

## Chapter 32 : Now They Have These Public Hearings...

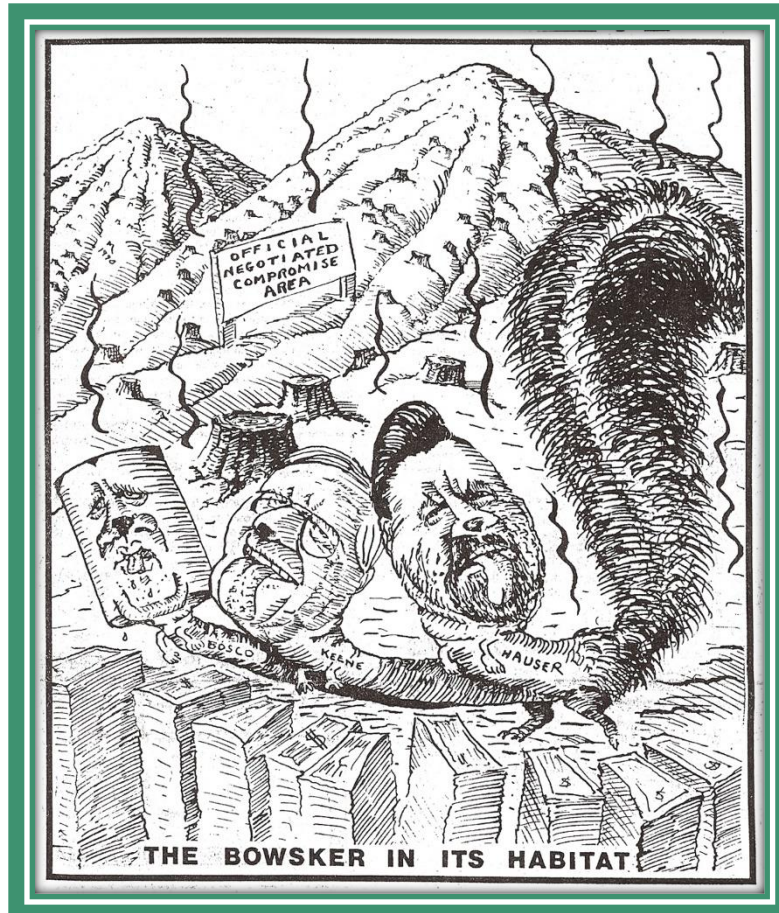


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*Now back in Sacramento town sits the Board of Forestry,  
And they log their land, they work their ranches, and they teach in the universities,  
And the nine who sit in judgment as they massacre the trees,  
Are Russ and Rose, Small, Berridge and Barnes, Atkinson, Shannon, Walt and Yee...*

—lyrics excerpted from the *Board of Forestry Song*, by Darryl Cherney, 1989<sup>1</sup>

*Now they have those public hearings where they ask our point of view,  
Like what do ya think of this here thing on page 4,002,  
And they're so easy to get to if you just know how to drive,  
And you don't work and you've got no kids and your rich uncle just died...*

—lyrics excerpted from the *Ballad of BLM*, by Darryl Cherney, 1986<sup>2</sup>

<sup>1</sup> They Sure Don't Make Hippies the Way They Used To, 1989, by Darryl Cherney

<sup>2</sup> I Had to be Born this Century, 1986, by Darryl Cherney

As the “Timber Wars” heated up, it was not uncommon to see counterdemonstrators at Earth First! protests bearing signs which read, “Earth First! is the problem, not the solution.” At these same events counterdemonstrators were quick to bandy about several Corporate Timber talking points. Four widely held notions were parroted in particular: First, corporations were “good neighbors” that supported ecology and contributed to the community. Second, they asserted that harvesting old growth forest stands was beneficial to the environment because removing the older trees allowed quicker growing (not to mention, managed) younger trees to flourish thus removing more CO<sub>2</sub> from the atmosphere. Third, they claimed that California had the most stringent forestry laws in existence, namely the Z’berg-Nejedly Forest Practices Act and the California Environmental Quality Act (CEQA), and these were already restrictive enough to make logging almost unprofitable. Lastly, government agencies had been hijacked by radical environmentalists, and for this reason the proposed listing of the spotted owl as threatened was merely an attempt to appease an out of control, overly vocal but tiny minority. However, in February and March of 1990, a series of unrelated events debunked all four such claims thoroughly.

Corporate Timber itself, claimed that it was “a good neighbor”, but in fact, they actually acted as though the counties and communities in which they operated owed *them* something for all of the profits they made at the expense of the workers, environment, and residents. For example, both G-P and L-P opposed new assessments on log trucks hauling logs over county roads in the winter. Mendocino County had spent a million dollars in road maintenance costs for 1989 as a direct result of the timber industry’s hauling in the rainy season. The company reaped the profits, but made the people pay for the effects.<sup>3</sup> As a result the Sherwood Forest Protection Association (SherPA), based near Willits, battled L-P legally in order to force the corporation to pay its fair share. Corporations like L-P were always quick to invoke the money they donated charitably, but Walter Smith pointed out the emptiness of such philanthropy stating:

“L-P donates to the community. Every high school play and practically every social event in Willits has been donated to by (various Gyp-

pos) and L-P. They’re doing those kinds of things, but, on the other hand, the destruction that’s taking place in the woods and the detrimental effect it’s having on our communities is a hell of a lot more than the few pennies they’re putting in on the other end.”<sup>4</sup>

It was for reasons such as these that residents of timber dependent communities, who had hitherto been cowed into silence, were now speaking out, and not just about clearcutting or road issues. Louisiana-Pacific and Simpson posed substantial health risks due to chloroform emissions at L-P’s Samoa (in Humboldt County) and Antioch (in Contra Costa County) pulp mills and Simpson’s nearby Fairhaven mill. Both had been named among the 500 worst polluters in the United States in August 1989 by the National Wildlife Federation. Simpson’s Pulp Mill ranked at number 208 while L-P’s Samoa facility was ranked 261. Of the 3,100 counties in the nation, Humboldt County ranked 77<sup>th</sup> worst.<sup>5</sup> The Environmental Protection Agency (EPA), especially under the Ronald Reagan and George H.W. Bush administrations had been particularly friendly to capitalist industrial interests, but they were forced, by public pressure, to admit that chloroform emissions posed a significant carcinogenic risk. The EPA had recently calculated that as many as 10 percent of all residents of Eureka would develop cancer from Simpson’s emissions alone. Although the EPA had awarded both companies special permits which allowed them to greatly circumvent normal emissions standards, neither company had even complied with these conditions since 1987.<sup>6</sup>

Due to the recent revelations about L-P’s polluting of the Russian River in Sonoma County, the lack of oversight in Humboldt County was now too big to ignore.<sup>7</sup> The discharged waste water drained directly to the nearby Pacific Ocean and altered the water’s color and temperature interfering with the

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<sup>4</sup> “A Logger Speaks Out – An Interview with Walter Smith”, by Bruce Anderson, *Anderson Valley Advertiser*, July 4, 1990.

<sup>5</sup> “L-P, Simpson ranked in ‘Toxic 500’: Local Mills on Wildlife Group’s List of Worst Polluters nationally”, by Mario Christaldi, *Eureka Times-Standard*, August 16, 1989.

<sup>6</sup> “Labor, Activists Unite to Fight L-P”, by Crawdad Nelson, *Anderson Valley Advertiser*, January 17, 1990.

<sup>7</sup> See for example, “Toxic Survey Rips 2 Humboldt Mills: L-P, Simpson Emissions Cited”, by Eileen Klineman, *Santa Rosa Press Democrat*, Aug. 21, 1989, “Pulp Mills Face Tighter EPA Wastewater Rules”; UPI, *Eureka Times-Standard*, January 3, 1990; 1990; “Air Quality Decision Hurts”, letter to the editor by John Triska, *Eureka Times-Standard*, January 5, 1990; and “Pulp Mill Emission Levels Down: Cancer Risks Still Exceed Government Standards”, *Eureka Times-Standard*, January 13, 1990.

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<sup>3</sup> “Forest Protectors Take the Initiative”, by Richard Johnson, *Mendocino Country Environmentalist*, November 1, 1989.

amount of light vital to photosynthetic activity in violation of California's Ocean Plan and threatening the lives of shellfish and other marine fauna, as well as the fishermen dependent upon them for their livelihoods. The Surfrider foundation pointed out that the discharged effluent reeked of kerosene, burned skin and eyes, and caused nausea which persisted for days. On January 28, 1988, the Regional Water Quality Control Board had issued a cease and desist order against both L-P and Simpson, but this had been ignored. Additionally, both mills produced dioxin by-products in the course of their refining activity which posed additional cancer risks.<sup>8</sup>

Workers in these plants were even beginning to add their voice to the chorus of opposition. To speak against these mills had hitherto been to risk one's job, one's business, or one's reputation, and to live in fear or risk the wrath of the mill owners and their constant influence pedaling backed by threats of capital flight.<sup>9</sup> For example, Dave Chism, a hog tender for the Simpson Pulp mill, who had worked at the company for nine years and served as the elected vice president of the Association of Western Pulp & Paper Workers (AWPPW) Local #67, which represented the 200 or so employees in the Simpson facility, had not originally been a dissident, but had become enlightened after the evidence proved too great to ignore. At an Earth First! rally, he would openly declare:

"If you look down here at this operation (L-P), see how after it breaks up you get that haze? We've had a real ongoing battle with particulate problems because it's an old boiler with an electrostatic precipitator. The particles in the flue gas pass through the precipitator and they're supposedly taken out of the gas stream, but since ours is so old and since we fire our furnace so hard, we have a lot of problems meeting particulate levels. They ran a source test in April (1989) and the legal allowable limit for particulate per ton of pulp was four pounds; we were found putting out 14.3 pounds. Actually, that's why I started getting involved, because I'm a pulp worker and that first meeting I went to was a real eye opener. I was on the company side, if anything, until I started listening to some of the arguments that were presented by the environmentalists, started reading some of

the documentation. I went, 'My God, they do have a valid bitch.' I mean, our company didn't tell us how much particulate we were putting out. So that's when I started to try and help them a little bit."<sup>10</sup>

For his outspokenness, David Chism was red-baited by officials at Simpson. As he described it several years later:

"I can tell you from my own experience, I've been called a 'communist' by representatives of Simpson Timber Company. They used to routinely refer to the Arcata Plaza as the Red Square and we all had a good chuckle over that one. I was actually involved in an FBI investigation of Simpson Paper Company when they sewerred—did some illegal dumping—at the mill when they were closing it, and the FBI agent told me, 'Look, do you ever plan to work in the timber industry again?', and I said, 'no,' and he said, 'well, that's good, because you can pretty much forget it.' *And that came from the FBI*—and I don't really put much stock in what they have to say, but I took *that* point seriously."<sup>11</sup>

It was no coincidence that the AWPPW's increasingly nasty labor dispute with Simpson made the workers more receptive to overtures from the likes of environmental activists, even Earth First!, as workers felt as though the company was abusing them as much as they were the local community.<sup>12</sup> Two workers had been permanently disabled and eight others injured by a pulp mill tank that collapsed due to willful negligence by the company in December of 1988.<sup>13</sup> OSHA had fined the company \$666,000, but Simpson was appealing the decision, much like G-P was doing in the case of its Fort Bragg facility.<sup>14</sup> The workers had also been working without a contract since June of

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<sup>10</sup> "The Scene at Simpson", Dave Chism interviewed by Bruce Anderson, *Anderson Valley Advertiser*, June 27, 1990.

<sup>11</sup> "The Public Outlaw Show: Democracy is Not a Spectator Sport", Dave Chism and Bob Cramer, interviewed by Dan Fortson on KMUD FM, November 27, 1997.

<sup>12</sup> "Union Making a Good Faith Effort", letter to the editor by Robert Sylvester, Shop Steward, on behalf of the membership of AWPPW Local #67, *Eureka Times-Standard*, February 16, 1990.

<sup>13</sup> "Simpson Penalized", *EcoNews*, August 1990.

<sup>14</sup> "Tank Collapse Will Cost Simpson", by Charles Winkler, *Eureka Times-Standard*, July 10, 1990.

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<sup>8</sup> Crawdad Nelson, January 17, 1990, op. cit.

<sup>9</sup> "Mill Towns", editorial by Bob Martel, *Country Activist*, February 2, 1990.

1989.<sup>15</sup> At one point they went so far as to picket plant manager Aaron Gettelman's house in Arcata.<sup>16</sup> The company responded by denouncing this as "terrorist activities which drew an angry rebuke from AWPPW Local 67 shop steward Robert Sylvester who declared, on behalf of the membership:

"We in the AWPPW are making an honest and good faith attempt to convey to management our concerns about problems in this mill. Management appears to be unwilling to consider our concerns... It has proven very difficult to deal in good faith with our management team, as they refuse to deal with us in any but an adversarial manner.

"The charge of terrorist activities in this mill is not only uncalled for, it is also unfair to a conscientious and dedicated workforce which has labored for years to make this plant an integral and profitable part of the corporation.

"Labor-management relations in this plant are at an all-time low... Threats, intimidation, punitive actions, and concessionary bargaining are not the way to obtain cooperation."<sup>17</sup>

Both L-P and Simpson planned expansion on their pulp operations as well as new facilities for producing carbon and charcoal. Both companies applied for emissions waivers, which angered the community. Louisiana Pacific's waiver was granted, though it was done largely on a legal technicality, wherein the company cited past practice, essentially wherein the very responsible agencies had declined to enforce emissions and effluent standards that L-P was again asking to violate.<sup>18</sup> The City Council of Arcata, at least, was incensed and declared that L-P's waiver was illegal, and demanded that the air board resign.<sup>19</sup> That one of the Air Quality Control Board members had owned stock in the company no doubt helped frame the board's decision, though they claimed to have sold it before granting the waiver.<sup>20</sup>

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<sup>15</sup> "Simpson Worker at Issue with Ad", letter to the editor by Kevin Truby, *Eureka Times-Standard*, June 14, 1990.

<sup>16</sup> "Simpson Workers Picket Boss's Home", *Eureka Times-Standard*, February 26, 1990.

<sup>17</sup> "Millworkers Want Talks", letter to the editor by Mike Snell, AWPPW Local 67, *Eureka Times-Standard*, March 12, 1990.

<sup>18</sup> "L-P Emissions Spark Review of Air Quality Testing Rules", *Eureka Times-Standard*, by David Forster,

<sup>19</sup> "Arcata Demands New Air Board: L-P Waiver Illegal, City Contentends", by Ed Lion, *Eureka Times-Standard*, January 26, 1990;

<sup>20</sup> "Board Member Sold L-P Stock Before Vote", by David Forster, *Eureka Times-Standard*, January 24, 1990.

The *Eureka Times-Standard*, offered its support (once again) as the defender of corporate personhood and L-P's right to pillage the community in the name of capitalism, and argued that "Louisiana-Pacific shouldn't be made to pay for the mistakes of others," namely the negligence of the Air Quality Control Board.<sup>21</sup> However the publication's logic was completely circular in that corporations like L-P routinely pressured such enforcement agencies to ignore existing laws, had their executives placed in positions of responsibility on such boards, and—failing that—threatened (and sometimes committed) capital flight if they don't get their way, thus making such boards reticent to enforce those standards!<sup>22</sup> Certainly, this is how Maxxam had reacted to Jerry Partain's brief display of independent thought.

This callous disregard for the health of the local communities angered local residents, and the Arcata City Council argued against Simpson being likewise granted a waiver.<sup>23</sup> On February 4, 1990, The City sued the Air Quality Control District, arguing that the board had a conflict of interest and that medical professionals and licensed doctors should at least be appointed to the board to balance the influence of pro-industry officials then dominating them.<sup>24</sup> Much to everyone's surprise, on February 6, the waiver was at least temporarily blocked, and California State Attorney General Van de Kamp, who was somewhat progressive and receptive to the concerns of environmentalists requested that the Board deny it altogether.<sup>25</sup> Simpson, naturally, threatened to close their mill, arguing that the waiver's denial threatened their ability to operate,<sup>26</sup> and this prompted the *Eureka Times-Standard* to excoriate Van De Kamp's actions as "politically motivated" (as if the actions of the corporations and their capitalist media commissars weren't)

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<sup>21</sup> "L-P Shouldn't Pay for Others' Errors", editorial, *Eureka Times-Standard*, February 4, 1990.

<sup>22</sup> "Environmental Group Challenges L-P Air Variance", by David Forster, *Eureka Times-Standard*, February 7, 1990.

<sup>23</sup> "Arcata City Council Defers Action on Simpson's Annexation Request", by Ed Lion, *Eureka Times-Standard*, January 18, 1990; "Simpson Pulp Mill Project Hinges on Emissions Waiver", by Charles Winkler, *Eureka Times-Standard*, January 30, 1990; "Decision on Pulp Mill Emissions Delayed: Simpson Asked to Respond to Board Concerns", by David Forster, *Eureka Times-Standard*, February 2, 1990; "Simpson Considers its Options: Smoke Cleanup in Jeopardy, Exec Says", *Eureka Times-Standard*, February 4, 1990.

<sup>24</sup> "Arcata Sues Air District: City Says Law Requires Doctor as Board Member", by Ed Lion, *Eureka Times-Standard*, February 5, 1990.

<sup>25</sup> "Van de Kamp Asks Air Board to Deny Simpson Variance", by David Forster, *Eureka Times-Standard*, February 7, 1990.

<sup>26</sup> "Simpson Air Waiver Denied: Officials Hint Decision Could Force Mill Closing", by David Forster, *Eureka Times-Standard*, February 8, 1990.

and again opine that corporations such as Simpson should be given carte blanche to pollute at will, all in the name of “free enterprise”.<sup>27</sup>

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Corporate Timber had been making the “young growth is more beneficial than old growth” argument for years in defiance of repeated arguments to the contrary by environmentalists and biologists. The day after Bosco, Keene, and Hauser announced the terms of their so-called “timber pact” with Hurwitz and Merlo, the prestigious and widely read journal, *Science*, published the findings of a study discrediting the industry’s claims about young growth. In fact, the research showed, that during the 20<sup>th</sup> Century, the rapid deforestation of old growth conifer forests of the Pacific Northwest had actually dumped a “disproportionately large amount” of CO<sub>2</sub> into the earth’s atmosphere in comparison to other land use changes during the same time. Mark Harmon of Oregon State University, one of the study’s researchers summed up the findings declaring:

“The conventional wisdom was that since young trees remove carbon from the environment more actively than older trees, harvesting the old growth would actually reduce problems with the greenhouse effect, but the natural processes are not nearly that simple and the theories do not hold up (under scrutiny).<sup>28</sup>

What the study showed, among other things, was that the CO<sub>2</sub> was absorbed by the young trees and incorporated into their wood and remained there as long as the trees remained alive—even if immeasurably old. However, upon their harvest or death, that CO<sub>2</sub> was then released into the atmosphere. The death and decay of ancient old growth trees did not have the same effect as their harvesting, however, because the woody debris cycle effectively transferred the carbon to other species in the process, this is now referred to as *biological carbon sequestration*. Lumber harvesting, on the other hand, represented a significant and invasive disruption of that cycle. By failing to account for all of the parts of an old growth forest, rather than just the harvestable timber, the corporations had once

again quite literally failed to see the forest for the trees!<sup>29</sup>

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This was but the latest domino to fall. More would soon follow. In 1973, the California Legislature had passed Z’berg-Nejedly, which was designed to regulate forest practices within the state of California with the goal of mixed usage, including long term preservation, recreation, and timber harvesting. According to the Environmental Protection Information Center (EPIC), however:

“The Forest Practice Rules state that CDF ‘shall disapprove a plan as not conforming to the rules’ if it does not contain enough information to evaluate potential environmental effects, if it would cause ‘significant, long-term damage’ or cause a ‘taking’ of a threatened or endangered species or if it would cause irreparable harm to rare or endangered plant species... *Over 99% of the THPs that are submitted, however, receive CDF’s reliable rubber stamp approval.* At most CDF will encourage submitters to withdraw a THP if there are problems in giving it their approval, but most often a new THP is submitted and approved in its place which covers the exact same area and only differs from the original plan by small, cosmetic changes.”<sup>30</sup>

The claim made by EPIC as represented by the italicized text is an accusation that many environmental activists had been making for several years, and both Earth First! and EPIC were among those who most steadfastly made this point. Corporate Timber, the CDF, most gyppo operators—particularly those most enthralled by the corporations—and their “Wise Use” front groups continued to deny this accusation, even going as far to state the contrary position, that the existing rules were overly burdensome and additional regulations, like the proposed *Forests Forever* ballot initiative were unnecessary.<sup>31</sup> Challenging THPs was no easy task either, because access to information, in-

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<sup>29</sup> This is described in a much more recent study covered in “Factors Controlling Long- and Short-Term Sequestration of Atmospheric CO<sub>2</sub> in a Mid-latitude Forest”, by Carol C Bradford, et. al, *Science*, November 2001

<sup>30</sup> “How a Timber Harvest Plan Works”, featured on the EPIC website at <https://www.wildcalifornia.org/post/an-explanation-of-the-timber-harvest-plan-process> (Emphasis added).

<sup>31</sup> For example, see “State has Strictest Forest Rules in Nation”, letter to the editor by Paula M. Langager, *Eureka Times-Standard*, Sept. 28, 1990.

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<sup>27</sup> “Air Board’s Action Fogs Simpson Mill”, editorial, *Eureka Times-Standard*, February 11, 1990.

<sup>28</sup> “Study Disputes benefits of Old-Growth Replacement”, UPI Wire, *Eureka Times-Standard*, February 10, 1990.

cluding timber volume, on private forest holdings was as difficult as getting access to the land itself, because timber corporations considered the statistical information proprietary.<sup>32</sup> In spite of this, several times in recent years they had even attempted to scrap the THP process for individual harvests in favor of far more lax approval mechanisms, including annual timber inventory reviews (which would no doubt make approval of logging plans even easier), or even longer period harvest plans.<sup>33</sup>

Yet, challenges to THPs by concerned locals and/or environmental activists had been rising at an ever accelerating rate since EPIC vs. Johnson in 1985. Indeed, since Maxxam had raided Pacific Lumber, EPIC alone had filed numerous challenges to Pacific Lumber THPs.<sup>34</sup> CDF employees had even blown the proverbial whistle, claiming that their agency was indeed a “rubber stamp” for the corporations.<sup>35</sup> It was this ever increasing dissidence—among other factors, including an escalation of direct actions in the woods by Earth First! and workers’ resistance to corporate timber practices—spurred on to some extent by the IWW—that pushed Maxxam’s Charles Hurwitz and L-P’s Harry Merlo to meet with Doug Bosco, Barry Keene, and Dan Hauser to hammer out their so-called “accord”.<sup>36</sup> These events hadn’t gone unnoticed by the California Department of Forestry and Fire Protection either.

In March of 1989, the CDF commissioned a study by the private consulting firm of the Point Richmond, California based LSA Associates, Inc. to investigate why, in recent years, the CDF had sustained an increasing amount of litigation over its THPs. The majority of the legal challenges took place in “Region I”, California’s North Coast, or the so-called Redwood Empire, and were in response to plans to harvest old growth redwoods in particular.<sup>37</sup> The consulting firm spent nine months involved in and observing the THP review and decision making

process. In some cases, for some specific THPs, this involved LSA consultants accompanying RPFs in their field inspections for pre-harvest inspections (PHIs). Usually these inspection teams consisted formally of the RPF and a professional wildlife biologist accompanied by the observing LSA personnel. LSA also observed the organization and preparation of official responses (ORs) to environmental comments documents submitted in response to specific THPs. The primary goal of the report was not to criticize the CDF or the BOF, but, in fact, to assist both in securing more favorable court judgments in the event of litigation.<sup>38</sup>

When LSA presented its findings, the results were astonishing. Without intending to do so, the firm confirmed just about every charge made by the CDF’s and BOF’s critics, and vindicated the environmental activists who had been claiming that the fox had been guarding the henhouse for years.<sup>39</sup> The report had been written by Dr Robert J. Hrubes, himself a former federal forester and economist, and it was so damning in its conclusions, the CDF initially tried to keep it a secret from board member Harold R. Walt who had been appointed the agency’s chair in March 1990, after serving on the BOF as one of its directors for seven years. The report had been released in December 1989, but Walt didn’t learn of its existence until mid-March from a meeting with a coalition of environmentalists, who had learned of the report before *him*. Upon confirming the report’s existence, he angrily ordered that it be made public. Upon doing so, he declared, “I hope that releasing this report, discussing it openly, and dealing decisively with the issues will be a starting point in blistering public confidence.”<sup>40</sup>

To begin with, LSA confirmed that the THP process was biased against the timber industry’s critics. The Forest Practices Act required the CDF to reach a decision for a THP within 35 days of its submission, and for most submissions, that was insufficient, but for controversial old growth THPs, it was impossible. In practice, the average time required to reach a decision on the latter was closer to six months. Corporate Timber had often tried to hide

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<sup>32</sup> “Lawmakers’ Ignorance Forces Forest Initiative”, Lynn Ryan interviewed by David Forester, *Eureka Times-Standard*, September 14, 1990.

<sup>33</sup> “Timber Business to Cut Costs? Draft Legislation Proposes Long-Term Harvest Plan for State”, by Gina Bentzley, *Eureka Times-Standard*, November 18, 1985.

<sup>34</sup> “New Battles in the Maxxam Campaign”, by Greg King and Berberis Nervose, *Earth First! Journal*, Eostar / March 21, 1989.

<sup>35</sup> “Two Forestry Employees Testify at PALCO Trial”, by Marie Gravelle, *Eureka Times-Standard*, September 4, 1987.

<sup>36</sup> “The Latest on Headwaters Forest: Maxxam Violates Accord, Dissects Headwaters”, By Greg King – *Country Activist*, March 1990 and *Earth First! Journal*, Eostar / March 22, 1990.

<sup>37</sup> “An Interview With Kelpie Wilson”, by Sharon Seidenstien, *Ecology Center Newsletter*, October 1990.

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<sup>38</sup> Hrubes, Dr. Robert J., Final Report – Conclusions and Recommendations for Strengthening the Review and Evaluation of Timber Harvest Plans: Prepared for the California Department of Forestry and Fire Protection, LSA Associates, Inc., Point Richmond, California, March 1990.

<sup>39</sup> “Kelpie Wilson”, Seidenstien, October 1990, op. cit.

<sup>40</sup> “New CDF Chief Pledges Forestry Reforms”, by Mike Geniella, *Santa Rosa Press Democrat*, April 3, 1990.

behind the 35-day rule, but judges had routinely granted critics of the THPs appeals for time extensions making a mockery of the process. In the recent EPIC and the Sierra Club vs. CDF case involving Headwaters, Humboldt County Superior Court Judge William Ferroggiaro concluded that the stipulated timeframe led to decisions based on “sheer sophistry”. A recent rule change by the BOF had added ten days to the review period, extending the time for review to 45 days, but according to LSA’s findings, this change was insignificant.<sup>41</sup>

Furthermore, for old growth THPs, the complex relationship between the CDF—whose mandate under California law was to facilitate resource extraction, specifically the harvesting of timber—and the Department of Fish and Game (DFG)—whose role it was to protect wilderness and wildlife, often resulted in interagency conflicts. LSA discovered that Corporate Timber firms often used this conflict to their advantage, usually using the CDF as a regulatory shield for their harvesting activity. Routinely, when the DFG requested “mitigations” in THPs—usually in response to pressure from concerned critics of the plans—the submitter would respond by arguing that the mitigations were infeasible, either being too costly or bringing about “unacceptable silvicultural ramifications.” Often the RPF would also declare that the burden fell on the DFG to prove the necessity of the mitigations, to which the CDF would respond by endorsing the RPF’s response, either by forwarding it to the DFG without critical response or by choosing to abstain from negotiations and discussions on the disputed points. LSA’s interpretation of the law and the legal rulings that had touched on the conflict suggested that the CDF was obligated to be more proactive in reviewing the mitigations demanded by the THPs’ critics. LSA further suggested that the rejection of various mitigations might ultimately prove to be justifiable—in some circumstances—but the CDF needed to exercise more independent judgment.<sup>42</sup>

In many cases, LSA discovered, mitigations were rejected by the CDF on dubious grounds. The most common rational given for rejection was that the proposed mitigations were incompatible with “maximum sustained yield” (MSY). However, the definition of MSY was a moving target depending upon one’s interests, making it nearly impossible to measure objectively. To corporate timber, MSY meant the maximization of merchantable timber from a given

forest stand. To environmentalists, it meant the maximization of living forest biomass (being necessary for the long term viability) in the same. These were “clearly divergent agendas,” and for the CDF to reject proposed mitigations based on the timber industry’s definition of MSY was not likely to withstand judicial review in LSA’s opinion.<sup>43</sup>

A still more extreme and increasingly popular invocation by the submitter of THPs was that mitigations represented an infringement on their private property rights, or an “uncompensated taking”. This latter strategy was the brainchild of right wing think tanks and so called “Wise Use” organizations. These forces had cynically and successfully manipulated a very engrained culture of “rugged individualism” so prevalent in the rural American west to manufacture a consensus against increasingly stronger environmental ethics that evolved as human consciousness of the fragility and interconnectedness of the Earth’s ecology increased. From the reaction to environmentalism originated the so-called “Sagebrush Rebellion” which successfully—if falsely—attributed “environmentalism” to the whims of urban “elitists” (or “unwashed-out-of-town-jobless-hippies-on-drugs”) perhaps under the sway of hostile “outside” forces, even (gasp!) “Communism” (Horrors!). Corporate timber naturally found strategic advantages in using the “private property” defense.<sup>44</sup> LSA warned, however, that the Constitutional standards of taking were complex and that the CDFs understanding of them far too simplistic and not likely to stand up legally in court.<sup>45</sup>

Additionally, Title 14 Section 898 of the California Administrative Code required the RPF to determine if the proposed THP would have any significant adverse impact on the environment. The principle argument used by environmentalists and other critics of THPs in order to bolster their demands for mitigations, was that the harvest would indeed have adverse impacts. LSA found that only in the rarest instances, less than one-tenth of a percent of all cases, had a THP been submitted with a positive determination of significance. In *not a single case* had the CDF rejected the RPF’s negative determination. In effect, the THP had evolved into the functional equivalent of a “mitigated negative declaration”. Some foresters had even argued, and the CDF had consistently accepted, that for non-listed species, significant impacts

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<sup>43</sup> Hrubes, op. cit.

<sup>44</sup> Deal, Carl, The Greenpeace Guide to Anti-Environmental Organizations, Berkeley, CA., Odonian Press - The Real Story series, 1993, pages 6-22.

<sup>45</sup> Hrubes, op. cit.

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<sup>41</sup> Hrubes, op. cit.

<sup>42</sup> Hrubes, op. cit.

would only occur if the viability of the species was threatened. In essence, they were determined to log until and unless strictly prohibited by the Endangered Species Act, a law that resource extraction corporations had been trying to abolish for years anyway. LSA found this standard to be overly restrictive and unsupported by established peer-reviewed professional biological science. The report declared,

“With respect to possible wildlife impacts, we believe the Department’s tacit endorsement of the almost-categorical judgment of non-significance is both practically and factually untenable...To categorically hold to the position that impacts are not significant, as the Department has essentially done to date, increasingly puts the credibility of the THP review process in jeopardy...While the motivations or concerns of both the RPF and CDF reviewing staff is understandable, aversion to the possible ramifications is not a defensible justification. And, in fact the long term chances for successfully seeing a THP through the review process and subsequent litigation are quite possibly enhanced by shifting the focus away from the significance issue and on to possible ‘overriding considerations’.”<sup>46</sup>

Thus, LSA unambiguously described the CDFs conduct a pattern of “tacit endorsement of categorical non-significance”. This was fancy legal jargon for saying that the CDF was indeed, “a rubber stamp” for Corporate Timber, as EPIC had been arguing now since its victory in the case EPIC vs. Johnson, and the recently decided EPIC and the Sierra Club vs. Maxx-am.

The LSA report’s conclusion was the most damning of all to Corporate Timber and it vindicated the environmentalists. Among the points it made were these:

“From our perspective, the pattern of unfavorable court rulings is best viewed as a symptom of an underlying erosion of public support and endorsement of some of the more visible aspects of industrial forestry in California...the forestry community may be comforted by interpreting the opposition to the industrial forestry agenda as the agitation of the radical fringe but we cannot endorse that view...it is

an unavoidable reality that even the most rural counties are undergoing fundamental changes associated with urbanization...The harsh truth is that the majority of the State’s population does not, and increasingly will not, support ‘business as usual’ policies such as rapid liquidation of the remaining privately-held old growth stands and conversion of sizable portions of the State’s timberlands to a wood fiber industry.

“As the recent events in Mendocino County associated with the planned relocation of processing capacity to Mexico clearly demonstrate (the opposition is not limited to the) ‘environmental community,’ but rather includes local labor leaders, some county supervisors, Congressional delegations, state assembly members, and the natural resources professional and academic community...the forestry community is perilously isolated from the general sentiments and values of the California and national electorate...”

“In too many circles, the program and its administration by CDF is perceived as generally failing to adequately regulate the actions of the timber industry. The Board and, to a lesser extent, the CDF are perceived as overly sympathetic to the corporate goals behind industrial forestry actions and insensitive to the public resource obligations of industrial landowners.

“In our view the Department is at a crises point (and we recommend the two following actions): (1) establishing a greater degree of independence from the industry it regulates; (2) asserting a stronger leadership role in forestry matters in California...”

“Too many people perceive CDF as not aggressively enforcing the intent of the Forest Practices Act and the requirements of CEQA. While it is vital to maintain a working relationship with the industry, it is equally important to visibly demonstrate to the industry and the public that...(the CDF) is committed to its regulatory obligations even if it angers the industry.”<sup>47</sup>

This is not what Corporate Timber wanted to hear by any means. The recommendation was all but an endorsement of the changes to the regulatory process, including the composition of the Board of Forestry, that was being proposed by *Forests Forever*.

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<sup>46</sup> Hrubes, op. cit.

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<sup>47</sup> Hrubes, op. cit.



If the corporations were hoping that Harold Walt would ignore or downplay the report, they were soon to have their hopes dashed. In early April 1990, Walt signaled that he intended to take the report very seriously. He reassigned Len Theiss, the chief state forester for California's North Coast region (who had rubber stamped a great many THPs) to other duties. He budgeted money for the CDF to hire its own biologists so that the DF&G biologists wouldn't be constantly in conflict with those of the agency. "I want a healthy, viable timber industry that is putting more back into the ground than what it's taking out. I want good forestry forever, not just a 'boom or bust' mentality," he explained.<sup>48</sup>

This announcement did not bode well for the timber industry. Speaking for the Timber Association of California, Kevin Eckery announced that he had not yet read the report, but declared, "Contrary to the thrust of it, California has a very well-regulated timber industry. We believe current forest practice rules do indeed provide secure and perfected means of preserving our resources,"<sup>49</sup> but the words could not have been anything but hollow sounding to the proverbial imperial court that had just been, once and for all, shown to have no clothes.

The LSA report was hardly an aberration either. Everywhere news was breaking that proved that the foxes were indeed in charge of just about all of the henhouses with regards to environmental considerations. The GAO had recently determined that high level officials within the agency and Department of Interior had interfered with the listing process for the Northern Spotted Owl. The GAO also found that, in conflict with the Endangered Species Act, nonbiological considerations (read 'political / economic') had factored into the decision to not list it.<sup>50</sup> In June, the GAO would reveal that the US Government had failed to fully assess the environmental consequences of oil and gas development on millions of acres of public land, activity which mostly benefitted multinational energy corporations.<sup>51</sup>

All of this demonstrated that contrary to the rhetoric of the wise use movement, Earth First! was not the problem, it was an attempt at the solution. If the wildlife "trail" into Headwaters had given Redwood Summer a spark, the LSA report poured gaso-

line on the fire. Redwood Summer organizing meetings were already drawing huge numbers, far more than Earth First! or IWW meetings had managed to draw to this point. Soon they would double or even triple in size.

If history was any indication, the employing class giant would not simply lay down and let the little people tie it to the ground however. It would find other ways to remain uncontrolled and untamed. That notion quickly proved truthful. Shortly after returning home from one of these Redwood Summer organizing meetings, Judi Bari received a threatening phone call from Candace Boak who informed Bari that she had been watching the organizers, and to emphasize the point, Boak accurately described everyone who had been present at the meeting, and the cars they had driven. "Me and my husband John are coming over to visit you this weekend. We know where you live, over there in Redwood Valley," she concluded ominously.<sup>52</sup> Bari responded, "That's nice," before Boak abruptly hung up the phone. Bari had tried to act nonchalantly but privately she had been scared out of her wits. Little did she realize that this was only the beginning.

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<sup>48</sup> Geniella, April 3, 1990, op. cit.

<sup>49</sup> Geniella, April 3, 1990, op. cit.

<sup>50</sup> "Old Growth vs. Old Mindsets", by Mitch Freedman, *Earth First! Journal*, Beltane / May 1, 1989.

<sup>51</sup> "Environmental Factors Ignored", UPI Wire, *Eureka Times-Standard*, July 3, 1990.

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<sup>52</sup> "The Earth First! Car Bombing", by Judi Bari, *Earth First! Journal*, Brigid / February 2, 1994.