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I. INTRODUCTION

The National Environmental Policy Act of 1969 (“NEPA”) has been copied by a number of states and 130 other countries. The sponsors of NEPA had no doubt of its importance.

The legislative history of the time is filled with warnings and reflects the thoughts and feelings that “we cannot continue on this [environmentally destructive] course . . . for our natural resources . . . are not unlimited.”¹ Senator Henry Jackson, the prime mover of NEPA, called the Act “the most important and far-reaching environmental and conservation measure ever enacted. . .” and hoped the Act would help avert an otherwise inevitable environmental catastrophe.² Also in 1969, the Senate Interior and Insular Affairs Committee commented that “environmental problems are only dealt with when they reach crisis proportions. . . Important decisions concerning the use and the shape of man’s future environment continue to be made in small, but steady increments which perpetuate, rather than avoid the recognized mistakes of previous decades.”³ The California Environmental Quality Act (“CEQA”) was modeled on NEPA.⁴ One of the primary purposes and requirements of both of these Acts is to analyze and evaluate the cumulative impacts or effects (these terms are used interchangeably) of projects. Section 15355 of the CEQA Guidelines defines “cumulative impacts” as: “Two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.”

21 ¹ S. Rep. No. 296, 91st Cong., 1st Sess. 5 (1969).

22 ² 115 Cong. Rec. 40,416 (1969.)

23 ³ S. Rep. No. 296, supra note 1, at 5.

24 ⁴ “[S]ince CEQA was modeled on the NEPA (42 U.S.C. § 4321 et seq.), California courts have
25 consistently treated judicial and administrative interpretation of the latter enactment as
26 persuasive authority in interpreting CEQA.” (*Del Mar Terrace Conservancy, Inc. v. City Council*
27 (1992) 10 Cal.App.4th 712, 732.)
28

1 “Cumulative impacts can result from individually minor but collectively significant projects
2 taking place over a period of time.” [CEQA Guidelines, § 15355, subd. (b).] Agencies and the
3 courts must pay close attention to the analyses to ensure that environmental damage, possibly
4 permanent, is not passing undetected because of occurring in small incremental amounts.

5 CAL FIRE (“CDF”) is the lead agency that oversees the Timber Harvest Plan (“THP”)
6 process. A THP is filed in lieu of an Environmental Impact Report, but is usually prepared by the
7 submitting company rather than an independent source. There is no appeal process for a THP
8 approval and the cost of litigation in these cases can be tens of thousands of dollars, so the check
9 and balance system that is often in place to ensure fairness does not exist in the THP process.
10 While CDF and the THP submitter have paid staff and a great deal of time and other resources at
11 their disposal, the public comment period is limited and usually sudden, with little lead time or
12 awareness that a project is planned.

13 At issue in this case is CDF’s approval of the Plateau Flat THP, filed by Sierra Pacific
14 Industries (“SPI”). This THP lies in Shasta County south of Highway 44, east of Shingletown
15 and northeast of Manton. This THP is shown marked in black in the Exhibit 1 map of the
16 contiguous projects. This THP is the first of the 16 contiguous THPs filed since 1998 to return to
17 cut what are called the “adjacencies”, or the uncut areas that were left between the clearcuts from
18 the surrounding plans. The Plateau THP units are adjacent to the older Spring Creek and Long
19 Hay Flat THP units. Spring Creek THP (marked in darker blue on the map) was submitted and
20 approved in 1998 and had its completion report signed in 2004 and Long Hay Flat THP (marked
21 in orange on the map) was submitted in 1999, approved in 2000 and had its completion report
22 signed in 2005. (AR 578.) Exhibit 16 (AR 773) is a photograph of a Spring Creek unit to
23 demonstrate the physical condition of the previous clearcuts that this plan proposes cutting next
24 to.

25 The Plateau Flat THP also lies within the upper portion of the Battle Creek watershed. This
26 watershed is located where the Sierra Nevada and the Southern Cascade ranges overlap and
27 intertwine. Battle Creek is one of the largest tributaries of the Sacramento River and one of the
28 few remaining streams that support wild run salmon. The county line of Tehama and Shasta

1 counties runs through the middle of the area. In the 1990s, the Nature Conservancy conducted a
2 survey of California from Redding to Bakersfield. Their survey found that one of the most
3 important, and unique, biological and ecological resource areas of the state was the Lassen
4 Foothills, which the Battle Creek watershed is part of. The spring-fed creeks of this watershed
5 provide habitat for native fish such as Chinook salmon and steelhead; the woodlands provide
6 nesting sites for migratory songbirds and the landscape provides crucial corridors and habitat that
7 migrating wildlife, such as the Tehama deer herd, utilize in their seasonal travels from the valley
8 floor to the foothills.

9 The map in Exhibit 1 details the THPs of the area in question that forms the headwaters of
10 the Battle Creek watershed. Exhibit 1 is two quadrangles of United States Geological Survey
11 (“USGS”) maps. Petitioners created this map by sizing the THP maps to the same proportions as
12 the USGS maps and tracing the project units onto it. This map was begun because the THP maps
13 submitted by SPI are incomplete and misleading in that the THP maps never show all of the
14 contiguous projects together. (AR 39-51.) In the past, Petitioners also requested an all-project-
15 inclusive map from CDF and were informed that CDF did not have one. Petitioners asked what
16 percentage the contiguous area of projects covers in this area of the watershed (AR 1346) but
17 were not answered by Respondents. Accordingly, Petitioners can only estimate that the mapped
18 projects correspond to at least 30% of the area being cut. This figure does not include the miles
19 of roads that are permanently devoid of vegetation. Of the total 19,586 project acres, 12,683
20 acres are clearcut units, or 65%. Adding in the 645 more acres cleared for roads equals 13,328
21 acres or 68% clearcut. Adding in the 1,920 acres of shelterwood removal, which is classed as
22 near to clearcut, results in 15,248 acres, or 78% clearcut.

23 This area is also the northernmost part of the Sierra Nevada ecosystem which is home to
24 570 vertebrate wildlife species: 290 bird species, 135 mammal species, 46 reptile species, 37
25 amphibian species and 60 fish species. Of the 570 species, 180, or 32 percent, are on California’s
26 Special Animals list (defined as: “Species at risk, regardless of their legal or protection
27 status.”) Yet those numbers do not include the small organisms, such as microbes and arthropods,
28 which comprise 95% of all species. According to scientists, we are in the period known as the

1 “Sixth Great Extinction”. The current high rate of extinction is of particular concern because the
2 numerous small organisms that dominate the structure and function of ecosystems are not even
3 being considered, yet they may be the most vital part of the systems that sustain our planet. We
4 did not address individual species in our comments to CDF because our point is that all of the
5 species, including our own, which exist in this area, are being impacted and that the cumulative
6 impacts from the 19,586 acres of projects to the public trust resources of water, air quality,
7 temperature/climate, soil and wildlife have not been addressed in a complete or fully cognizant
8 way. “The public trust is... an affirmation of the duty of the state to protect the people’s common
9 heritage of streams, lakes, marshlands, and tidelines...” (*National Audubon Society v. Superior*
10 *Court*, 33 Cal. 3d 419, 441 (1983). “It is beyond dispute that the state of California holds title to
11 its...wildlife in public trust for the benefit of the people.” (*People v. Harbor Hut Rest.*,
12 (1983)148 Cal App. 3d 1151, 1154.) The methodology used by CDF does not conform to law or
13 to the intent of CEQA. In the *Communities for a Better Environment v. California Resources*
14 *Agency* (2002, 103 Cal.App.4th at 119-120) the court wrote “the incremental effects of [an]
15 individual project are to be viewed in connection with the effects of past, current and probable
16 future projects. . .the cumulative impact from several projects is the change to the environment
17 which results from the incremental impact of the project when added to other closely related
18 past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result
19 from individually minor but collectively significant projects taking place over a period of time.”

20 There have been 16 THPs filed in the Battle Creek watershed since 1998. (Exhibit 1, 2,
21 27. AR 7573, 1339, 880.) These 16 THPs cover 19,586 acres. Of these, 11 have been cut (13,324
22 acres), 3 are in litigation, 1 has been approved but not cut and 1 has not yet been approved.
23 Exhibits 2 and the picture on AR 886 are a 2010 GIS image that presents the 13,324 cut acres
24 visually and a photograph taken from a plane in the area in question. The primary logging
25 method used in these THPs is the form known as “clearcutting” which involves removing the
26 majority of the diverse types of vegetation from “units” of 12 to 27 acres. CDF and SPI prefer to
27 refer euphemistically to clearcutting as “evenaged management”. Following clearcutting, the soil
28 is ripped deeply, further destroying any seed bank that remains of the diverse species of plants

1 and the many mosses and fungi that live in the soil and vegetation. Another part of the process is
2 herbicide spraying of the units at various times to kill any of the native grasses and shrubs that
3 might regenerate and compete with the replanted monoculture plantations of ponderosa pine
4 seedlings.

5 The area in question is also upstream and upland of the \$130 million multi-agency Battle
6 Creek Salmon and Steelhead Restoration Project. This expensive project is being jeopardized by
7 the lack of a comprehensive and honest assessment of the impacts that this vast amount of
8 clearcutting over a short time period may have to the fish that are a public trust resource. There
9 has been little data collected to assess the condition of the watershed area downstream of the
10 contiguous THPs since 2002. “The fish within our waters constitute the most important species
11 of property commonly designated as wild game, the general right and ownership of which is in
12 the people of the state...the right and the power to protect and reserve such property for the
13 common use and benefit...coming to use from common law...and preserved and expressly
14 provided for by the statutes of this and every other state in the Union.” (*People v. Truckee*
15 *Lumber Co.*, 116 Ca 397 (1897)).

16 The Respondents have failed in their obligation to conduct an adequate cumulative
17 impacts analysis for this THP’s effects in conjunction with the contiguous THPs, thereby
18 rendering the approval of this THP contrary to law.

19 **II. STATEMENT OF FACTS**

20 Petitioners Mauro Oliveira and Marily Woodhouse are members of the Battle Creek
21 Alliance. Because of the high cost of legal representation, petitioners are acting pro per; as such,
22 petitioners were required to file this action as individuals rather than as the Battle Creek
23 Alliance. Our group is a small non-profit Northern California-based Sierra Nevada/ Cascades
24 regional alliance of residents and other groups whose lives are impacted by unsustainable
25 logging practices. These practices contribute to the ongoing and increasing cumulative impacts
26 that are affecting air quality, water quality and quantity, temperature and climate (CO₂
27 emissions), wildlife and habitats. Battle Creek Alliance was formed in 2007, to monitor and
28 challenge the cumulative impacts of local timber harvesting by clearcutting. Since its inception,

1 Battle Creek Alliance and its members have been dedicated to protecting public trust resources
2 such as water, air, soil and wildlife, protecting diversity and raising public awareness through
3 education. Members have submitted comments on this and other THPs and work with many
4 other groups on conservation issues, and also work with loggers who know that clearcutting
5 reduces the number of workers needed thereby costing the loggers jobs now and in the future.
6 We believe that we speak for those who have no voices, whether it is non-humans or humans
7 who have no knowledge that this is happening or how important it is to the systems that support
8 all of our lives and the lives of the future.

9 Petitioners challenge the approval of this THP because of the multiple, and
10 interconnected, cumulative impacts to public trust resources that have not been acknowledged or
11 analyzed or mitigated. There have been no real alternatives suggested to reduce these serious
12 impacts and these impacts will contribute to the existing impacts from past projects. As is the
13 case in many sectors, private profit will equate with public loss.

14 15 **III. ARGUMENTS**

16 **A. Failure to Conduct an Adequate Cumulative Impacts Analysis**

17 **1. The cumulative impacts of this contiguous block of projects have not been** 18 **assessed in the past and are not being assessed in this THP.**

19 CEQA requires an agency to “use [their] best efforts to find out and disclose all that [they]
20 reasonably can” to adequately evaluate a project’s impacts. (14 CCR § 15144.) This THP fails to
21 do so by the exclusion of complete maps and information regarding the extent and number of
22 contiguous projects and by narrowing the scope of the assessment area. When, as in this THP,
23 the information does “not ‘adequately appraise all interested parties of the true scope of the
24 project for intelligent weighing of the environmental consequences of a project,’ informed
25 decisionmaking cannot occur under CEQA and the [THP] is inadequate as a matter of law.”
26 (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.)

27 The natural environment can only be understood by realizing how interdependent all
28 systems of it are. The parts—the plants, the water, the soil, the wildlife, the climate—work

1 together to form the whole. Impacts to an interdependent watershed area, in this case the upper
2 beginning part of the Battle Creek watershed where the contiguous THPs shown in the exhibits
3 lie, cannot be dismissed as “insignificant”. The qualifying phrases found throughout CDF’s
4 Official Response (“OR”) such as “this THP” “the THP” (examples: AR 378, 382, 383, 386,
5 387, 388, 390, 391, 403, 412, 426, 428, 430, 456, 461, 463, 476, 545, 546, 548, 556, 658)
6 demonstrate the use of a linguistic loophole to avoid a complete cumulative impacts analysis by
7 viewing a single THP as an independent project when in physical reality it is part of a large,
8 contiguous block of connected projects in an interdependent watershed system. An example:
9 “All concerns raised were reviewed and addressed . . . the Department has determined that there
10 will be no significant adverse impacts resulting from the implementation of this THP.” (AR 658.
11 Emphasis added.) It is untrue that all concerns raised were addressed. There were 6 pages of
12 questions that asked for information pertinent to the methodology being used to assess
13 cumulative impacts to public trust resources and what data was being collected and analyzed to
14 determine what changes are or are not occurring. (AR 1345-1347, 1350-1354.) A few of these
15 questions were answered with obfuscation; most were not answered at all. The concerns over the
16 ongoing loss of finite resources in small but steady increments is the *raison d’être* behind both
17 NEPA and CEQA, and the majority of those resources belong to all citizens, in perpetuity.
18 Questions regarding the concrete reality of how those resources are being protected deserve to be
19 answered, but were not.

20 When there is ample evidence that impacts exist, CEQA does not allow an agency or
21 project submitter to pick and choose which impacts to review or account for. Doing so violates
22 the basic requirement for “the good-faith disclosure and analysis that is required by CEQA.”
23 (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184,
24 1216.) CDF has failed to require or provide a complete “big picture” impacts analysis and has
25 thereby prejudicially abused its discretion. The *Joy Road Area Forest and Watershed Assn. v.*
26 *Cal. Dept. of Forestry and Fire Prot.* decision determined that CDF prejudicially abuses its
27 discretion by “approving a THP which contain[s] an inadequate cumulative impact analysis.”
28 (*Joy Road*, (2006) 142 Cal.App.4th at 676.)

1 “CEQA requires a ‘general description’ of the technical aspects of . . . the project. The
2 description must contain sufficient detail to enable the public and the decision makers to
3 understand the environmental impacts of the proposed project. The description cannot narrow the
4 scope of the environmental review or minimize the project’s impacts on the environment.” (*Dry
5 Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 36.) Petitioners provided
6 a copy of the map that shows the contiguous THPs all together on one page (AR 710, 1345) as
7 well as satellite and aerial images (AR 885, 886, 1339) that reinforce the map’s data. Petitioners
8 provided the THP plan numbers and acreages of the contiguous THPs that were known to them
9 at the time. (AR 708-709.) A comparison of SPI’s Cumulative Assessment Area maps (AR 186-
10 187) and general area maps (AR 39-41) to Exhibit 1 will confirm that SPI’s maps show none of
11 the adjacent and contiguous plans that exist in their ownership area. Both CDF and SPI have
12 exploited the “sub-watershed” system to avoid addressing the cumulative impacts of these
13 contiguous and continuing projects as required by law. 14 CCR § 897(3) reads: “The information
14 in [THPs] shall also be sufficiently clear and detailed to permit adequate and effective review by
15 responsible agencies and input by the public...”

16 **2. The CalWater 2.2 subwatershed system has been used to subvert the intent**
17 **of CEQA.**

18 The use of the CalWater 2.2 system, that divides this part of the Battle Creek watershed
19 into 9 smaller “subwatersheds” based on the smaller tributary creeks of Battle Creek, has been
20 used by CDF and SPI as the justification for not looking at the cumulative impacts of all of the
21 projects together.

22 What defines a watershed, or drainage basin, is that it is an area that collects all of the
23 surface water from rain and melting snow and funnels it to a single point. A watershed is
24 separated topographically from adjacent watersheds by a ridge or a mountain. This area of Battle
25 Creek, with the Shingletown ridge to the north that Highway 44 follows and the ridge that
26 Highway 36 runs along to the south, and the manner in which it channels water to the
27 Sacramento River, conforms to this definition. The tributary creeks of Battle Creek, which have
28 been named as the subwatersheds, do not conform to the definition.

1 “Cumulative impacts can result from individually minor but collectively significant
2 projects taking place over a period of time.” [CEQA Guidelines, § 15355, subd. (b).] Agencies
3 must pay close attention to the analyses to ensure that environmental damage, possibly
4 permanent, is not passing undetected because of occurring in small incremental amounts. This
5 attention is not being paid when CDF uses the flawed methodology of judgment by the
6 subwatershed system. In fact, this methodology is contrary to law. 14 CCR § 895.1 states that
7 “the rationale for [using a planning watershed] is that all impacts from the proposed operation
8 will only be seen within the area that is drained by that watershed and areas downstream of that
9 watershed.” This is being ignored by the use of the subwatershed system because a large
10 percentage of the “area that is drained by that watershed and areas downstream of that
11 watershed” is being left out of the analysis equation. 14 CCR § 895.1 also states that “Where a
12 watershed exceeds 10,000 acres, the Director may approve subdividing it.” The key word here is
13 “may”. It is not “must”. The use of the tributaries of Battle Creek as imaginary borders only
14 serve to allow SPI to continue to clearcut on a much larger scale than would be allowed by using
15 the boundaries of the part of the actual watershed that is the site of the contiguous projects and
16 analyzing the true impacts of that large contiguous block of projects. The lack of an honest and
17 inclusive evaluation of these impacts betrays the intent of the rules and regulations that exist and
18 fails to protect the public trust resources. “[A]n agency may not ... [treat] a project as an isolated
19 'single shot' venture in the face of persuasive evidence that it is but one of several substantially
20 similar operations.... To ignore the prospective cumulative harm under such circumstances could
21 be to risk ecological disaster.” (*Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397,
22 408.)

23 **3. The lack of comprehensive, inclusive maps conceal the total cumulative impacts**
24 **from CDF’s partner agencies.**

25 During the pre-approval process of a THP a pre-harvest inspection (PHI) may occur, as it
26 did with this THP. What is termed a “multidisciplinary team” looks at selected sites in the THP
27 area; this could include a staff member from the Department of Fish and Game and the Regional
28 Water Quality Control Board. Unless these agencies are given information that is not included in

1 the THP, the only maps they see are maps that show the units of the individual project by
2 themselves with no representation of the surrounding, contiguous units from other projects. (AR
3 39-62, 185-191.) In the case of *Environmental Protection Information Center, Inc. v. Johnson*
4 (1985) 170 Cal. App. 3d 604, the court “held the department [CDF] was guilty of prejudicial
5 abuse of discretion in failing to consider the cumulative impact of past logging activities,
6 combined with the proposed harvest on the ecology of the grove.” Incomplete, omitted and
7 misleading information can only lead to misinformed and spurious decisions that are contrary to
8 law. When, as is the case here, the THP does “not adequately appraise all interested parties of the
9 true scope of the project for intelligent weighing of the environmental consequences of a project,
10 informed decisionmaking cannot occur under CEQA and the [THP] is inadequate as a matter of
11 law.” (*Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.)

12 **4. Additional Interconnected Cumulative Impacts That Have Been Disregarded**

13 “Significant effect on the environment” is defined by the CEQA guidelines as “a
14 substantial, adverse change in any of the physical conditions within the area affected by the
15 project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic
16 and aesthetic significance.” (14 CCR § 15382.)

17 The underlying purpose of cumulative impacts analyses is to provide a public agency with
18 information to understand the long-term impacts and consequences of its decisions, before
19 approving an irreversible course of action. It is another way to prevent the approach of taking a
20 bit here, a bit there, until nothing is left. One Court of Appeal stated that an insufficient
21 cumulative impact analysis “avoids analyzing the severity of the problem and allows approval of
22 projects, which, taken in isolation, appear insignificant, but when viewed together, appear
23 startling.” (*Kings County Farm Bureau v. City of Hanford*, (1990) 221 Cal.App.3d 692, 721.)

24 **a. Failure to address impacts that this many acres of contiguous projects will have on** 25 **the public trust hydrological resources.**

26 The Plateau Flat THP and the nearly 20,000 acres of contiguous THPs lie in the top part of
27 the Battle Creek watershed. The Battle Creek watershed is one of the largest tributaries of the
28 Sacramento River.

1 The Sacramento River flows into the Sacramento-San Joaquin Delta. The Delta is defined
2 by water that flows from the 27.2 million acre watershed of the Sacramento and San Joaquin
3 rivers. The Delta watershed provides water supplies to more than 96% of California's residents.
4 Water Code section 85020 states: "*The policy of the State of California is to achieve the*
5 *following objectives that the Legislature declares are inherent in the coequal goals for*
6 *management of the Delta: (a) Manage the Delta's water and environmental resources and the*
7 *water of the state over the long term . . . (d) Promote statewide water conservation, water use*
8 *efficiency, and sustainable water use.*" (Emphasis added.) Water Code Section 85023 states:
9 "*The longstanding constitutional principle of reasonable use and the public trust doctrine shall*
10 *be the foundation of state water management policy . . .*"

11 Petitioners and Water Code Regulations say it is not reasonable and does not comply with
12 applicable law to confine the assessment of water (and other) impacts to one lone THP when it is
13 only a part of a large mass of numerous THPs conducted over a short time. Temporal and spatial
14 scales have been ignored throughout CDF's and SPI's documents. The court must instruct the
15 respondents to act according to the regulations and analyze the true costs and impacts of this
16 project in conjunction with the other projects.

17 "Soils eroded from partly-logged to denuded slopes pollute water supplies, clog filtration
18 systems, and promote heavy silt accumulations in downstream waterways. Removing that
19 sediment is one of the most expensive treatments required for purifying municipal water
20 supplies, both for reducing wear on pumps, and even more importantly removing toxic chemicals
21 attached to sediment particles. Water purification costs are high for municipalities and their
22 ratepayers, but forests do it for free." (*The American West at Risk*, AR 1061.) Petitioners asked
23 many questions about the impacts to water resources resulting from the many contiguous
24 projects (AR 1345-1350), but few of the questions were answered in the OR.

25 Petitioners do not find any references that studied the effects of clearcutting large
26 numbers of acres in a contiguous area in a short space of time in an area similar to the Battle
27 Creek watershed. CDF cites the Modified Completion Report Study regarding water quality,
28 erosion and sediment transportation, but fails to mention that this study was conducted between

1 2001 and 2004 on THPs that were filed between 1996 and 2001 throughout California. (AR
2 600.) Petitioners have not been able to determine if any of the test sites were located in the Battle
3 Creek Watershed, but the time frame used to choose the sites occurred before most of the plans
4 for this watershed were submitted or completed. Petitioners submitted many maps and
5 photographs of the recent physical reality of the land, roads and water that have been taken since
6 2007. Most of these documents and the information they convey have not been addressed.
7 (Exhibits 17-26.)

8 **b. Failure to address the soil degradation from erosion and other logging impacts on**
9 **20,000 acres of land.**

10 “All human clearings destabilize slopes and soils, which in turn increases floods and
11 lowers water quality, oxygen production, and biodiversity. Clearings also reduce the forests’ CO₂
12 absorption. The number and size of human clearings have vastly expanded over the past 50
13 years, breaching forest integrity, soils, slopes and streams on scales that natural processes rarely
14 accomplish, short of cataclysms...Unlike selective cutting, clearcuts utterly eradicate a patch of
15 forest. Heavy machinery fells and extracts only the larger trees, while crushing smaller trees and
16 shrubs, and overturning soil layers that typically take thousands of year to develop.”(*The*
17 *American West at Risk*, AR 1054, 1056-1057.) Petitioners asked many questions regarding what
18 methodology was being employed to track the impacts to soil throughout the multiple project
19 area and asked if there were any enforceable limits in place. (AR 1345-1350.) CDF did not
20 answer these questions.

21 **c. Failure to address the cumulative impacts of herbicide usage on 20,000 contiguous**
22 **acres.**

23 Exhibits 3 and 4 (AR 879, 798) detail the number of pounds of herbicides/chemicals that
24 have been applied to the contiguous project area between 1998 and 2006. To use the herbicide
25 hexazinone as an example, the OR states on AR 397: “About 10,060 pounds [of hexazinone]
26 were used in Shasta County on forestlands in 2008. This compares to about 110,647 pounds were
27 sold statewide in 2008 for all uses.” There are 58 counties in California, yet that statement means
28

1 that 9% of the hexazinone used in the state was used in Shasta County on forestland. The OR
2 continues (AR 398): “Hexazinone may remain active in the soil at low concentrations for up to
3 three years after application...EPA studies indicate hexazinone ‘appears to be persistent and
4 mobile in soil and aquatic environments’ and ‘may be of concern for groundwater and surface
5 water contamination’ (EPA, 1994).” The OR goes on to detail studies that were performed 15 or
6 more years ago and concludes with: “CAL FIRE finds that there is no substantial evidence that
7 hexazinone use would provide a significant human health hazard or significant adverse
8 environmental impact...” (AR 399.) None of the studies mentioned in the AR pertaining to
9 herbicides were done on 20,000 acres of contiguous cutover land that had herbicided year after
10 year. Accordingly, they do not represent substantial evidence that is germane to this particular
11 area or to this level of impacts.

12 Petitioners questioned the unpublished and unavailable results of the “SPI Monitoring”
13 section of the THP regarding herbicides. (AR 613.) Specific questions regarding the
14 methodology used in the collection of samples and the scarcity of samples taken across SPI’s 1.7
15 million acres of land ownership were not answered by CDF. In fact, CDF quoted the paragraph
16 from SPI’s THP that Petitioners were questioning, as the answer to the questions. (AR 614.)
17 Because SPI is often allowed to self-monitor its impacts, Petitioners submitted information
18 regarding past SPI malfeasances to demonstrate our concerns about that lack of an independent,
19 outside source monitoring impacts. (AR 846-854.) As Petitioners stated in the comment, this list
20 was gathered from public records. CDF referred to the list as “unsourced allegations” and did not
21 answer our concerns. (AR 614.)

22 “No significant adverse environmental impact” is a phrase that CDF uses quite frequently
23 throughout the OR, but does not provide a definition of what “significant” is in their analysis. It
24 is also based on not acknowledging or assessing the adjacent projects. The OR states (AR 400):
25 “Since the even-aged regeneration units are spaced out over time and over the area in accordance
26 with BOF rules, other units that have brush, forb or weed growth will be available nearby so that
27 there is not a total elimination of a variety of species useful for wildlife habitat and forage on any
28 large landscape basis.” This is patently not true as demonstrated by Exhibits 5-15 and 28-30. The

1 statement also ignores the fact that this THP proposes cutting the areas that were left between the
2 clearcuts from the 1998 and 1999 plans as shown in Exhibit 1. Additionally, what is not
3 mentioned in the response is that the “brush, forb or weed growth available nearby” has been
4 eliminated by herbicide applications pre and/or post clearcutting and has usually been replaced
5 by the invasive weed species that thrive in clearcuts, such as star thistle, mullein and bull thistle.
6 Part of the reason that these invasive weed species thrive is that nothing eats them. (Exhibits 5-
7 15.) CDF ignored these pictures from the actual land areas in question and did not address them
8 in the OR.

9
10 **d. Failure to address the cumulative impacts of drafting water out of the tributaries**
11 **of Battle Creek during the driest and hottest times of the year on water flow and**
12 **temperature and failure to require enforceable plans to monitor water resources by an**
13 **independent and responsible third party.**

14 The California Constitution, Article X, § 2 states:

15 It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water
16 resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or
17 unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is
18 to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the
19 public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this
20 State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and
21 such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or
22 unreasonable method of diversion of water.

23 During the time a THP is being logged, 4,000 gallon water trucks siphon (“draft”) water
24 out of the creeks in the area to water down the logging roads. SPI’s THP estimates that 6
25 truckloads per day will be used during the time period of April 1 through October 15. There have
26 been no cumulative impacts analyzed for the Plateau Flat THP regarding how much water would
27 be removed from the streams during the driest and hottest times of the year, nor for if operations
28 are being conducted on multiple THPs at the same time. Even minor changes in the water
temperature and volume can affect aquatic species, such as the salmon and steelhead that are the
focus of the \$130 million restoration project directly downstream of the area of thousands of
acres of clearcuts. Petitioners’ questions about these impacts were not answered. (AR 1351.)

1 **e. Failure to address the cumulative impacts of thousands of acres of clearcutting on**
2 **the early and late developmental stages of forest ecosystems, to the non-coniferous types of**
3 **vegetation, to wildlife and their habitat by fragmentation, and to biodiversity of flora and**
4 **fauna.**

5 CDF’s OR contains statements such as: “In THP 2-09-027-SHA(4) the even-age harvest
6 areas all fall within the size limitations allowed under the FPRs. The units are separated by a
7 distance of 300 feet or more.” (AR 393.) “Since the even-aged regeneration units are spaced out
8 over time and over the area...” (AR 400.) “...there will be a variety of seral stages that will
9 likely provide for habitat diversity.” (AR 472.) “The remaining 97.4% of this area will remain in
10 a diverse stage of forest and vegetative conditions. CAL FIRE, in conjunction with the
11 interagency review team, has found no functional wildlife habitat that will be eliminated as a
12 result of *the* proposed THP.” (AR 591.) All of these statements neglect to mention, or
13 acknowledge, the existence of the many other projects surrounding this one. As mentioned in our
14 section regarding the lack of accurate, complete maps the “interagency review team” was given
15 maps with most of the contiguous plans omitted. “These areas have the potential to develop
16 characteristics of late seral forests over time...” (AR 591.) The use of vague words such as
17 “likely” and “potential” and “over time” in these statements provide for no enforceable or
18 measurable results to support those conclusions.

19 The different types of Oaks along with shrubs such as the Ceanothus varieties and
20 Manzanita that are native to the area are the foundation of the food web that supports many
21 species. As noted in the published research paper by Joan C. Hagar (AR 7584-7598): “Forest
22 management practices that are detrimental to broad-leaved trees and shrubs are likely to decrease
23 habitat diversity for wildlife...a diversity of herbs and broad-leaved trees and shrubs provides the
24 foundation for food webs that contribute to diversity at multiple trophic levels in Pacific
25 Northwest conifer forests. Given the number of species associated with non-coniferous
26 vegetation in conifer-dominated forests, maintaining habitats that support diverse plant
27 communities, particularly broad-leaved trees and shrubs, will be an important component of
28 management strategies intended to foster biodiversity...Wildlife species that depend on the

1 resources provided by non-coniferous vegetation may not persist in forests where these
2 components are scarce.” The California Forest Practice Rules require the landowner to “maintain
3 functional wildlife habitat in sufficient condition for continued use by the existing wildlife
4 community within the planning watershed.” (CCR §897 (b)(1)(B). Clearcutting thousands of
5 contiguous acres with no data collected about population numbers and no analysis of the
6 cumulative impacts of the entire mass of projects neither conforms to nor upholds this rule. (See
7 also AR 7662-7671 for a discussion of the effects of clearcutting on ecosystems.)

8 One of the most basic ways to evaluate change is to compare past conditions to present
9 conditions. Petitioners believe that the absence of data about flora and fauna populations, water
10 temperature, flows and sedimentation pre-clearcutting make it difficult, if not impossible, to
11 understand the short-term and long-term consequences of these actions. All of the resources at
12 stake in the Battle Creek watershed can experience cumulative impacts over large spaces and
13 long time periods. There has been no knowledge sought or analysis of what effects further
14 habitat loss and fragmentation might have or whether the area might be supporting any small,
15 critical populations of flora and fauna that remain. Petitioners’ questions about these issues were
16 not answered. (AR 1346-1347.)

17 Additionally, there has been little site specific monitoring of any of the resources in the
18 Battle Creek watershed since the intensive clearcutting began in 1998. Petitioners believe that if
19 CDF and SPI fail to look for declines, no declines will be apparent before crisis points are
20 reached. Without objectives specified that can and will be measured, significant cumulative
21 impacts will go undetected and undisclosed. There is nothing in the THP or the OR that proposes
22 or requires site specific monitoring of impacts to the water, soil, air, climate (CO₂ emissions) or
23 wildlife. These resources do not belong to any one private landowner.

24 **f. Failure to address the cumulative effects to weather and to greenhouse gas**
25 **emissions (GHG) of 20,000 acres of cutover land. The THP does not address the near and**
26 **long-term GHG emissions of the total number of projects and acres.**

27 The OR states: “The THP applicant provided calculations that were site-specific for *this*
28 particular project...the THP is capable of releasing 8,513 tonnes CO₂.” (Emphasis added. AR

1 545.) Setting aside the many arguments about the method of calculation, there is still the problem
2 of only looking at the number for this single THP, while ignoring the ongoing emissions from
3 the 15 other contiguous projects.

4 The single THP approach also ignores the effect of the 16 total THPs on local weather. A
5 forested area has a low albedo surface, but the open ground in clearcuts absorbs heat and causes
6 hotter daytime temperatures. “The normal respiration of trees, taking up CO₂ and releasing
7 oxygen to the lower atmosphere, is a critical forest ecosystem function that supports human life
8 and helps regulate greenhouse gases. The oxygen that trees release is the main source of the
9 oxygen that people—and all other animals—have to breathe... Once the forest has been cut, soils
10 degrade and release substantial amounts of CO₂ to the atmosphere, further adding to climate
11 warming.” (*American West at Risk*, AR 1062.) No matter what method is used to measure the
12 GHG emissions, statements such as the OR makes on AR 548 that “the plan does contain
13 estimates of the amount of GHG that would be produced by *the project*” fail completely to
14 address the amount of GHGs being produced in the contiguous area of the 16 plans. “A
15 cumulative impact analysis which understates information concerning the severity and
16 significance of cumulative impacts impedes meaningful public discussion and skews the
17 decisionmaker’s perspective concerning the environmental consequences of the project, the
18 necessity for mitigation measures, and the appropriateness of project approval.” (*Joy Road Area
19 Forest & Watershed Assn. v. California Dept. of Forestry & Fire Prot.* (2006) 142 Cal.App.4th
20 656, 657.)

21 **B. Lack of Substantial Evidence**

22 CDF’s OR states that “the plan itself and supporting evidence in the file for the plan
23 contains the necessary informational elements for the reviewing agencies and the interested
24 public.” (AR 556.) Beyond the issue of the incomplete and misleading maps contained in the
25 THP, this statement is a fallacy.

26 The AR index lists 5,948 pages of documents cited by CDF, with documents from the
27 letters of concern submitted by Center for Biological Diversity included in that number. On the
28 surface that appears to be quite a few pages. Upon review of those documents however, it will be

1 found that there is very little mention of clearcutting. There is no reference in those pages to the
2 effects of clearcutting this many contiguous acres in a brief time frame. Questions in Petitioner’s
3 comments about what data has been collected and what monitoring has been done to assess the
4 effects were not answered. (AR 1345-1347.) “Conclusory responses unsupported by empirical
5 information, scientific authorities or explanatory information are insufficient to satisfy the
6 requirement of a meaningful, reasoned response.” (*Environmental Protection Information*
7 *Center, Inc. v. Johnson* (1985) 170 Cal. App. 3d 604.)

8 CDF’s OR remarks: “It is the Department’s conclusion that the even-aged management
9 regime will likely afford more options for management applications that will enhance forest
10 health, resistance to wildfire, and ecosystem resiliency.” (AR 468.) Since there is no empirical or
11 scientific information regarding the clearcutting of thousands of contiguous acres in 10 years
12 included in CDF’s cited references, there is no basis for this statement. “Conclusory statements
13 do not fit the CEQA bill.” (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.*, 136
14 Cal.App.4th at 17.)

15 CDF apparently maintains different standards of judgment when evaluating the public’s
16 evidentiary documents and the information submitted by SPI. Petitioners submitted documents to
17 demonstrate it is not “likely” that clearcutting will enhance forest health, etc. The published, peer
18 reviewed paper “Long-term impacts of even-aged timber management on abundance and body
19 condition of terrestrial amphibians in Northwestern California” (AR 711-727) mentions “In
20 Northern California, species richness and abundance remained significantly lower in streams 37-
21 60 years after timber harvesting, compared with streams in late seral forests . . .” CDF summarily
22 dismissed this paper and did not include it in the list of literature cited by Petitioners yet
23 references unpublished, incomplete and unavailable research from SPI about water quality and
24 plant diversity. (AR 384, 606.) Petitioners and other commenters also submitted the Peter Miller
25 review of an unpublished, non-peer reviewed paper from SPI titled: “Carbon Sequestration in
26 Californian Forests: Two Case Studies in Managed Watersheds”. (AR 5903-5909.) The Miller
27 review notes “As detailed below, the SPI study raises numerous methodological and policy
28 issues that call into question both the quantitative conclusions and the value of those conclusions

1 for the development of climate policy. A critical review of this study demonstrates that, contrary
2 to the report’s conclusions, replacing existing diverse forests with uniform tree plantations is
3 unlikely to produce net carbon benefits and will instead increase the risk of catastrophic fire and
4 threaten the extensive range of benefits provided by existing forest ecosystems . . .

5 Methodological problems with the SPI study include the following: The SPI analysis is based on
6 a non-peer-reviewed statistical model. While the authors acknowledge that their model violates
7 normal statistical conditions, they reject alternative, unbiased approaches because they would be
8 ‘tedious’ . . .” (Emphasis added.) Despite this and many other concerns raised about the validity
9 of the SPI study, CDF writes about it: “The Department finds it *refreshing* to have a study that
10 was at least done in conditions that duplicate the forest type and harvesting regime of the THPs
11 that are currently under consideration by CAL FIRE.” (AR 485.) Another example of different
12 standards being applied to public commenters is on page AR 599 where CDF writes: “The
13 comment writer has included the comments of another resource professional to lend credence to
14 their argument, apparently without concurrence of permission of Mr. Rhodes. Due to
15 the lack of a clear connection between the comments and the current project, CAL FIRE has
16 decided to not answer the concerns which were plagiarized from Mr. Rhodes.” (Emphasis
17 added.) The document referred to was included in Petitioners’ comments, and although CDF
18 never asked before naming us as plagiarists in a public document, we did have permission to use
19 Mr. Rhodes comments. Some of these comments were pertinent to any soil issues and logging
20 road usage and were not limited to burned areas as CDF writes. Examples include: “Soil and soil
21 productivity are irreplaceable in human timescales...the loss of topsoil via erosion causes
22 significant and essentially **permanent** reductions in soil productivity...soil compaction typically
23 persists for at least 50-80 years.” (AR 756-772.) Exhibits 17-26 demonstrate road erosion in this
24 part of the Battle Creek Watershed. As for “the comment writer included the comments of
25 another resource professional to lend credence to their argument” Petitioners observe many
26 instances throughout the record that CDF uses the same technique, but seems to find nothing to
27 criticize or dismiss in their own, or SPI’s, usage.

28 CDF writes in the OR: “Implementation of the proposed THP should benefit both elk and

1 deer herds by providing well-spaced early seral vegetation with adjacent forest cover, meadows
2 and available water...also will encourage production of grass, herbs and forbs for deer
3 foraging...while herbicides are expected to be used which would set-back or delay the
4 development of these species, plants will not be eliminated by such use.” This statement ignores
5 the fact that the areas next to the proposed units have been cut recently already, and ignores the
6 physical reality of the herbicided land where “grass, herbs and forbs” are rarely growing back,
7 shown on pages 751, 799, 800, 1035-1042 of the AR and in Exhibits 5-15. More commonly, the
8 herbaceous and shrub species are eliminated by herbicide applications pre and/or post
9 clearcutting and are usually replaced by the invasive weed species that thrive in clearcuts, such
10 as star thistle, mullein and bull thistle. CDF ignored the pictures from the actual land areas in
11 question and did not address them in the OR. CDF and SPI sometimes compare clearcutting to
12 natural disturbances, but that is contrary to what scientific research reports. For example:
13 *“Natural disturbances create heterogeneous environments at multiple spatial scales [citation]*
14 *because disturbances do not cause damage uniformly. Disturbances such as wildfires and*
15 *windstorms are variable in intensity . . .Different types of disturbances produce different types of*
16 *biological legacies, including living organisms and structures: (a) standing dead trees (snags)*
17 *are dominant structural legacies after severe wildfires; (b) downed tree trunks and nearly intact*
18 *understory communities are characteristic legacies after major windstorms; (c) standing dead*
19 *trees are also dominant structural legacies after heavy insect infestations; and (d) clearcuts*
20 *typically eliminate most aboveground structural legacies. . . Clearcutting has been proposed as a*
21 *technique to create ESFEs [early successional forest ecosystems], but this can provide **only***
22 ***highly abridged and simplified** ESFE conditions. First, traditional clearcuts leave few*
23 *biological legacies [citation], **limiting habitat and biodiversity potential**. Second, clearcuts are*
24 *often quickly and densely reforested, and often involve the use of herbicides to limit competition*
25 *with desired tree species . . . Emphasizing recovery as the management goal fails to acknowledge*
26 *the essential ecological roles played by early-successional ecosystems on forest sites. **It should***
27 ***also be considered that climate change and other factors may not permit “recovery” to pre-***
28 ***disturbance conditions.**”* (Emphasis added. Swanson, et al., 2010. AR 7662-7671.)

1 CDF and SPI pay lip service to maintaining early and late stages of forest development,
2 wildlife habitat, water quality, and diversity of species and ages and sizes of trees, but the
3 ongoing clearcutting of thousands of contiguous acres belies any interest in or intent of
4 maintaining or creating these characteristics. This is evident in the physical reality of the land.
5 The avoidance of an all-project-encompassing cumulative impacts analysis allows these
6 incremental losses to continue. In the case of *Natural Resources Defense Council, Inc. v.*
7 *Callaway* (524 F.2d 79 [2d Cir. 1975]) the court said that all other projects “are to occur in the
8 same geographical area, all are related . . . all present similar problems of pollution . . . Clearly,
9 the projects are closely enough related so that they can be expected to produce a cumulative
10 environmental impact which must be evaluated as a whole . . . [The failure to consider this] is an
11 example of the isolated decision-making sought to be eliminated by NEPA.”

12 **C. Intent of Public Resource Code 21001 is Being Actively Undermined**

13 Public Resources Code §21001 reads:

14 The Legislature further finds and declares that it is the policy of the state to:

15 (a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect
16 and rehabilitate, and enhance the environmental quality of the state.

17 (b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic,
18 natural, scenic, and historic environmental qualities, and freedom from excessive noise.

19 (c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations
20 do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and
21 animal communities and examples of the major periods of California history.

22 (d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and
23 suitable living environment for every Californian, shall be the guiding criterion in public decisions.

24 (e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social
25 and economic requirements of present and future generations.

26 (f) Require governmental agencies at all levels to develop standards and procedures necessary to protect
27 environmental quality.

28 (g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical
factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to
proposed actions affecting the environment.

The manner in which this THP has been evaluated is completely inadequate to fulfilling any of
these requirements or achieving the results desired. The omission of pertinent information and
the lack of supporting references that actually address the scope of this degree of clearcutting and
its many associated impacts actively undermine this code. It is not enough to write these codes.

1 There must be enforcement by the agencies and courts. There must be real world data and
2 measurements and analysis to prove, or disprove, assertions that there are no “significant
3 impacts”. The projections, averages and models that many of the statements in the THP and OR
4 are based on are not taking “all actions necessary.” Without this enforcement and action by
5 agencies and courts, the Resource Code intent will be defeated and will never become physical
6 reality. “Hypothetical conditions contemplated by [an] existing plan and not with physical
7 conditions . . . can only mislead the public as to the reality of the impacts which would result.”
8 *Woodward Park Homeowners Ass’n v. City of Fresno*, [2007] 150 Cal.App.4th 683, 709.) As
9 explained in *Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th
10 1253, 1261, agencies “shall provide that measures to mitigate...are fully enforceable...and must
11 adopt a monitoring program to ensure that the mitigations are implemented.” There has been no
12 required monitoring with spelled out, enforceable plans for implementation suggested or required
13 by CDF for the 16 THPs. Petitioners questions (AR 1345-1347, 1350-1354) about these issues
14 were not answered.

15 16 **D. Deference Accorded to Agencies**

17 Agencies have the advantage of being accorded deference by the courts. In the *Berkeley*
18 *Keep Jets Over the Bay Com. v. Board of Port Cmrs* [(2001) 91 Cal.App.4th at 1371] case, the
19 lead agency relied on agency deference to support its conclusion that its methodology was
20 sufficient. Despite this, the Court disagreed because “much information of vital interest to the
21 decision makers and to the public . . . was simply omitted. In other instances, the information
22 provided was either incomplete or misleading...the dispute...goes beyond a disagreement of
23 qualified experts over the reasoned conclusions as to what the data reveals.” A court does not
24 defer to an agency if it has not proceeded in the manner required by law. (*Sierra Club v. State*
25 *Board of Forestry* (1994) 7 Cal.4th at 1235-1236.) CDF has not proceeded according to law; it
26 has avoided the rules and intent of CEQA by omitting pertinent information and has failed to
27 answer questions about information that was incomplete and misleading. Therefore, CDF should
28 not be allowed to cloak itself in “agency deference”.

1 14 CCR §897(b)(2) Implementation of Act Intent: “Individual THPs shall be considered
2 in the context of the larger forest and planning watershed in which they are located, so that
3 biological diversity and watershed integrity are maintained within larger planning units and
4 adverse cumulative impacts, including impacts on the quality and beneficial uses of water are
5 reduced.” The approach CDF has chosen to take by declining to analyze the impacts of the entire
6 contiguous block of projects fails to “resolve every fair argument that can be made about
7 possible significant environmental effects of a project.” (*Protect the Historic Amador Waterways*
8 *v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

9 **E. SPI’s Option A**

10 Much of CDF’s OR cites SPI’s “Option A” (AR 243-274) as the basis of CDF’s findings,
11 but Option A is not site-specific nor reality based; it is based on unsupported future projections
12 that cannot be proven and that are imagined to happen during the next 100 years, over SPI’s
13 entire land ownership of 1.7 million acres within California. These projections are often based on
14 computer models. Nature is always changeable and unpredictable, even without the added
15 burden of anthropogenic climate change. Computer models cannot predict what will happen over
16 the next 100 years any more than a fortune teller in a circus sideshow can. Computer models
17 have no control over temperature, rainfall, drought, fire and insects. The Option A plan is the
18 foundation that all of SPI’s THPs are built on. CDF uses the same foundation to approve the
19 THPs. If the foundation has no basis in the reality of the physical land, is based on dissimilar
20 conditions on 1.7 million acres of land and has no control over the numerous possibilities, the
21 rules and laws are not being upheld by basing decisions on this foundation. “Knowledge of the
22 regional setting is critical to the assessment of environmental impacts.” (*San Joaquin*
23 *Raptor/Wildlife Rescue Center v. County of Stanislaus*, (1994) 27 Cal.App.4th at 713, 723.)
24 Option A has no relation to the particular place of the Battle Creek Watershed and its many
25 resources; Option A is an unproven hypothesis. The impacts of a project must be compared to
26 “real conditions on the ground,” not “hypothetical situations.” (*Save Our Peninsula Committee v.*
27 *Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 121.)
28

1 CDF writes on AR 472: “Regarding the concern over potential for reduction in plantation
2 productivity in light of climate change, growth and yield for plantations, particularly plantations
3 of ponderosa pine, has received considerable attention and research (Oliver and Powers, 1978,
4 Oliver 1972, Oliver 1979). SPI has modeled yield for their established plantations and
5 LTSY calculations are based on consistency of silvicultural application and the accuracy
6 of the growth projections for these regenerated stands. This modeling shows increasing
7 in-woods inventory as well as increased harvest levels over the next 100 years.” (Emphasis
8 added. Note that the studies referenced are over 30 years old. There have been many changes in
9 scientific knowledge in that time period.)

10 The majority of SPI’s THP and CDF’s approval depends on the acceptance of these
11 “incomplete and misleading” predictions that conceivably will have no concrete reality in the
12 rapidly changing climate and world of the future. Using projections that are hypothetical
13 demonstrates that the methodology used by SPI and CDF for analysis is fundamentally flawed.
14 Consequently, this fundamentally flawed form of analysis makes “any meaningful assessment of
15 the potentially significant environment impacts of timber harvesting and the development of site-
16 specific mitigation measures impossible.” (*Sierra Club v. State Board of Forestry*, (1994) 7
17 Cal.4th at 1236-1237.) It is a violation of CEQA when agency “logic is flawed.” (*California*
18 *Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Call.App.4th,
19 1225, 1241.)

20 The avoidance of straight answers and the dismissal of the public’s valid concerns is
21 troubling, but what is really important is that the lack of analysis of the entire contiguous block
22 of acres at stake in this portion of the Battle Creek watershed will continue without abatement if
23 nothing changes in the analysis process and the true interrelated effects are not judged honestly
24 and fairly. With no changes, the watershed will be further impacted by sequential and continuing
25 piecemeal projects until there are nothing but young ponderosa pine trees, as far as the eye can
26 see. Monoculture plantations are creating a landscape lacking the components that other forms of
27 life require. Consequently, these biodiverse forms of life will find it increasingly difficult to
28 survive as the temperature rises.

1 **F. Failure to Address Valid Concerns**

2 The California Supreme Court has stated that the public cannot be ignored. The Court
3 wrote that CEQA’s procedures must be “scrupulously followed” because the environmental
4 review process “protects not only the environment but also informed self-government.” (*Laurel*
5 *Heights Improvement Association of San Francisco, Inc. v. Regents of the University of*
6 *California* (1988) 47 Cal.3d 376, 392.) California’s high court also acknowledged that “citizens
7 can make important contributions to environmental protection” and declared that the California
8 public holds a “privileged position” in the CEQA process. (*Concerned Citizens of Costa Mesa,*
9 *Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.) CDF did not answer
10 many of the public’s concerns and questions in its OR, thereby effectively excluding the public
11 from the process and failing to uphold its obligations described in Public Resource Code 21000:
12 The Legislature finds and declares as follows:

- 13 (a) The maintenance of a quality environment for the people of the state now and in the future is a matter of
14 statewide concern.
- 15 (b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and
16 intellect of man.
- 17 (c) There is a need to understand the relationship between the maintenance of hgh-quality ecological systems and the
18 general welfare of the people of the state, including their enjoyment of the natural resources of the state.
- 19 (d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state
20 take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all
21 coordinated actions necessary to prevent such thresholds being reached.
- 22 (e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.
- 23 (f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires
24 systematic and concerted efforts by public and private interests to enhance environmental quality and to control
25 environmental pollution.
- 26 (g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private
27 individuals, corporations, and public agencies which are found to affect the quality of the environment, shall
28 regulate such activities so that major consideration is given to preventing environmental damage, while providing a

1 decent home and satisfying living environment for every Californian.

3 IV. APPLICABLE LAW

4 A. CEQA and Environmental Review of THPs

5 A Timber Harvest Plan is the functional equivalent of an Environmental Impact Report
6 (“EIR”) that non-timber projects would prepare under the requirements of CEQA. (*Sierra Club*
7 *v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230-1231.)

8 The Supreme Court has called an EIR the “heart” of CEQA, likening it to an
9 “environmental alarm bell” that provides the essential service of alerting the public and decision-
10 makers to ecological changes before they occur. (*Laurel Heights Improvement Ass’n v. Regents*
11 *of University of California* (1988), 47 Cal.3d at 392.) “CEQA is a comprehensive scheme
12 designed to provide long-term protection to the environment.” (*Mountain Lion Found. v. County*
13 *of Kern* (1997) 16 Cal.4th 105, 112.) “The foremost principle under CEQA is that the Legislature
14 intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to
15 the environment within the reasonable scope of the statutory language.’” (*Laurel Heights*
16 *Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 390.)

17 One project’s environmental effects can be “individually limited but cumulatively considerable.”
18 (Cal. Code Regs., tit. 14, § 15065, subd. (a)(3). “Cumulative impacts can result from individually
19 minor but collectively significant projects taking place over a period of time.” (*Id.* § 15355, subd.
20 (b).) *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d at 718 remarked:

21 “thousands of relatively small sources of pollution [can] cause a serious environmental . . .
22 problem.” The restricted and myopic methodology that was used to assess and approve this THP
23 does not meet the CEQA Guideline, § 15088, subd. (b) “There must be good faith, reasoned
24 analysis in response. Conclusory statements unsupported by factual information will not suffice.”

25 The Forest Practice Rules state: “The Director shall disapprove a plan as not conforming to the
26 rules of the Board if . . . there is evidence that the information contained in the plan is incorrect,
27 incomplete or misleading in a material way, or is insufficient to evaluate significant
28 environmental effects.” (14 CCR 898.2(c).)

1 **B. Prejudicial Abuse of Discretion**

2 Abuse of discretion has been defined in case law: “Abuse of discretion does not
3 necessarily imply a willful abuse, or intentional wrong. In a legal sense, discretion is abused
4 whenever, in its exercise, a court exceeds the bounds of reason—all the circumstances before it
5 being considered.” (*Sharon v. Sharon*, 75 Cal. 1 [Cal.1888].) “The term as used in the decisions
6 of courts and in the books, implying, in common parlance, a bad motive or wrong purpose, is not
7 the most appropriate. It is really a discretion exercised to an end or purpose not justified by, and
8 clearly against, reason and evidence.” (*Murray v. Buell*, 74 Wis. 14 [Wis. 1889].) Petitioners
9 have gone to great lengths to present evidence and reason to CDF regarding all of the other
10 projects that the Plateau Flat THP is adjacent to, and have entreated CDF to analyze the
11 cumulative impacts that this contiguous block of projects might have on this area that is the
12 beginning of the Battle Creek watershed. CDF has chosen to disregard or omit most of this
13 information and has not answered questions regarding the entire cumulative impacts on the
14 contiguous Battle Creek watershed area that the Plateau Flat THP is a section of. *East Peninsula*
15 *Ed. Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal.App.3d 155,
16 174: “Where failure to comply with law results in a subversion of the purposes of CEQA by
17 omitting information from the environmental review process, the err is prejudicial.”

18 As detailed in the preceding pages, Petitioners’ believe that CDF has demonstrated a
19 prejudicial abuse of discretion in its handling of the THP process and its failure to require SPI to
20 provide information necessary to the process. “A prejudicial abuse of discretion occurs if the
21 failure to include relevant information precludes informed decision making and informed public
22 participation, thereby thwarting the statutory goals of the EIR process.” (*Association of Irrigated*
23 *Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391-1392.) As the lead agency,
24 CDF failed to: 1) Conduct a proper CEQA analysis 2) Consider a diverse range of alternatives
25 3) Acknowledge valid concerns from the public about short- and long-term impacts and evaluate
26 those concerns in an unbiased manner.
27
28

1 **V. CONCLUSION**

2 CDF based its approval on false and misleading information by analyzing only a small
3 part of the contiguous acres of which this plan is an incremental part.

4 CDF did not answer pertinent concerns about the cumulative impacts to the sum total of
5 those acres and the cumulative short and long term impacts to public trust resources such as
6 water quality and quantity, climate and air through the release of greenhouse gases, wildlife
7 populations, habitat and biodiversity.

8 CDF required little site specific monitoring in the past, present or future to create the
9 basis for sound, realistic, informed judgment.

10 CDF and SPI's references have not addressed what effects this level of clearcutting might
11 have when practiced on the large spatial scale and in the short time span that has occurred in the
12 Battle Creek Watershed.

13 CDF did not conduct an adequate cumulative impacts analysis, thereby failing to uphold
14 CEQA rules.

15 There is little of this process that stands up under honest, critical scrutiny. For this reason
16 and the reasons stated above, Petitioners request that the Court grant the Petition for the Writ of
17 Mandate, find that SPI's THP and CDF's approval of same do not comply with CEQA, and
18 vacate and set aside approval of the THP.

19 DATED: April 25, 2011

Respectfully submitted,

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23 By: _____

24
25 Marily Woodhouse, Representative of Petitioners
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1 **PROOF OF SERVICE**

2
3 I, Marily Woodhouse, declare as follows:

4 My address is 32065 Rock Creek Rd., Manton, CA 96059. On April 25, 2011, I served a true
5 and correct copy of the following:

6 **PETITIONERS OPENING BRIEF Case #170855**

7 on all parties in this action, and the clerks of the court in this action, by placing the true copies
8 thereof enclosed in sealed envelopes addressed as stated in the attached service list.

9 BY MAIL in accordance with Code of Civil Procedure § 1013a(2) by depositing in the
10 United States Mail at Manton, California with the postage thereon fully prepaid.

11 BY PERSONAL SERVICE by personally delivering such envelope by hand to the
12 offices of the addressee(s).

13 BY OVERNIGHT DELIVERY SERVICE via Federal Express to the offices of the
14 addressee(s).

15 BY FACSIMILE by transmitting from my business address a true copy thereof from
16 sending facsimile number _____ addressed to the receiving facsimile numbers on
17 the attached service list at _____. A true copy thereof was transmitted by facsimile
18 and the transmission reported complete and without error.

19 Executed on April 25, 2011, in Manton, California.

20 STATE I declare under penalty of perjury under the law of California that the
21 foregoing is true and correct.

22 FEDERAL I declare that I am employed at the office of a member of the bar of this
23 court at whose direction the service was made.

24 Marily Woodhouse

25 Type or Print Name

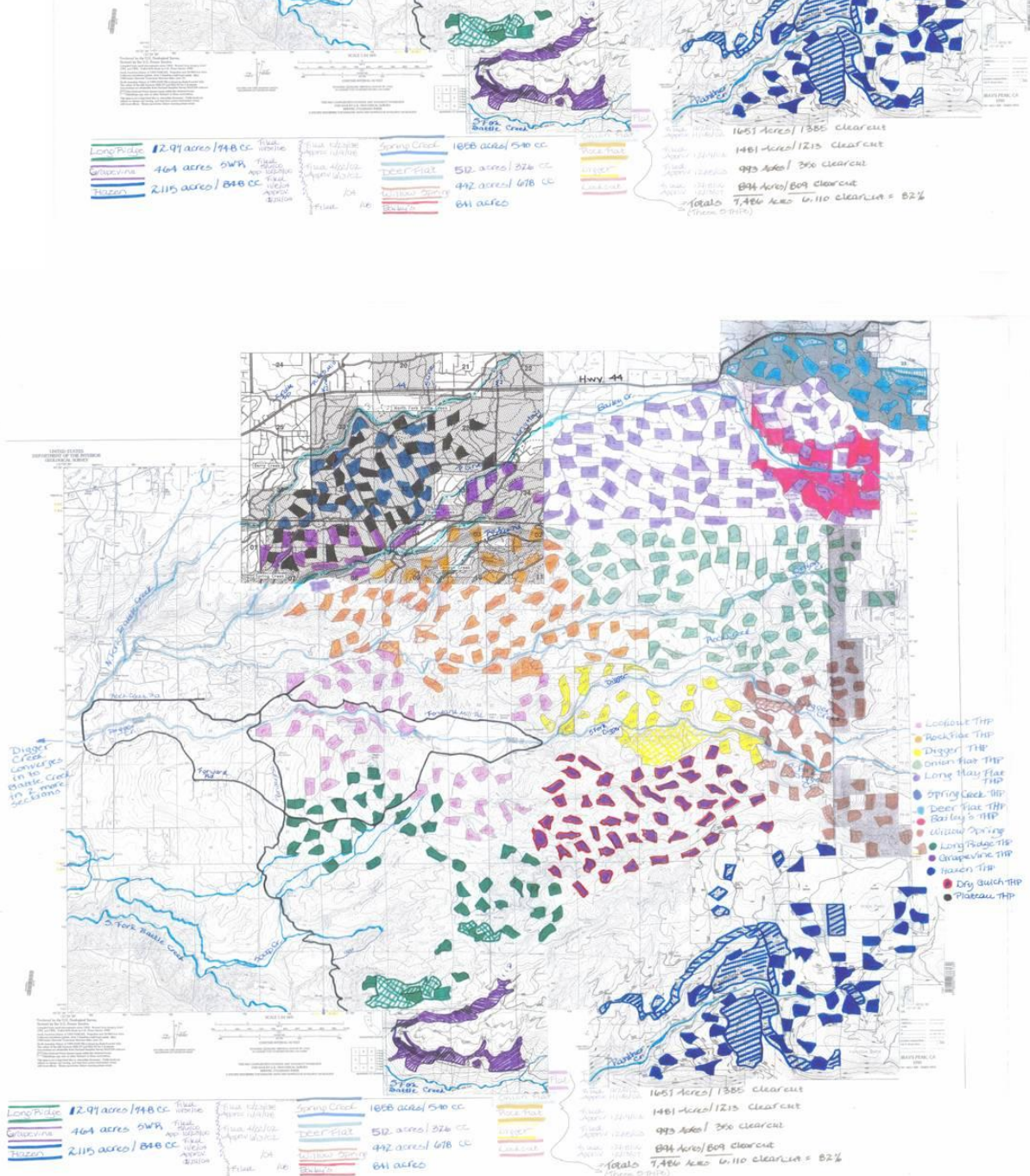
26 Signature

1 Attached service list:

2 David E. Martinek
3 DUN & MARTINEK LLP
4 P.O. Box 1266
Eureka, CA 95501

5 Kristin Peer
6 Deputy Attorney General
7 California Department of Justice
1300 I Street
8 P.O. Box 944255
Sacramento, CA 94244-2550

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This map shows the upper part of the Battle Creek watershed. It is bordered by Highway 44 on the north, Highway 36 on the south and Lassen National Forest and Mt. Lassen on the east. The different colors represent the separate THPs that have been filed since 1998. The solid color blocks are primarily clearcut units, ranging in size from 12 to 27 acres. The last unmarked area to the right of the dark green markings is approximately where the Blue Ridge THP of 1,212 acres that was received by CAL FIRE on 11/5/10 will be. The turquoise blue lines are Battle Creek and its tributaries. The THPs marked in pink, dark green, black, and purple outlined in red have not been cut yet. This THP, Plateau Flat, is the black areas. (AR 7573.)

EXHIBIT 2

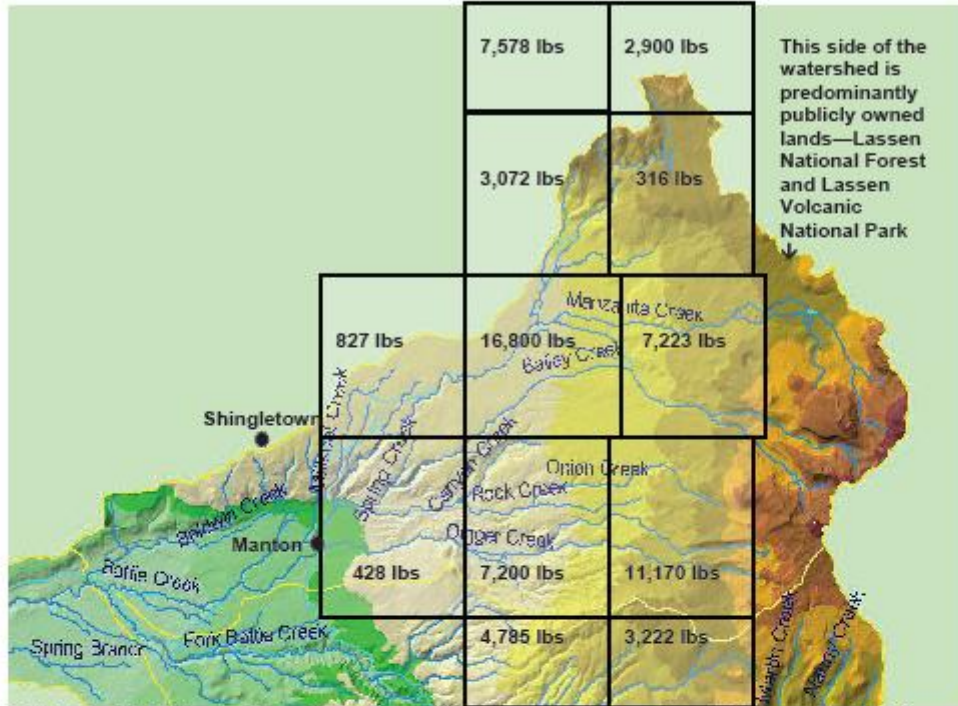
Eastern Shasta County 2010
The clusters of small brown
holes are each an approx. 20
acre clearcut.
20 acres equals 4 city blocks.



The part of the Battle Creek watershed in question, lower right of image. (AR 1339.)

EXHIBIT 3

BATTLE CREEK WATERSHED, SHASTA AND TEHAMA COUNTIES
Sierra Pacific Industries (SPI) Forestry Herbicide Applications



Battle Creek Watershed. Herbicide Data Source: Calif. Department of Pesticide Regulation (2008), Current data are available only to 2006.

Township & Range	Lbs. herbicides	Date range
T33NR3E	2,900 lbs	2000-2006
T33NR2E	7,578 lbs	2001-2006
T32NR3E	316 lbs	2005
T32NR2E	3,072 lbs	1998-2006
T31NR1E	827 lbs	1999-2005
T31NR2E	16,800 lbs	2000-2006
T31NR3E	7,223 lbs	1997-2006
T30NR1E	428 lbs	2004-2005
T30NR2E	7,200 lbs	1999-2006
T30NR3E	11,170 lbs	2001-2006
T29NR2E	4,785 lbs	1996-2006
T29NR3E	3,222 lbs	1998-2006

Chemicals used include atrazine, hexazinone, imazapyr, glyphosate, triclopyr BEE, 2,4-D, sulfometuron methyl, and a variety of additives and surfactants.

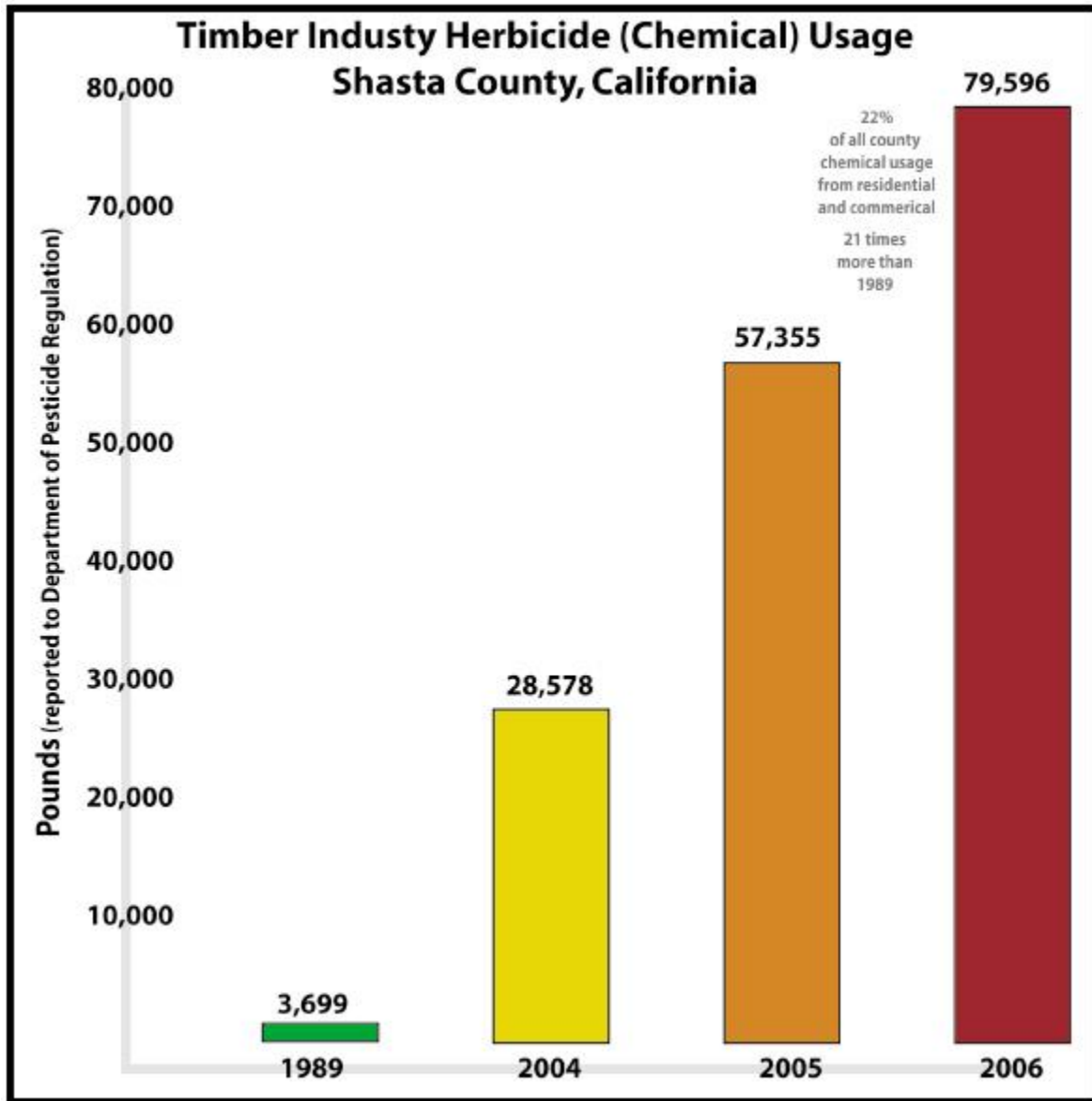
TOTAL: 62,621 pounds of herbicides were applied by Sierra Pacific Industries in the Battle Creek Watershed in the last decade. Of this, 17,834 pounds were applied aurally. This total does not include additional spraying in 2007 and 2008.

Battle Creek watershed is the site of a \$43 million state and federal salmon and steelhead recovery project. The streams in this watershed are critical habitat for federally listed threatened and endangered salmon and steelhead.

Attachment 1.

(AR 879.)

EXHIBIT 4



Long Ridge THP is near the borderline between Tehama and Shasta Counties.

If the same amount of herbicides for forestry were still being used as in 1989, it would take 21 years to use the amount that was used in the single year of 2006. (AR 798.)

EXHIBIT 5



Long Hay Flat unit approved in 2000, photographed in 2008. (Lavender markings on map.) No Manzanita, Ceonothus, Oak or other plants that feed a large percentage of wildlife. (AR 799.)

EXHIBIT 6



Rock Flat THP unit, approved in 2003, photographed in 2007. (Orange markings on map.) A deer from the Tehama Deer Herd (that has been in decline for a number of years) wouldn't find anything to eat here, nor would anyone else. (AR 799.)

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EXHIBIT 7



Onion Flat THP unit, approved 2002, photographed in 2009. (Lighter green markings on map.)
If SPI's "products do not eliminate grasses, etc." as the THP states, there are thousands of
clearcut acres that are not growing anything but tiny tree seedlings, bull thistle, star thistle and
mullein for some other reason that has not been disclosed. (AR 1004.)

1 **EXHIBIT 8**



18 Rock Flat THP (2003) unit, photographed in 2009. Invasive weeds. (AR 1035.)

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1 **EXHIBIT 9**



18 Rock Flat THP (2003) unit, photographed in 2009. Invasive weeds. (AR 1036.)

1 **EXHIBIT10**



18 Rock Flat THP (2003) unit, photographed in 2009. Invasive weeds. (AR 1037.)

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1 **EXHIBIT 11**



18 Rock Flat THP (2003) unit, photographed in 2009. Invasive weeds. (AR 1038.)

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1 **EXHIBIT 12**



18 Long Hay Flat THP (1999) unit, photographed in 2008. Invasive weeds. (AR 1039.)

1 **EXHIBIT 13**



18 Long Hay Flat THP (1999) unit, photographed in 2008. Invasive weeds. (AR 1040.)

1 **EXHIBIT 14**



18 Onion Flat THP (2002) unit, photographed in 2009. (AR 1042.)

1 **EXHIBIT 15**



18

19 Fuel break cut in 1990 during Finley Fire at the corner of Ponderosa and Forward Roads, as it

20 was in 2008, nearly 20 years later. The primary vegetation is star thistle and mullein, which no

21 wildlife eats.

22 Estimates of how long it takes a forest to create one foot of topsoil range from 400 to 1,000

23 years. (AR 800.)

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