order to show that this rule will avoid any potentially significant impacts. Since cumulative impacts hinge on the effects of all projects, this will have to be considered in conjunction with all other logging going on, all that has gone on, and all that foreseeably will go on.

EPFW feels the “presumption” that no cumulative impacts will likely occur violates a central principle of CEQA cumulative impacts: “environmental damage often occurs incrementally from a variety of small sources,” which may “appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” (Communities For a Better Environment, *supra*, 103 Cal.App.4th at 114. ) There seems no way to know whether or not these impacts are occurring unless project applicants comply with the Technical Rule Addendum No. 2.

EPFW believes the position set forth in the MTHP Pleading is not supported by case law. The following is just a small sampling of such decisions. If desired, EPFW will bring in a more detailed discussion of these and other cases for the Board’s consideration.

CAL FIRE must evaluate the cumulative impacts of a THP pursuant to the Rules, CEQA and the CEQA Guidelines: *EPIC v. Johnson*, *supra*, 170 Cal. App.3d at 625 (“Since CEQA applies to the THP evaluation and approval process, it follows that CDF did not proceed in the manner required by law by failing to consider the impact of cumulative effects.”)

*EPIC v. Johnson* specifically rejected the piecemeal approach as proposed here: " To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum on each individual operation, then the total effect in the surrounding area will also be minimized to an acceptable level . . . This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts." 170 Cal. App.3d at 624-625.

The cumulative impact analysis bears directly on the scope of potential adverse environmental impacts, the necessity for mitigation measures, and ultimately the appropriateness of project approval: *Schoen v. CDF*, *supra*, 58 Cal. App.4th at 566-567, 572; *Friends of Old Trees*, *supra*, 52 Cal. App.4th at 1394.

See also Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Protection (“Ebbetts Pass”) \_\_ 4th \_\_\_, (May 22, 2008) 2008 Cal. LEXIS 6207 (“The purpose of requiring a cumulative-impacts analysis in a timber harvest plan under the Forest Practice Act, as in an EIR under CEQA, is to ensure that the public and decision makers receive full information before the project is approved.”)

The “fair argument” standard set forth in the MTHP pleading is not supported by case law: Under CEQA, the burden is on the agency or applicant, not the public to provide the necessary information. Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 311 (“CEQA places the burden of environmental investigation on government rather than the public.”); Endangered Habitats League v. State Water Resources Control Board (1997) 63 Cal. App. 4th 227, 239; Dunn-Edwards Corporation v. B.A.A.Q.M.D. (1992) 9 Cal.App.4th 644, 658.

**Conclusion:**

While EPFW supports responsible timber harvest that maintains a supply of high quality timber while giving consideration to resource values and also supports responsible efforts to reduce excessive fuel levels and fire threat, we find the present proposal flawed. Some of the problems in the proposal can be changed to be acceptable. Others, like the cumulative assessments procedure are irreparable.

Cumulative impacts assessment has been recognized at least as far back as the Little Hoover Commission Report as a failing of the THP system. There needs to be a substantive revamping of this process that serves both the environment and timber operators. EPFW would like to be a positive partner in this process. In the meanwhile, however, it is unacceptable to circumvent the law and public trust resource protection through the proposed procedure set forth in the MTHP Pleading.

Respectfully submitted,



Addie Jacobson, on behalf of the  
Ebbetts Pass Forest Watch Board

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