

# California Native Plant Society

North Coast Chapter  
P.O. Box 1067  
Arcata, CA 95518

CNPS Forestry Program  
P.O. Box 985  
Pt. Arena, CA 95468  
March 6, 2003

Mr. Paul Gallegos  
Humboldt County District Attorney  
825 Fifth Street  
Eureka, CA 95501

## **Re: Support for People v. Pacific Lumber Company**

Dear Mr. Gallegos,

The California Native Plant Society (CNPS) is a nonprofit organization of nearly 10,000 amateurs and professionals dedicated to the preservation of California's diverse native flora. CNPS conducts a variety of conservation efforts focused on long-term protection and preservation of native flora in its natural habitat. The Society has been assessing the status of rare plant species for over 30 years and is the foremost non-governmental organization working to protect rare, threatened, and endangered plants in California. The North Coast Chapter represents over 300 members, primarily in Humboldt County.

I would like to express support for your recent complaint against the Pacific Lumber Company/MAXXAM (PL). We believe that such action is needed to enforce the protection of public trust resources of Humboldt County. On PL lands, politics and short-term economic concerns often seem to take precedence over laws and regulations intended to protect sensitive plants and animals, water quality, and human health. As a result, Humboldt County's long-term economic health may be jeopardized. PL's apparent failure to act in good faith is threatening our public trust resources.

I am writing this letter to describe several examples of PL's apparent repeated duplicity, specifically with regard to rare plant species. My experiences with PL come from my work as a botanical consultant and as the Timber Harvest Plan Reviewer for the North Coast Chapter of CNPS. CNPS is concerned that rare plants are not adequately protected from direct or cumulative impacts related to herbicide use, particularly on managed forestlands. In the redwood region in northwestern California, known rare plant populations have been sprayed with herbicides even though state law protects them from impacts during timber harvest. CNPS



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believes that the widespread use of forestry herbicides poses a significant threat to rare plant populations in the state's timber-producing regions. Protection of endangered species from direct and cumulative impacts of pesticides is necessary to protect the unique flora and fauna of California. Preserving habitat for populations of pollinators and seed dispersing animals is essential to the survival of both rare, threatened, and endangered plants and to healthy communities of common species as well.

CNPS has been raising issues related to rare plants and forestry herbicide use in Humboldt County for several years, with little success. The California Department of Forestry (CDF), the Humboldt County Agriculture Department, and the Department of Pesticide Regulation have been unresponsive to most of CNPS's concerns with regard to forestry herbicide impacts to rare plants that are protected during timber harvest, including the instances described above.

Currently, the agencies that regulate private timber harvest defer to the EPA's pesticide registration process as the primary means by which sensitive species are protected from pesticide impacts. However, in cases where we have investigated the implementation of these practices, we have found that rare plants are often directly sprayed with forestry herbicides. Impacts of forestry herbicide applications are not considered in the timber harvest plan process, even though piecemealing projects is a violation of the California Environmental Quality Act and the Forest Practice Rules (14 Cal. Code Reg. § 15378)(a) and 4 Cal. Code Reg. § 895.1).

### **Decreased Coverage of Botanical Surveys for PL Lands, March 2000**

A poignant example of PL's mode of addressing environmental issues is the mandate from Department of Fish & Game (DFG) in January 2000 to reduce botanical survey coverage to 40% of the area to be harvested, even though during the non-blooming season one is far less likely to locate rare plants. Botanical consultants were mystified, since we were already conducting surveys outside the proper season and should have increased survey coverage to ensure detection of rare species. Later that year, I read a disturbing report of the meeting held between PL representatives, regulatory agency staff, and Governor Davis's administration. According to a August 22, 2000 press release by Public Employees for Environmental Responsibility (PEER),

Susan Kennedy, Governor Davis' Cabinet Secretary and Deputy Chief of Staff, summoned managers from DFG and CDF to attend the January 18, 2000 meeting at the State Resources Building. Kennedy's order to the agency managers to "back off" followed a presentation by Jared Carter, Executive Vice president and Counsel for Pacific Lumber, who had a list of complaints about CDF and the Department of Fish and Game. The company contends that the state is taking too long to approve Pacific Lumber's logging plans. The plans are those governed by the Habitat Conservation Plan (HCP) that was part of the Headwaters Forest acquisition deal. State biologists say the delays are due to inaccurate information in the plans, such as failing to identify the presence of federally listed wildlife species, and Pacific Lumber's insistence on interpreting provisions of the HCP in ways that undermine the conservation plan.

According to a August 29, 2000 press release by PEER<sup>1</sup>,

According to interviewed [DFG] employees, the administration's directives include concessions to Pacific Lumber Company in implementing the Headwaters Forest Habitat Conservation Plan. They say these concessions are resulting in the continued decline of federally listed species such as the northern spotted owl and marbled murrelet.

In 2000, PEER released its summary of findings from interviews with 70 DFG staff regarding forest policy<sup>2</sup>, in which it found that

PALCO has bombarded the governor's office and state agencies with complaints about delays in getting timber harvest plans approved. The complaints often turn personal, as company officials attack the qualifications of state employees they consider obstructionists... Logging plan reviewers argue the delays stem from deficiencies in the THPs themselves. The plans often fail to meet minimum standards required under the Forest Practice Rules or the Habitat Conservation Plan (HCP) adopted by the Headwaters Deal, which specifies rules for logging on Pacific Lumber Company-owned lands around the Headwaters Forest in order to protect sensitive or federally-listed species.

### **Apparent Unauthorized Destruction of Sensitive Plants, June 2000**

As a botanical consultant, I discovered several individuals of a sensitive species, the maple-leaved checkerbloom (*Sidalcea malachroides*), on the "Redwood House 23" THP (#1-00-120). Upon visiting the site after timber harvest activities had been completed, I found that four of the ten plants had been graded over during road grading, three of which were no longer present. I had been under the impression that the mitigations for this THP allowed for "taking" a single plant in the middle of the road, since the road would be useless if this small individual was protected. I contacted the Department of Fish & Game to inquire as to whether they had also agreed to allow the three roadside plants to be "taken," and through these discussions I discovered that PL employees had not submitted my original map, but rather had remapped the plants using a coarser scale, which meant that the specific locations of individual plants could not be definitively determined. At a subsequent site visit, PL staff told DFG that there had never been plants in the location I described.

### **Special Exemption for PL and Subsequent Herbicide Impacts to Sensitive Plants**

In February of 2001, PL obtained a special exemption from the Department of Fish & Game to suspend survey and mitigation requirements for the maple-leaved checkerbloom (*Sidalcea malachroides*), which occurs almost exclusively on PL lands. The DFG exemption was apparently made by a single agency official, without consultation with professional botanists, other DFG staff, or CNPS, which is the leading authority on rare plants in the state. This is one example of the special exemptions that PL manages to obtain by claiming that undue economic hardship is resulting from enforcement of regulations intended to protect the environment and public trust resources.

With DFG's special exemption came a stipulation that nine occurrences of the maple-leaved checkerbloom had to be monitored for the species' response to timber harvest methods, since it is thought to be "disturbance-related" in that it thrives in sunny openings and may in fact benefit from logging. This species is restricted to redwood forests, and has been extirpated from the northern and southern parts of its historic range. It is state-listed as endangered in Oregon, where it has not been documented in decades. It is considered a CNPS List 1B species, and as such qualifies for protection under §15380(d) of the California Environmental Quality Act—except on PL lands, which are the heart of its range.

Research on forestry herbicide use led me to discover that four of the nine THPs with monitored maple-leaved checkerbloom populations had been sprayed with Oust© and Roundup© in early 2001. I went to one of the sites adjacent to a county road (THP #1-99-272, along Redwood House Road) and found many dead and deformed plants in July 2001. I called this to the attention of county and state officials<sup>3</sup>, and a meeting was arranged to examine the area. During this meeting, PL employees consistently claimed that where the rare plants were unharmed, they had sprayed; where they were dead, they claimed they had not sprayed. They could not explain how they could tell if herbicides had been applied or not, since it is difficult to tell, and no records had been kept. However, no other reasonable explanation for the death of the plants in question was offered. It was determined by Paul Holzberger of the Humboldt County Agriculture Department that no law had been broken. Since the lead agency that oversees timber harvest (the California Department of Forestry) will not accept responsibility for regulating forestry herbicide use, rare plants are undoubtedly still being impacted by herbicides on various ownerships.

### **Herbicide Spraying of Sensitive Plants that Were Undisclosed to DFG**

An example of the failure of the current regulatory system—as well as PL's inadequate oversight of its employees' activities that could impact rare plants—is the spraying of a sensitive plant population by spray crews targeting invasive non-native roadside species. The Pacific Lumber Company's HCP Monitors' activity report from Timber Harvest Plan #1-01-363 HUM indicates that an occurrence of Howells' montia (*Montia howellii*) was sprayed with herbicides meant to eliminate roadside pampas grass.

This annual plant is a sensitive species as defined by 14 Cal. Code Reg. §15380 (d). Approximately 250 individuals were killed by application of Roundup© by spray crews, even though the site was marked as a Botanical Restriction site.

According to the HCP Monitor's report<sup>4</sup>,

This incident indicates lack in communication between different departments of PALCO. The intent of the Conservation Plan for Sensitive Plants as part of the HCP can only be fulfilled when all operations that might affect survival of rare plants are logically coordinated. It does not make sense that efforts taken to protect rare plants under covered activities are impeded by operations outside the scope of the HCP.

## **Proposed Elimination of the HCP's Rare Plant Section**

The Headwaters Agreement and the resulting HCP was instrumental in bringing botanical surveys into compliance with California law. Prior to the PL HCP, timber harvest plans simply stated that no rare plants were likely to occur, and therefore no significant impacts were likely to result from the proposed timber harvest plan. The PL HCP established rare plant surveys as a standard requirement for THP approval, and covered species included sensitive species as defined by 14 Cal. Code Reg. §15380(d) as well as state and federally listed rare, threatened, and endangered species. A good example of the need for botanical surveys as required by state law is the discovery of the Humboldt milkvetch, a state listed endangered plant that was previously known from only one site. Without the HCP's rare plant survey requirements, these additional occurrences would not have been discovered. I would also like to point out that PL disingenuously proposed in November 2001 that the entire rare plant section of the HCP be removed. This is another example of PL's apparent lack of good faith with regard to sensitive species that must be protected according to CEQA.

### **Conclusion**

This is a company that appears to simultaneously pressure agencies for special exemptions while complaining that it is being unfairly singled out. I sincerely hope that your willingness to take a stance that our elected officials will not tolerate these apparently egregious and duplicitous acts will change the mode of operation that I have witnessed in the past several years. We hope that you will continue to work to protect the public trust resources of Humboldt County. Please feel free to contact me at (530) 629-4567 if you have any questions.

Sincerely,



Jennifer Kalt, Conservation Chair, North Coast Chapter  
and  
Greg Jirak, State Forestry Program Coordinator

cc: Governor Gray Davis  
Rep. Mike Thompson, First District, U.S. Congress  
Wesley Chesbro, First District, California State Senate  
Patty Berg, First District, California State Assembly  
Mary Nichols, State of California Resources Agency  
Humboldt County Board of Supervisors  
Bill Condon, California Department of Fish and Game, HCP Implementation

References:

1. Public Employees for Environmental Responsibility (PEER), August 22, 2000 press release. GOVERNOR INTERVENES FOR PACIFIC LUMBER: Staff Taken to the Woodshed for Delaying Headwaters Logging <http://www.peer.org/press/124.html>
2. California's Failed Forest Policy: State Biologists Speak Out. Summer 2000. California Public Employees for Environmental Responsibility (PEER), Sacramento, CA. [http://www.peer.org/california/dfg\\_final\\_report.doc](http://www.peer.org/california/dfg_final_report.doc)
3. Kalt, Jennifer. Dec. 11, 2001. Letter to John Falkenstrom, Humboldt County Agricultural Commissioner, re: maple-leaved checkerbloom sprayed on the Redwood House THP (1-99-272 HUM).
4. Activity Reports for Monitoring of the Pacific Lumber Company Habitat Conservation Plan, July 17, 2002. ActiveTrak 101363-050102. U.S. Fish & Wildlife Service, Arcata Fish & Wildlife Office, Arcata, CA. FOIA 1-14-02-1250.