



The Log

of the

Central Coast Forest Association

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"LEGISLATION" EDITION

FEBRUARY CALIFORNIA LEGISLATION SYNOPSIS

By Cate Moore

The window for proposing new legislation has closed and CCFA volunteers have completed examining the list.

The legislature introduced a grand total of 2,195 bills, at least 529 of them being "spot bills" that serve as placeholders for potential legislation later in the session. We view these bills as "sleepers" that can morph into anything later in the legislative season, often getting written and crammed through the process before anyone can read, analyze them, and provide feedback.

The CCFA team combed through the legislation by searching all of the bills for certain keywords that may lead to legislation that affects forestry. Some of them are obvious: forest, forestry, timber and logging, for instance. Others sit on the periphery of the realm of forestry, including fire, water, and environment, among others. These bills provided a significant number of side paths that need to be weeded out of the list, like firearms, fire codes for buildings, public water district rules and so forth.

Listed following are the survivors of our sort. We will be updating their progress through the legislature and providing further analysis on our updated website. We will also provide links into the actual text of the bills so you can read them for yourself. Please visit frequently, as the situation changes almost daily.

Timber Harvesting and Forestry:

AB 350 would increase the size of trees that may be removed from within 500 feet of a structure without a THP for the purpose of fire safety.

AB 383 is a massive bureaucracy and procedural bill. Within it is buried a section that addresses the implementation of the THP process review enacted by AB 1492 (section 171) and another section for financing coho habitat restoration (Section 228).

AB 823 requires replacement acreage for mitigation when agricultural land is converted to another use. The problem here is that the bill does not address the root causes of conversion, inability to make a living on the land as ag land, inheritance tax burdens and succession choices.

AB 875 proposes funding from AB 1492 lumber tax to seek efficiencies and cost savings in salmon/trout restoration and forest/watershed restoration and improvement projects. We

worry that this is diverting money from the original intent of the lumber tax.

AB 904 proposes to reform the NTMP program to enable more landowners to use it. There isn't enough text in this bill yet to assess it.

The Fire Tax or "State Responsibility Area Fees":

These have been highly unpopular and Cal FIRE has received thousands of protest petitions. There have been six bills introduced about these fees.

AB 23, **AB 124** and **SB 17** all call for outright repeal the fee.

SB 125 exempts landowners that live within another fire district

SB 147 exempts low income residents from the fee.

AB 929 supports the fee.

Fish and Wildlife:

AB 497 adjusts the meeting schedules and rule of the Fish and Game Commission to reduce the number of meetings annually, the number of meetings that must take place outside of the Sacramento area, and the amount of public notification needed before a meeting. The overall effect will be to make the commission's dealings less visible to the public. **AB 504** repeats this bill nearly exactly.

AB 896 wants to achieve mosquito abatement while enhancing wildlife habitat. It looks to us like mutually exclusive goals, since mosquitos are an integral part of the food web.

AB 1097 declares the primary function of the Department of Fish and Wildlife is to provide services for those who fish and hunt. That's going to be a hard sell to make to the urban legislators.

AB 1213 places bobcats in protected status, although they are not endangered in any way. The cuteness factor strikes again.

AB 1230 relaxes the standard for adding and removing species from the California Endangered Species list. It remains to be seen if the removal process ever gets used.

SB 132 requires non-lethal methods of taking mountain lions unless there is a reasonable expectation of the lion causing immediate death or physical harm. This is the fallout of the lion cubs hiding under the suburban house and should be dealt with by internal fish and wildlife procedures, not through a new law.

Legislation (Continued from page 1)

SB 749 attempts to make endangered species protection and agriculture more compatible activities. It adds changes to the endangered species petition process to include public hearings.

CEQA:

There is a varied list of CEQA tweaks appearing on the list this year. There must be problems with normal CEQA processing, because there is a healthy list of exemptions proposed for government projects.

AB 37 adjusts reporting procedures.

AB 515 establishes separate CEQA court districts within Superior Court for trying CEQA civil cases. **SB 123** is a similar Senate analog of the concept. The CEQA civil cases must be eating up a lot of court time to warrant this action. We aren't sure it is a good idea to have dedicated CEQA courts, since this will remove a brake on the system and the judges assigned to it will probably be "true believers."

AB 756 and **SB 167** introduce the exact same language in each house. There are two interpretations of what these bills say. One interpretation is that these bills are simply placeholders; in this case simply changing the wording from the plural case to the singular case. The other interpretation is that these bills will require a single lead agency for each EIR and that all other agencies contributing to the report must defer to the lead agency. There is not enough text in the bills to determine what is the real intent.

AB 794 exempts biofuel conversion projects and composting projects from CEQA if they "will result in a net reduction in greenhouse gases."

AB 953 adds the health and safety of people near a project to the list of concerns that must be addressed in an EIR report. It boggles the mind that this is not currently on the list. It could open up a can of worms if there are no standards for what constitutes significant threats to health and safety; there are just too many people who will sue over an inconvenience, declaring it a threat to their mental health and well being.

SB 436 and **SB 617** are very similar and both expand the notifications and public meeting requirements for CEQA hearings, which will add to the bureaucracy hoops to be jumped. We wonder if changing these CEQA requirements will have an affect on THP processing.

SB 633 seems to make it easier to require subsequent or supplemental EIRs for incomplete information, which will make processing the EIR take even longer. "New information" has been a very common delay tactic in EIRs.

SB 731 focuses mostly on making changes to CEQA to help along "smart infill" projects. Never mind that - the real beauty of this bill is that it requires standards for determining what constitutes a "significant threat." With standards, measurements must be made to determine the level of the threat and subjective judgments will not rule the case.

SB 787 makes other adjustments to CEQA but the impact of these changes has not been sufficiently studied for us to form an opinion.

Fuels and Emissions:

One of the glamour topics on the list is "Low Carbon Fuel" and other fuel/emission packages.

AB 8 and **SB 11** contain a proposed program to help people repower their "high-emitting engines" with new ones. Many of us have older diesel engines powering an array of equipment that may become illegal in the future, so options to replace or retrofit them should be examined.

AB 278 proposes a list of criteria that should be considered when determining the rating of a "Low carbon fuel."

AB 284 forms a board to track emissions reduction progress which will spend even more money that the state does not have.

SB 621 would extend the diesel emission compliance deadlines a further 5 years for low-mileage vehicles.

Global Warming Solutions Act:

This act has ramifications that keep reaching out to touch forestry concerns, impacting the equipment we can use, requiring us to perform carbon calculations and creating the carbon offset market that hopes to use our lands as a carbon extraction machine and reservoir. This is another glamour topic for legislation. The focus lately has been on the bureaucracy that will manage all the money they think they will be making and projects to spend it on.

AB 153 proposes a process for reviewing new offset protocols before enacting them. **AB 254** repeals the exemption granted to the Western Climate Initiative for the Bagley-Keene Open Meeting Act. CARB has been very secretive about what is going on within this initiative, so sunshine would be welcome.

AB 416 has a bonehead typo: "(8) Prevent conservation of agricultural, forest, and open space lands to uses that result in higher greenhouse gas emissions." Surely they meant "conversion."

Now that the Greenhouse Gas Reduction Fund is up and running, the legislature is thinking up all kinds of ways to spend the money.

AB 1375 created a Clean Technology Investment Fund.

SB 798 creates a number of venues for reducing greenhouse gases. One mentioned is "Funding to reduce greenhouse gas emissions associated with water use and supply, land and natural resource conservation and management, forestry, and sustainable agriculture." Aren't we actually absorbing greenhouse gases?

SB 1051 wants to spend the money to build high density, low income housing near transit stations.

Taxes:

Now that the legislature has a super-majority, there is a major push going to bypass Prop 13 tax provisions. Below is an array of examples of reduced majority proposals for raising taxes:

ACA 3 provides an exception to the 1% ad valorem property tax rate limit to allow bonded indebtedness for city, county, or special districts funding fire, emergency response, police, or sheriff buildings or facilities, and equipment, that is approved by 55% of the voters of the city, county, or special district, as applicable.

Legislation *(Continued from page 2)*

ACA 8 changes the rules for raising property taxes to allow a 55% vote for passage for an array of infrastructure improvement bonds.

AB 1188 authorizes bonded indebtedness upon approval of 55% of the voters to fund activities involving buildings, facilities, and equipment for the direct and exclusive use of fire, emergency response, police, or sheriff personnel. It requires the passage of ACA 3 to be valid.

SCA 4 changes the rules for raising property taxes to allow a 55% vote for passage for bonds for local transportation projects.

SCA 7 changes the rules for raising property taxes to allow a 55% vote for passage for bonds for public libraries.

SCA 8 also changes the rules for raising property taxes to allow a 55% vote for passage for bonds for transportation projects.

SCA 11 allows cities, counties and special districts to enact special taxes with a 55% majority.

Peripheral Concerns:

AB 1 appropriates money to develop an integrated water management plan for the Salinas Valley. It appears benign at the moment. Our concern is any effects it may have on water rights as it works its way through the legislature.

AB 73 is the grand budget bill of the Assembly, which lists the budgets for each department. **SB 65** is its Senate analog.

AB 502 addresses rules concerning loan collateral; one of the classes of property mentioned is standing timber.

AB 763 requires a broadband level of coordination and cooperation between state and federal agencies in controlling and eradicating invasive aquatic plants. Since we are so plagued by agencies that act as if there were no others involved in the THP permit process, it will be interesting to see if this model can be enacted and used to inform other multiagency concerns.

AB 866 is a real gem that would change the regulation creation process to require a real economic impact study that includes not just the impacts to state government, but to the entire state economy. The goal is to make regulations less burdensome for the regulated.

AB 1295 makes adjustments and clarifications to tariffs for electrical purchases with the goal of increasing renewable energy sources. There is a small section discussing the use of the biomass materials produced by fire-safe projects for generating energy. Fire-safe biomass needs to go somewhere or it becomes a fire hazard on its own, so using it to generate energy and perhaps offset the expenses of the trimming should be encouraged. **SB 674** does the same thing for the Senate.

AB 1330 requires the Secretary for Environmental Protection to find and address gaps in "environmental justice." Concepts like environmental justice and social justice get used as justifications for all kinds of projects of dubious value that try to reform our society into a progressive utopia. They also get used as justifications for lawsuits by the perennially offended, so this could open a can of worms.

SB 273 exempts farm vehicles that are mostly used off-road from

registration. Timber is defined as an agricultural concern and some of our members farm and ranch as well as grow timber, so this may be of interest.

AB 769 is an arcane tax law modification that disallows the use of net operating loss carrybacks for individuals and corporations. We aren't sure if this applies to CCFA members, but since timber accounting is often spread out over a number of years, we are willing to watch this. ■

THE CURRENT STATUS OF THE IMPLEMENTATION OF AB 1492

By Cate Moore

One of the major provisions of AB 1492 is a lumber tax that is to finance the state agencies' expenses for processing Timber Harvest Permits and the subsequent post-harvest inspections. After the passage of the bill, the agencies are supposed to come together to devise the procedures for processing permits in the future. At the California Forestry Association annual meeting, a panel of agency heads were present to discuss progress on the implementation to this point. The people in this panel were Ken Pimlott—CalFIRE, Chuck Bonhom—Fish and Wildlife, and Matt St. John—North Coast Water Quality Board.

The short story here is that the agencies have no idea yet how they are going to implement the bill. We really did not get any solid information, and from the grumbling afterward, people were frustrated and not very pleased.

AB 1492 has the following goals:

- * implementing process efficiencies
- * collecting data metrics and making them transparent to reviewers and the public
- * monitoring ecological performance

Theoretically, the agencies are identifying staff positions and assigning them to the AB 1492 fund. They are basing their procedures on lessons learned from the Redding Pilot Program, but just what exactly these lessons were was never mentioned. The Redding Pilot Program is a test project for the idea of having dedicated THP reviewers who review THPs on the site and settle any problems during the review.

There were words acknowledging there are interagency and even intra-agency conflicts existing that impede the process and there is a goal of removing these, but nothing was mentioned about how these decisions were to be made.

The procedures the agencies come up with are supposed to be available for review. We don't know how yet. The involved groups in the process are CalFIRE, Fish and Wildlife, the Water Boards and the Governor's office. We expect we will need to be proactive if we are to get any ideas pushed through.

During the presentation, I asked what the drawing line was that would define what is considered data for presentation to the public and what would remain private data for use only between the landowner and the involved agencies. This is currently being examined by staff attorneys.

CCFA will be watching to see how we can monitor progress on this process as it develops. ■

HIDDEN FUNDS: SEN. GAINES WANTS AG TO LOOK AT CAL FIRE

From *Mountain Democrat*
February 1, 2013

SACRAMENTO – Sen. Ted Gaines, R-Rocklin, has sent a letter to California Attorney General Kamala Harris requesting an investigation into the California Department of Forestry and Fire Protection following recent reports revealing the agency hid \$3.6 million with the California District Attorneys Association instead of depositing it into the state's General Fund.

"This is a very serious and disturbing matter that calls for a thorough investigation by the attorney general to determine whether there are any related criminal charges that should be brought," said Gaines. "Hiding funds outside the state system with an organization that is profiting from the account simply reeks of wrongdoing and demands to be looked into."

This news comes on the heels of the California Department of Parks and Recreation concealing \$20 million in a hidden account last year. Following that revelation, auditors found more than \$200 million that other state agencies had stashed away.

"How can the state get away with charging rural Californians a \$150 illegal fire fee specifically to support Cal Fire operations, and at the same time Cal Fire is hiding millions in a secret fund?" said Gaines. "It's no wonder there is such a high level of distrust between the government and its citizens. We deserve to know the truth behind what took place and why."

Gaines also strongly supports the efforts of the joint Assembly and Senate committee hearings into whether there are millions more hiding completely off the grid.

"Unfortunately, our oversized government makes it far too easy for state agencies to get away with this kind of activity and have it go unnoticed for years," said Gaines. "I welcome the joint committee hearings and commit to working with my colleagues to determine necessary reforms to put a stop to this unethical behavior and return any funds where they belong—with California's taxpayers."

Senator Ted Gaines represents the 1st Senate District, which includes all or parts of Alpine, El Dorado, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra and Siskiyou counties. ■

CCFA HAS A NEW WEBSITE!

We are very excited to announce that our new, revamped website is now alive and available. This new design will allow us to quickly and efficiently update information as it arrives.

We still have a lot of archived material to load, but we will interweave that with current news, so that you can see what is happening now, while we fill in the context material.

Come check us out on www.ccfassociation.org!

Cate Moore, CCFA board member and webmaster

WATER QUALITY UPDATE

IMPORTANT !

By Jim Hildreth

The Central Coast Regional Water Quality Control Board met last summer and changed the conditions of their General Conditional Waiver for Timber Harvesting. This waiver is separate from the Timber Harvest Plan (THP) process, and must be secured prior to timber operations. All new waivers (those granted after July 2012) are under the new requirements while those granted before this date remain unchanged.

The new waiver still requires the post-harvest monitoring of the plan area. Unfortunately there was a significant and potentially costly change to the requirements. Landowners are now required to take photographs at mitigation points determined by Water Quality staff. These photographs must also be submitted as part of the annual report which adds another cost to the landowner. Photo monitoring has little practical value other than proving that the inspection was conducted. Photo monitoring was previously required for most waivers. This requirement was then removed by Water Quality after they analyzed several years of monitoring data. It is unclear why this was added back in last summer.

A second new condition is the change in deadline date for annual reports that the landowner is required to submit to Water Quality. For all new waivers the date is May 15 of each year. This could be considered an improvement as the reporting is immediately after the winter period. The old date was November 15 which was confusing as it included the overlap of two different reporting seasons.

The last significant change to the waiver is the new form that an applicant must fill out and submit to request the waiver. Water Quality uses a system where they assign Tier I, Tier II, Tier III or Tier IV to your harvest plan. The Tier is dependent upon the actual timber operations contained within the plan, the amount of watercourses within the plan area and the amount of harvesting within the watershed over the previous 15 years. The monitoring requirements and associated costs are typically higher as the Tier level increases. The previous form used to determine this Tier made it likely that conditions outside the control of the landowner would push the Tier level higher. It seems obvious that emphasis should be placed upon proposed timber operations which can be controlled by the landowner. This would give the landowner incentive to voluntarily restrict operations near watercourses beyond what is required by the Forest Practice Rules. This may be worthwhile to the landowner as it may result in a lower Tier and a reduction in the amount and cost of monitoring. The old application form did not take this into account – hopefully the new form does, but it is too early to determine if this is true.

The new changes to Water Quality monitoring and reporting did nothing to address the frustrating delays associated with the application process. The landowner cannot submit the application to Water Quality until the timber harvest plan has gone to second review. The plan is typically approved about two weeks after this second review which gives Water Quality little time to process

Water (Continued on page 9)

125 YEARS OF FOREST STEWARDSHIP

By Marty McCormick, CCFA Board Member

James McCormick, Sr. left Ireland in 1848 in the depth of the Irish Potato Famine. He was seven years old. The family settled in Carthage, Jefferson County, New York.

In 1863 James, his older sister, Kate, and his older brother, John and wife of two years joined hundreds to escape from the Civil War. They sailed to the Isthmus of Panama crossing the narrow strip of land on the "dinky railroad." Then they boarded another boat heading north, sailing into San Francisco Bay on January 15, 1864.

They only stayed in San Francisco a short time. They were basically farmers and dairymen and soon sailed down the coast to Santa Cruz. They stayed for several months, but after hearing about Pescadero (then part of Santa Cruz County) moved there in late 1864.

James worked as a dairyman for a while and married Julia Shaffrey on January 12, 1866. In those days they lived at Willowside Farm on Stage Road. James, Sr. purchased land in Pescadero, and the Catholic Church was built in 1868 on that land. They had seven children, all of whom became active in Pescadero in their adult years.

In 1873, James McCormick, Sr. built an architecturally classic house on Stage Road next to Pescadero Creek. It still stands today as does the church. They are both constructed of lumber, the majority of which is redwood and mostly heart redwood.

Also in 1873, James, Sr. purchased 320 acres along Butano Creek just downstream from the Butano Falls. He, along with his brother John (who now owned the Pescadero Hotel) originally brought hotel guests to The Butano to fish and hunt.

In the late 1880's he constructed a mill on Butano Creek and with his partner, Hamilton, began logging the Butano. They hauled logs over skid roads with ox teams. Only the level areas and lower parts of the steep sides of the canyon were timbered. Other trees were spared or bypassed because of size or gnarly growth. The milled lumber then was hauled out to the coast by mule-drawn wagons and hoisted by booms onto ships mostly bound for San Francisco Bay. The mill saw its largest activity after the San Francisco earthquake and fire in April 1906, employing twenty-six workers at its peak. Today, there are many old growth redwoods in this canyon. The newer growth is over 100 years old.

James' partner, Hamilton, was killed in 1895 by a part of the mill's large concrete fly wheel that broke off. James then operated the mill until 1910.

In June, 1912, the property was subdivided into about 110 "summer vacation" lots selling for between \$200-\$800. This unique community thrives today and is a beautiful enclave in the redwoods. A privately-owned acreage of uncut timber was set aside as a preserve adjacent to "The Butano" to protect the several waterfalls contained therein.

My eight grandchildren are the sixth generation of McCormicks to enjoy, love, and respect this great place.

I first met our good friend, historian and author Sandy Lydon* in the late 1940s when we both spent summers with our grandmothers in "The Butano." This summer will be my 75th consecutive summer spending great family time amongst our beloved redwoods.

*Coast Redwood: A Natural and Cultural History

co-authored by Sandy Lydon

An exceptionally informative book



"Company House" of Butano Land & Development Company, built in 1912 to house prospects for property purchase



Frank Wellington, timber cruiser for McCormick Mill in the late 1800s

More photos of The Butano on page 12



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Ecosystem Conservation Division/Water Branch
830 S Street
Sacramento, CA 95811
www.dfg.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



December 4, 2012

Interested party

Subject: Department of Fish and Game Instream Flow Recommendations for Scott Creek, Santa Cruz County, Pursuant to Public Resources Code 10002

Pursuant to the Public Resources Code Section 10002 the Department of Fish and Game (Department) is consulting with the local government and interested stakeholders on the attached recommended stream flows identified by the Department for Scott Creek, Santa Cruz County. The Department has interest in assuring that water flows within streams are maintained at levels which are adequate for long-term protection, maintenance and proper stewardship of fish and wildlife resources.

Scott Creek is a significant watercourse for which minimum instream flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. Scott Creek was selected for development of flow recommendations because it is a significant watercourse with high resource value, and it is critically important for viability of California central coast steelhead (*Oncorhynchus mykiss*) and coho salmon (*Oncorhynchus kisutch*) populations.

After reviewing comments from this request, the Department intends to transmit the completed flow recommendations to the State Water Resources Control Board (Water Board), which will consider the Department's flow recommendations for Scott Creek as set forth in 1257.5 of the Water Code.

The draft flow recommendations report for Scott Creek can be accessed at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=57461>. Please respond with any written comments by January 5, 2013 addressed to: Robert Holmes, Instream Flow Coordinator, California Department of Fish and Game, Water Branch, 830 "S" Street, Sacramento, CA 95811.

Sincerely,

A handwritten signature in black ink that reads "Scott Cantrell".

Scott Cantrell
Chief, Water Branch



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division/Water Branch
830 S Street
Sacramento, CA 95811
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



January 4, 2013

Interested Party

Subject: Extension of Comment Period for California Department of Fish and Wildlife Draft Instream Flow Recommendations for Scott Creek, Santa Cruz County

The California Department of Fish and Wildlife (CDFW) sent a letter dated December 4, 2012 soliciting comments on our *Draft Instream Flow Recommendations for Scott Creek, Santa Cruz County* (Draft Recommendations). Public Resources Code (PRC) Section 10001 requires CDFW identify streams and watercourses for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. Scott Creek is a significant watercourse with high resource value, critically important for viability of California central coast steelhead (*Oncorhynchus mykiss*) and coho salmon (*Oncorhynchus kisutch*) populations. CDFW prepared the Draft Recommendations pursuant to PRC Section 10002 which requires CDFW to "prepare proposed streamflow requirements" for transmittal to the State Water Resources Control Board (Water Board). Following the comment period, CDFW will transmit our final document to the Water Board to fulfill PRC Section 10002 "proposed streamflow requirements". PRC Section 10002 also requires the Water Board to "consider these requirements within a stream" when, pursuant to Water Code Section 1257.5, "acting on applications to appropriate water".

CDFW conducted the instream flow study in Scott Creek in 1995. On May 22, 2008, CDFW submitted draft recommendations to the Water Board based on the 1995 study. CDFW reviewed the 1995 study and the 2008 draft recommendations to ensure they reflect the most current understanding and scientific methods. CDFW's 2012 Draft Recommendations are the result of that review and are unchanged from the 2008 draft recommendations.

After reviewing public comments and requests to extend the comment period, CDFW is extending the comment period to April 5, 2013. CDFW will also be available to speak directly to interested community members during the extended comment period to identify any specific information relevant to finalizing the Draft Recommendations. Comments on the Draft Recommendations should focus on information used to assess minimum flow needs for instream fishery resources. This could include the study design, its methodology, results and any potential change in conditions which may affect the Draft Recommendations. Comments regarding competing water uses and water availability are not within the purview of CDFW's Draft Recommendations and should be addressed to the Water Board through its regulatory process.

DEPARTMENT OF FISH AND WILDLIFE ATTEMPTS WATER TAKINGS ON SCOTTS CREEK FOR FISH HABITAT

By Cate Moore, February, 2013

The Department of Fish and Wildlife (CDFW) recently attempted to take the use of the water of Scotts Creek from its residents and assign it to fish habitat. CDFW did this by assigning a required flow level schedule for the creek that it believed was necessary to maintain a viable fish habitat. If the proposed flow was not evident in the stream, the proposed remedy was to forbid the Scotts Creek drainage residents from using their springs for domestic water and farming.

A great many users of Scotts Creek water, including Swanton Pacific Ranch (the Cal Poly facility), which has a great many resident watershed process researchers, protested the schedule, saying it simply was not realistic. On the right is the proposed flow schedule from "In-stream Flow Recommendations: Scotts Creek, Santa Cruz County."

The first thing we observe is that this schedule is based on average rain year patterns and doesn't hold up to the large year-to-year variations evident in California Central Coast rainy seasons. Over the last few years, anyone who has been paying attention has observed that January and February have been unusually dry. This year, there hasn't even been an inch of rain since December, and now we are in March.

If the rain doesn't fall, the required flow cannot be achieved, no matter how many residents are barred from using their water. (*About 1.25" fell in early March, but not enough to significantly increase the flow.*) Had this process taken place, most residents of Swanton would have been denied water rights, as all springs and streams there are tributaries of Scotts Creek.

Chart of CDFW recommended flow levels at right

Due to the intensity of the protests, CDFW announced on March 1 that they will drop the plan. CCFA will continue to monitor the situation. ■

See the official letters of intent on pages 6 and 7.

A ONE-WAY ENDANGERED SPECIES ACT?

By Damien M. Schliff
From Pacific Legal Foundation Liberty Blog—December 18, 2012

Last week, the California Third District Court of Appeal issued its decision in *Central Coast Forest Association v. California Fish & Game Commission*. The court, in an opinion authored by Justice Blease and joined by Justice Robie, held that, under the California Endangered Species Act, one can seek delisting of an already protected species on only two grounds: (1) the species has gone extinct; or (2) the species has recovered. The court rejected the petitioners' position that one can also seek delisting on the grounds that new data show that the original listing was in error. In so holding, the court of appeal interpreted the California ESA contrary to the federal ESA. The court also interpreted the statute to create a strange regime where a landowner can continue to be subject to the statute's strictures notwithstanding that the species in question

Month	Target Species/Life Stage	Recommended flow (cfs)
January	coho adult spawning steelhead adult spawning	40
February	coho adult spawning steelhead adult spawning	40
March	coho adult spawning steelhead adult spawning	40
April	steelhead adult spawning	25
May	coho fry rearing steelhead fry rearing	10
June	coho juvenile rearing steelhead juvenile rearing	6
July	coho juvenile rearing steelhead juvenile rearing	6
August	coho juvenile rearing steelhead juvenile rearing	6
September	coho juvenile rearing steelhead juvenile rearing	6
October	coho juvenile rearing steelhead juvenile rearing	6
November	coho juvenile rearing	6
December	coho adult spawning	12

should never have been listed in the first place. How did the court of appeal majority reach this peculiar result?

First, the court interpreted the state ESA as authorizing judicial review of Commission decisions through administrative mandamus, *only*. That holding is particularly odd given that the same court's decision in *Central Coast Forest Association v. California Fish & Game Commission*, also interpreting the state ESA, was based on an *ordinary mandamus* petition (a fact I should know as I was the lead PLF attorney for the petitioner. N.B. I and a colleague have written a stinging critique of this exceptionally poor decision).

Second, the court deferred to the Commission's delisting regulations, which provide for delisting only on the grounds mentioned above. (In contrast, the federal analogue regulations expressly authorize delisting based on new information that demonstrates the original listing to have been in error).

Schiff (Continued from page 8)

Thus, the court concluded that the only way to challenge a Commission listing is through administrative mandamus brought immediately after the listing. Once the time for filing such a petition has passed, or once any challenge has been adjudicated, then the listing arguably becomes unassailable.

Justice Nicholson's dissent makes two main points:

First, precluding reconsideration of the Commission's decision to list, even reconsideration initiated by the Commission itself, is inconsistent with the proposition, which the majority concedes, that a listing is a quasi-legislative, not quasi-adjudicative action. Finality is to be expected in the latter, but certainly not in the former instance. Indeed, the ability to reconsider for almost any reason is a classic attribute of legislative power.

Second, the doctrine of judicial deference to agency interpretations of statutes still leaves the judiciary as ultimate arbiter of a statute's meaning. To the extent that the Commission's regulations preclude delisting on the basis of new information showing the original listing to have been error, then the court should not defer to the regulation. The Commission's interpretation is inconsistent with federal practice, and would produce absurd results. For example, the Commission's interpretation means that a landowner would be precluded from an otherwise productive use of his private property in order to protect a listed species *that does not qualify for listing*.

If the court of appeal's decision stands, what will be the impacts to California property owners? Arguably, the decision is not as far-reaching as one might think. To begin with, nothing in the decision precludes a property owner from petitioning for delisting on the grounds that the species has recovered. Thus, the property owner will fall into the lurch only in the (arguably) unusual circumstance where the erroneously listed species is actually endangered but otherwise does not qualify for listing.

When can that scenario arise? I can think of at least two circumstances, one of which is present here. The petitioners in *Central Coast Forest Association* challenged the Commission's listing of a population of coho salmon that dwells south of San Francisco Bay. The petitioners argued that new evidence demonstrates that the coho salmon were never native to streams south of San Francisco. And because the statute authorizes protection only for "native" species, the coho south of San Francisco is legally ineligible for listing. But, as the court of appeal ruled, delisting is not allowed for that type of argument.

A second scenario, related to the first, is where new evidence shows that the listed population is not a separate species or subspecies but rather is part of a larger taxonomic unit that, as a whole, is not in danger of extinction. As I read the court of appeal's decision, one cannot seek delisting on this basis.

Now, could the court of appeal's decision raise due process issues? I should think so. For example, let's say someone is criminally prosecuted for "taking" a listed species, and he defends on the grounds that the species is not validly listed. Arguably, the court of appeal's decision would preclude the defendant from challenging the legality of the listing, because it would be outside administrative mandamus. Similarly, let's say that a person received no notice of the pending listing, and had no reason to be concerned anyway because the species did

not dwell on his property, but after the listing the species now is found on the property. Under the court of appeal's decision, the property owner could not challenge the restrictions to which his property is now subject, notwithstanding that he had no meaningful opportunity to comment on the listing.

I think it fair to say that this is a bad decision, both as a matter of legal analysis and policy. I hope that the petitioners seek review in the California Supreme Court. ■

CENTRAL COAST FOREST ASSOCIATION PETITIONS THE CALIFORNIA SUPREME COURT

By Tony Francois

From Pacific Legal Foundation Liberty Blog—January 25, 2013

In December, the California Court of Appeal ruled, in *Central Coast Forest Assoc. v. California Fish & Game Comm.*, that one may not petition the California Fish and Game Commission to de-list a species, under the California Endangered Species Act, on the basis that the species was not eligible for listing in the first instance. The import of the ruling in *Central Coast Forest Assoc.* is that the only way a species can be de-listed is if it has recovered, or it is extinct. There are other significant and perverse procedural impacts of the ruling.

This week the Central Coast Forest Association and Big Creek Lumber Company petitioned the California Supreme Court for review of this decision. The Court has a sound basis to grant review, since the scope of the Commission's authority to de-list a species is an important question of state law. Significant public resources are expended in the effort to recover a listed species. If the experience in Siskiyou County is any guide, even more significant private property and other resources will be encumbered by recovery plans for Coho in particular, especially where state and federal listings overlap. To avoid these costs where they are not warranted, it is necessary for the Commission to be able to de-list species that did not actually warrant listing in the first instance.

Thus, this would a very important case for the Court to grant review, and to ultimately reverse the Court of Appeal's decision. ■

Water (Continued from page 4)

the waiver. This leads to painful delays as the timber harvest plan is approved, the logger is ready to go, but everything is on hold until Water Quality completes their work at their pace. Water Quality has limited staff and resources, and often processing timber harvesting waivers are a lower priority than working on other projects. Last summer this led to delays of over two months which had a significant adverse economic impact on the landowner and logger. ■

FOREST LANDOWNERS of CALIFORNIA 2013 Annual Meeting

Hotel Information

Forest Landowners Annual Meeting – May 9-11 – Hilton Santa Cruz/Scotts Valley



Dear FLC Members and Friends,

This year's Annual Meeting will be held in the Santa Cruz/Scotts Valley area. The Annual Meeting Committee is working on a dynamic program. Here are some initial details about the schedule.

Mark your calendar for May 9-11. With the exception of the Field Day, the meetings and related events will be held at the Hilton Santa Cruz/Scotts Valley. A special rate

of \$109 single/double occupancy is available - details below how to make your reservation.

Annual Meeting Schedule *(times are tentative; subject to change)*

Wednesday, May 8

12:00pm - 5:00pm - Board Meeting

Thursday, May 9

8:00am - 5:00pm - Field Day (fee will include boxed lunch & transportation departs the Hilton)

6:30pm - 9:00pm - BBQ and Wine Tasting

Friday, May 10

Welcome and Opening Remarks

8:30am - 11:30am - Morning Education Sessions and Panel Discussions

12:00pm - 1:15pm - Lunch and Presentation

1:30pm - 5:00pm - Afternoon Education Sessions and Panel Discussions

6:00pm - 7:00pm - Reception and No-host Bar and Raffle Drawing

7:00pm - 9:00pm - Annual Meeting Dinner (Awards and Presentations)

Saturday, May 11

Opening Remarks

8:30am - 10:00am - Education Sessions and Panel Discussions

10:30am - 12:00pm - FLC Annual Business Meeting

Annual Meeting Concludes

Hotel Accommodations

Make your hotel reservation by April 10, 2013 to take advantage of the group rate of \$109 per night. The special rate is available for three days prior to and after the Annual Meeting dates. Extend your stay through Sunday and enjoy activities in the Santa Cruz/Scotts Valley area. More information to come on how to make the most of your stay during the Annual Meeting.

Hilton Santa Cruz/Scotts Valley
6001 La Madrona Drive
Santa Cruz, CA 95060
(831) 440-1000

Call the Hilton directly to make your reservation. Please use the group code of FLAC to be sure you receive the special group rate.

Registration information will be available in early March. The Annual Meeting brochure will be mailed to all members.

We look forward to seeing you at the Annual Meeting, May 9-11 at the Hilton Santa Cruz/Scotts Valley.

Sincerely,
Deidre Bryant
Executive Director



Forest Landowners OF CALIFORNIA

Forest Landowners of California
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Folsom, CA 95630
(877) 326-3778

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www.forestlandowners.org

KACZYNSKI AND ALVARADO VINDICATED?

By Eric Moore

The 2006 peer reviewed paper by Kaczynski and Alvarado, "Assessment Of The Southern Range Limit Of North American Coho Salmon: Difficulties In Establishing Natural Range Boundaries" that documented the lack of a viable Coho population south of San Francisco before the fish plantings of the 1900s has received some backdoor vindication by the National Marine Fisheries Service [NMFS]. The Central Coast Forest Association actually had to go to court to get NMFS to look at this study. NMFS denied everything in the paper.

The paper documented the historical record, the lack of Summer rain/stream blockages and the Winter flushing of streams to show that Coho were not viable here until introduced by the white man. The Coho also went into decline as soon as the hatchery program was shut down.

NMFS now admits in their "Recovery Plan for the Evolutionary Significant Unit of the Central California Coast Coho Salmon" that the Coho in the San Lorenzo are dependent on man and they have started fish plantings in area streams. They are even considering planting fish that are not native to the area. Might we suggest Baker Lake, Washington for their fish just like before? NMFS is also considering planting fish in streams all the

way down to Big Sur where there is no proof they have ever been.

Of course as soon as they do this, those areas would become subject to Coho Regulations and restrictions. It must be nice to create your own ever-expanding job. ■

THANK YOU !

We take this opportunity to thank all of our renewing members and those who donated generously to the legal fund. The legal fund is not used for general expenses but is saved in case we have to take an issue to court to uphold our members' private property rights.

(Continued from page 5)

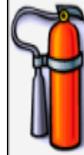


Road into The Butano—before autos



©STEPHEN HENRY 2012

One of the six waterfalls on Butano Creek, historically the center of social events for The Butano residents for over a century, now placed in a preserve by a private landowner



FireTaxProtest.org

A PROJECT OF THE HOWARD JARVIS TAXPAYERS ASSOCIATION

Important information about your 2013 fire tax bill

Cal Fire is preparing to mail the next round of fire tax bills to people in the so-called State Responsibility Area. CalFire will bill you every year until we win our class action lawsuit.

Some people have already begun to ask whether they should protest their bill again. **If you already filed the Petition for Redetermination according to the instructions on FireTaxProtest.org, and you received a denial that was not due to your Petition being late or incomplete, then you do NOT need to protest again unless you face one of three special circumstances, which are as follows:**

1. Your parcel is no longer located in the State Responsibility Area
2. Your parcel has fewer habitable structures than the number billed, or
3. Your bill omitted the \$35 credit for a parcel located within the jurisdiction of a local fire protection agency.

If you have not already filed the protest paperwork on FireTaxProtest.org, you should protest now.

Our lawsuit continues to wind its way through the process and we will be in touch with more information when it becomes available. Please be patient as lawsuits typically take a long time.

Central Coast Forest Association
Membership / Renewal / Contribution

Name _____ Date _____

Enclosed is \$ _____ for: New Membership Membership Renewal Legal Fund

Home phone _____ Work phone _____

Address _____ City _____ ST _____ Zip _____

Signature _____ E-mail _____

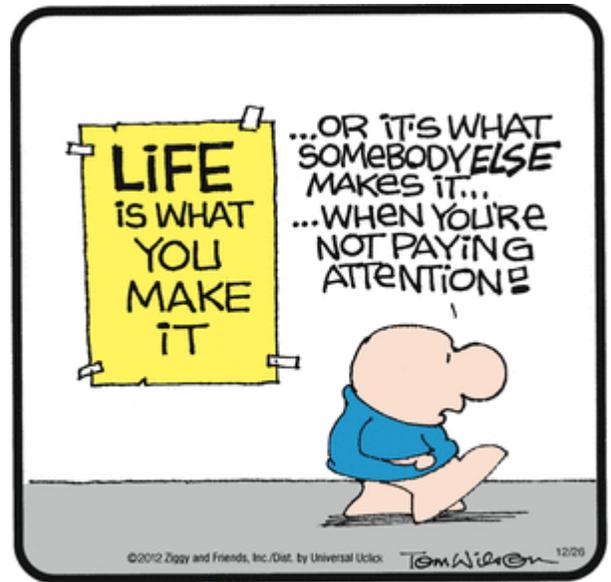
Please make checks payable to:

Central Coast Forest Association P.O. Box 66868 Scotts Valley, CA 95066

<u>Membership Category</u>	<u>Dues</u>
Individual	\$50
Business	\$500

CCFA appreciates your support

CCFA is a 501-(c) 4 tax-exempt organization. Donations may be tax-deductible as a business expense.



It takes only one match to start a forest fire, but a whole box to start a campfire.

We're on the web!
www.ccfassociation.org

Central Coast Forest Association
 P.O. Box 66868
 Scotts Valley, CA 95066



IMPORTANT NOTICE: HELP US COMMUNICATE!

Occasionally we need to rally the membership to respond to abrupt government actions. We must be able to contact you in a hurry in such circumstances. Please submit your current e-mail address to us via our website, www.ccfassociation.org or by e-mail to: ccfa@ccfassociation.org. We will keep it strictly confidential at all times.

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The forests must be, and will be, not only preserved but used, and the experience of all civilized countries that have faced and solved the question show that the forests, like perennial fountains, may be made to yield a sure harvest of timber while at the same time all their far-reaching beneficent uses may be maintained unimpaired.

John Muir

Founder of the Sierra Club in 1895

CCFA's Mission

The Central Coast Forest Association is a non-profit alliance of small forestland owners, forestry professionals and forest-oriented businesses with close affinity to the woods, mountains, streams and wildlife of the Central Coast. Our purpose is to uphold and preserve our values, our property rights and our way of life. To advance this objective, CCFA will:

- *Interact with community, political and environmental interests as a voice for forestland owners.*
- *Understand the news, law and technology of forestry and apply this knowledge for the benefit and protection of forestland owners.*
- *Inform members of matters affecting their lands and forests.*
- *Take political and legal action to defend the rights and property of all Central Coast forestland owners.*