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MINUTES
BOARD OF FORESTRY AND FIRE PROTECTION
FULL BOARD OF FORESTRY MEETING

Sacramento, CA

December 5-6, 2007

BOARD OF FORESTRY MEMBERS PRESENT:

Stan Dixon, Chair
David Nawi
Jim Ostrowski
Doug Piirto
Tom Walz
Lloyd Bradshaw
Gary Nakamura
Pam Giacomini
Bruce Saito

MEMBERS ABSENT:

None

BOARD STAFF:

George Gentry, Executive Officer
Eric Huff, Executive Officer, Forester's Licensing
Teri Ashby, Board Counsel
Chris Zimny, Regulations Coordinator
Carol Horn, Executive Assistant

DEPARTMENTAL STAFF:

Crawford Tuttle, Chief Deputy Director
Russ Henly, Asst. Deputy Director, Res. Mgmt.
Giny Chandler, Department Counsel

EXECUTIVE SESSION

December 5, 2007

Time: 4:00 p.m.

1. **Call to Order**

Chairman Dixon called the December 5, 2007 Board of Forestry and Fire Protection Meeting to order.

The Board's Mission:

To lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands and a fire protection system that protects and serves the people of the state.

2. **Adjourn to Executive Session**

Chairman Dixon adjourned the meeting to Executive Session.

REGULAR SESSION
December 6, 2007
Time: 8:00 a.m.

3. **Reconvene Regular Session**

Chairman Dixon reconvened the Board of Forestry Meeting December 6, 2007 at 8:00

4. **Announcement of Actions taken in Executive Session**

Chairman Dixon said no action was taken during the Executive Session yesterday. They discussed litigation.

5. **Approval of Minutes from the Regular Meeting of October and November 2007**

The October and November minutes were not ready for approval.

6. **Report of the Chairman**

Chairman Dixon attended the Governor's Medal of Valor Awards Ceremony at the Crest Theater on December 4, 2007. There were 31 awards made this year, of which six went to CAL FIRE staff. The awards went to Richard Moore, Battalion Chief from the Fresno-Kings Unit; David Shew, Battalion Chief from the Sonoma-Lake-Napa Unit; William Smith, Fire Captain from the Riverside Unit; Ignacio Otero, Firefighter from the Riverside Unit; Kelley DeGifford, Firefighter from the Riverside Unit; and Jacklyn Bowes, a Firefighter from the Riverside Unit. The Medal of Valor is the highest honor that California bestows on its public servants and is awarded to California state employees who have performed an extraordinary act of heroism above and beyond the normal call of duty, to great risk to their own personal safety or life to save the life of another. Award nominations are made by the employee's department. Chairman Dixon said it was a very impressive ceremony.

Chairman Dixon said at the Forest Practice and Policy Committee meetings yesterday and last month there were discussions about the Board's Technical Advisory Committee and the soon to be formed Science Committee and the modest budget they had to work with. Chairman Dixon said the Board's budget was in a precarious situation, and Board staff were overextended. Vice Chair Giacomini, Chairman Dixon, and Member Nawi will serve on an ad hoc committee to look at the Board's budget process, and to see what options the Board has to fulfill their charter.

7. **Report of the Director/Department**

Chief Deputy Director Crawford Tuttle said the threat of fire was beginning to abate, and CAL FIRE was continuing with recovery efforts. Reports are being prepared. A Burn Team has been put together to look at all fires statewide. Chief Grijalva continues to attend hearings on fires. Mr. Tuttle said there was a significant need for better fire prevention measures. CAL FIRE has been reviewing the ordering process, and how to streamline it. The Department hopes to develop an agreement for fire suppression

with other state and local agencies, and they are looking at ways to increase response time. A meeting was held between the Resources Agency and the Air Resources Board, and they are working with the Air Resources Board to formalize a stakeholder in the Air Resources Board scoping process. Mr. Tuttle said the Board had a critical role to play in climate change goals.

8. Report of Board's Advisory Committees

California Oak Mortality Task Force (COMTF)

No oral report was given, however, the COMTF report was in the Board Binder.

Range Management Advisory Committee

No report was made.

Monitoring Study Group

The MSG met on November 14, 2007 at the Howard Forest Training Center. The next MSG meeting has been tentatively set for February 13 in the Redding area. A copy of the MSG report is in the Board Binder.

Professional Foresters Examining Committee

Mr. Eric Huff said the following Registered Professional Foresters have requested license REINSTATEMENT from withdrawal status per 14 CCR SS 1608(d):

William A. Dean	RPF 150
Mervin Pyorre	RFP 1494
Pryce Campbell	RPF 1846

12-06-08: Member Nawi moved to reinstate the three Registered Professional Foresters who had requested license reinstatement from withdrawal status. Member Piirto seconded the motion. All were in favor and the motion passed unanimously.

Mr. Huff said the PFEC will meet on December 13, 2007, and he met with the graders earlier this week.

9. Public Hearing: The Board will hear an Appeal of the Director's Return, Unapproved, of Timber Harvest Plan #2-06-106-SHA(4), "Blacktail THP"

Chairman Dixon said the Board would hear an appeal of the Director's return unapproved of Timber Harvest Plan #2-06-106-SHA (4), the "Blacktail THP". The hearing was being held pursuant to Public Resources Code Subsection 4582.7. The Notice of Public Hearing was circulated pursuant to Title 14, California Resources Code Subsection 1054.5 on October 15, 2007. Chairman Dixon said they would start with Identification of Records, which will be given by Executive Officer Gentry, and then the Board would hear statements from Roseburg, the submitter of the plan. Roseburg had already submitted a brief to Board Members, but the brief was not submitted to the Department. Chairman Dixon said then Roseburg would make a summary, followed by comments by members of the public. Chairman Dixon said the Department should be given ample time to between now and the January meeting to review the brief, and if they so desire, to submit their brief.

Member Walz said the Board would be taking public testimony on something the public had not had a chance to review and suggested the Board hold the public hearing next month so the public could have

a chance to review the brief. Member Piirto agreed with Member Walz on deferring the public hearing to the January meeting.

Executive Officer Gentry said this was a Public Hearing for the Board to hear an appeal of the Director's return, unapproved, of Timber Harvesting Plan No. 2-06-106 SHA (4). Pursuant to 14 CCR Subsection 1054.1 *et seq.*, on August 10 2007, the Board received a request from Christopher Carr, Esq., representing Roseburg Resources Company to appeal the Director's denial of Timber Harvesting Plan No. 2-06-106 SHA (4). Specifically, the Director returned the plan unapproved under the provisions of Title 14, California Code of Regulations Subsection 898.1 (c)(1) based on the determination that the Director shall disapprove all plans that do not incorporate feasible silvicultural systems, operating methods and procedures that will substantially lessen adverse impacts on the environment. Roseburg subsequently waived the 30-day period required under 14 CCR Subsection 1054.4 for this matter to be heard before the Board. This hearing is scheduled for today. The hearing will be conducted pursuant to 14 CCR Subsection 1054.7 as follows:

1. Identification of the record.
2. Statements on behalf of the Department in support of the Director's determination. Those statements may include participation by other interested agencies.
3. Statements on behalf of the person submitting the plan.
4. Statements by members of the public.
5. Close public hearing.

Members of the public testifying on the matter shall limit their testimony to the specifics of the Director's return, unapproved of THP 2-06-106 SHA (4). Members of the public interested in addressing the Board on topics related, but not specific, to this matter may do so under the Public Forum agenda item.

Executive Officer Gentry said following the public hearing, the Board shall determine whether, upon the record before it, the plan is in conformance with the rules and regulations of the Board and the provisions of the Act. If the Board determines that the plan is in conformance with the rules and regulations of the Board and the provisions of the Act, it shall make its order approving the plan. If the Board determines that the plan is not in conformance with the regulations of the Board and provisions of the Act, it shall make its order disapproving the plan. Approval of the plan by the Board constitutes authorization that timber operations may commence and be conducted in accordance with the plan as approved and in accordance with the rules and regulations of the Board and provisions of the Act. Timber operations shall not take place where the Board disapproves the plan. Disapproval of the plan shall be without prejudice to the applicant submitting a plan at any later time complying with the rules and regulations of the Board and the provisions of the Act. If the Board approves the plan, notice thereof shall be filed with the Secretary of Resources, and within ten working days such notice shall be transmitted to the agencies and persons referred to in 14 CCR Subsection 1037.3, and for posting at the places referred to in Section 1037.1. The order of approval shall include written response to significant environmental points raised during the evaluation process.

Mr. Chris Carr, Attorney for Roseburg Resources, introduced himself, and he had some procedural verification from the Board on several issues that he felt it was imperative that the Board make a record on so his client, Roseburg, rights were protected and that the proceedings were fair. Mr. Carr said prior to the hearing Counsel for the Department and he were approached by the Executive Officer regarding a presentation of demonstrative evidence that Roseburg had brought with them today, a seven-minute DVD video of the Blacktail THP. Mr. Carr said the video showed the site lines, and views of the THP from various locations. Mr. Carr said the video was only to be demonstrative evidence, and that the Board had historically allowed this to be presented at THP hearings. Mr. Carr said the video was not formally part of the administrative record; however it is what CAL FIRE, State Parks, and members of the public saw on the ground. Mr. Carr asked the Board for a formal ruling to show the video. Mr. Carr also wanted to address the issue of the briefing. Mr. Carr said the procedural memo they received in October indicated the parties were to submit their briefs by a certain date for distribution to the Board to study and so that there would be no surprises by either party. Mr. Carr said Roseburg submitted a ten-

page brief and the Department submitted no brief. Mr. Carr said it would be unfair for CAL FIRE to have Roseburg's brief and be able to reply to that in advance of the hearing, and for Roseburg to not have similar opportunity to analyze, critique, and respond to CAL FIRE's brief. Mr. Carr said if CAL FIRE was going to prepare a brief that Roseburg would like the opportunity to reply to that brief, both in writing and, if they so choose, at another hearing.

Chairman Dixon asked if Mr. Carr had served Roseburg's brief to the Department.

Mr. Carr said he did not serve it on the Department, he was not instructed to serve it to the Department. Mr. Carr said he served it per the instructions in the October 3 memo; to the Board of Forestry's Executive Officer.

Ms. Giny Chandler, CAL FIRE's Counsel, said the Department was not asked to prepare a written brief. Ms. Chandler said if the Board wants a brief, then the Department will prepare a written brief in a reasonable time. Ms. Chandler asked the Board not to comment on Roseburg's brief because she had just received it a few minutes ago. Ms. Chandler said there were very specific case law and statutes on what constitutes an administrative record. Ms. Chandler said to the extent that evidence was available to the decision-makers, who made that decision, she believed that that evidence could be considered part of the administrative record although it was not submitted by the appellate, so Ms. Chandler said the Department would not object to that video to the extent that there would be presented by the appellate or any other party that was not part of the administrative record, the Department wants to go on record as objecting to anything, whether it is a videotape, map, picture, anything that was not before the decision-makers. Ms. Chandler said she was not objecting the video provided it is as represented and that it was presented to the decision-makers so that they would have had the ability to use that as part of their decision.

Chairman Dixon said the Board needed to make a good decision based on the record, not slip up with a process that could put the Board in jeopardy of having a delay and possibly litigation. Chairman Dixon said the Department said they would submit a brief, and counsel for Roseburg said they would like the opportunity to review and counter the brief, and it was Chairman Dixon's understanding that legally they had the right to do that.

Board Counsel Ashby said the rules are very clear that the decision must be made on the record; however, the rule also allows for statements to be made. Ms. Ashby said it was her understanding that Roseburg had provided a brief to the Board which had been provided to Board Members. Ms. Ashby said the Department was asking to respond to that brief and Roseburg wants a right to respond to the response. Ms. Ashby said that was all legal briefing and because the one brief had been allowed, she felt the Department should be able to respond and should allow Roseburg to reply. Ms. Ashby said that is how it was usually done and it is a way to set the record in case of an appeal, and it was due process and fair that way. Ms. Ashby said the Board could not make a decision until the other briefing had been done. Ms. Ashby said the decision could only be made on the record but it did not mean they could not use statements to argue why the record was in their favor. Ms. Ashby said it would be appropriate to hear the statements and allow a briefing schedule so that the Department could provide an opposition brief and Roseburg could prepare their reply brief and then the Board could make their decision during the February meeting.

Chairman Dixon felt that was probably the best process for the Board to follow on any appeal.

Member Ostrowski suggested postponing the whole process, and start with a clean hearing, and have everything presented at one time, and at that time, the Board would make a decision.

Chairman asked the Board to make a decision on whether they want to end the process today and prescribe how they want it to continue.

Mr. Carr said Roseburg objected to having the public hearing today. Mr. Carr said CAL FIRE had an opportunity to submit materials and timely submit a briefing as Roseburg did, but they choose not to take that avenue, that was their decision.

12-06-9: Member Piirto moved to postpone the hearing until everything was lined up properly and all parties could further present at the same time.

Member Giacomini said she would second the motion, but want to be sure that the Board follow Counsel Ashby's suggestions, that the two attorneys come forth with a schedule that they agree to abide by. Member Giacomini felt it prudent to allow public comment to be taken because it had been properly noticed for this hearing with no timeline to allow comment, then close the public hearing and reopen it after the January or February Board Meeting when the briefs had been filed.

Member Piirto agreed to the amended motion.

Mr. Carr said Roseburg objected to taking public comment today on the briefing because he did not feel the presentation for the Board would be a fair one.

Chairman Dixon said he agreed with Mr. Carr that public comment could not be reflective of the brief that the Department would file, nor the response to that brief. Chairman Dixon said he agreed with Members Piirto and Ostrowski that they wait on the public comment until the Board gets the record straight.

Member Ostrowski said it was unfortunate for the people who had traveled here today to testify, but people put serious effort into the appeal, and to make it as soon as possible, given the timelines in the regulation are short and he did not want to alter that intent, and in the future briefs be submitted in the timelines.

Member Nawi was concerned that the Board was not addressing the video. Member Nawi said to let the Department view the video and decide if it was acceptable for the Board to view the video.

Ms. Chandler said if the video was made after determination was made, she objected.

Member Nawi said everything should be done in a clean way, and that only the public who could not attend the January Board Meeting be allowed to make public comment today.

Chairman Dixon said most people would say they could not attend next month's meeting so they could make comment today.

Member Nawi said if people were able to make it to the December meeting, they should be able to make to the January meeting.

Mr. Arne Holtgren, Roseburg Resources, said it had taken 13 to 14 months to get to this point. If they get into March, April or May it would impact Roseburg and could take another year. Mr. Holtgren said if the Board could have this on their February agenda that would be acceptable for Roseburg.

Executive Officer Gentry said the hearing would have to be in Sacramento. Tentatively the Board was planning to hold a joint meeting with the Department of Fish and Game in February in San Diego.

Member Giacomini suggested the Board take no public comment today, that they have full record and public comments at once.

Member Nawi encouraged the Department to work with Roseburg to come to a mutual agreement if the video were appropriate.

Member Piirto amended his motion to postpone the hearing until the Board had a full record. Member Giacomini accepted Member Piirto's amended motion.

Chairman Dixon asked the counsels to plan a hearing schedule.

Board Counsel Ashby informed Chairman Dixon that the January Board Meeting would be an appropriate for this agenda item to come before the Board.

Member Ostrowski asked that it be included in Member Piirto's motion that the hearing be postponed the January Meeting.

Members Piirto and Giacomini agreed to include Member Ostrowski's amendment that the hearing be postponed to January.

All Board members were in favor of the motion, and it passed unanimously.

Member Nawi said the Board should have all the relevant documents from Roseburg and the Department posted on the Board's website for public review.

10. Review of the Final Environmental Impact Report (FEIR) and Public Comment for Jackson Demonstration State Forest (JDSF) Draft Management Plan

Dr. Russ Henly said the Department continues to work on final DEIR for Jackson will have it ready for the Board to review later this month, and to take action on at the January Board Meeting. Dr. Henly briefed the Management Committee yesterday on activities relating to the development of the Advisory Committee for JDSF. Dr. Henly said they were directed to seek input from the public and the Board on the Jackson Advisory Group processes and structure, which they had done. Dr. Henly said the charter should be ready for discussion and possible action at the January meeting. The Board will approve and the charter, and they will act to confirm the members appointed by the Director.

Member Nakamura asked if the Jackson Advisory Group was an experiment in its self. He asked how they would come up with some measure of success.

Dr. Henly said the Department had advisory groups for other state forests. The Advisory Group for Jackson would be a formal Advisory Group. The Jackson Advisory Group will review the new Management Plan, and they will play a key role in the Management Plan to ensure it is worthy of some measure of success.

Member Bradshaw encouraged the Department and Board to look for opportunities to lump tasks, in order to move as quickly as possible. Member Bradshaw suggested the Department have a possible list of appointees for the Advisory Group along with the charter in January.

Dr. Henly said it would not be possible to have a list of appointees until the charter was finalized.

Member Piirto asked if there would be a sunset for the committee.

Dr. Henly said there would be language in the charter as to how often they would meet of the first three years. It will be an ongoing committee, and they will be reimbursed for travel expenses.

Member Nawi said the Board knows what they were looking for, and they should make an effort to bring forth some names. Member Nawi said if there were no harvest in 2008, it would be a failure for both the Board and Department.

11. Report of Forest Practice Committee

Member Nawi said regarding the re-adoption of the Lookout Emergency Rule, the FPC recommended to let emergency lapse and expire on 1/8/08 because (1) the access to site would be under snow during the time of any re-adoption negating the emergency condition; and (2) CAL FIRE was not clear whether there was a real emergency, need for the treatment, or the desire from landowners to due treatment.

No action items were taken at the Forest Practice Committee. A summary of the FPC is contained in the Board Binder.

Policy Committee

Member Ostrowski said the Policy Committee met yesterday and had good public participation. They continue work on the joint Salmonids policy with the Fish and Game Committee. No actions items were taken at the Committee. Member Ostrowski will submit a written summary, which will be put in the Board Binder.

Management Committee

Member Piirto reported that the Management Committee met yesterday. The Management Committee had one action item. A summary of the Management Committee is in the Board Binder.

12-06-11: Member Piirto moved for Board concurrence for the final draft Table, cover letter, and attached roster of CAL FIRE Forestry Advisors, and that posting of those materials to all active RPFs, Fire Safe Councils, and other parties begin in January 2008, and that there will be consistent Management Committee review and update of the Table and associated materials during the annual September Board Meeting. Member Nawi seconded the motion.

Member Nawi said the Board was providing clarification of existing rules.

Member Piirto wanted to include in his motion that he was providing clarification of the existing rules.

Member Nawi accepted Member Piirto amendment to his motion. All Board Members were in favor of the motion, and it passed unanimously.

Resource Protection Committee

Member Giacomini said the RPC continues work on the Fire Plan. Members Walz and Giacomini will create a list of Fire Plan Update actions and strategies for the 2008 Fire Plan update based on the review of the 1996 Fire Plan. The ending date for the DEIR administrative review will be December 21,

2007. No action items were taken, and a copy of the Resource Protection Committee is contained in the Board Binder.

12. Report of the Regulations Coordinator.

Regulations Coordinator Zimny said the regulations calendar, under Tab 12 was up to date, except the readoption of the Emergency Exemption will be deleted from the list.

13. Report of Executive Officer.

Executive Officer Gentry said the Joint Policy on Anadromous Salmonids should be back from the Department of Fish and Game in a week, and the Board would be presented with it at the January Board Meeting. Mr. Gentry said a joint meeting with Fish and Game would be held in February at San Diego.

14. Public Forum

Mr. Paul Mason, representing Sierra Club, was concerned about procedures leading up to dysfunctional hearing the Board was trying to hold on the Blacktail THP. Mr. Mason said the administrative record had not made aware to anyone that Roseburg submitted a brief to Board, which should have been available to interested public.

Mr. Richard Geinger said that Humboldt County had a website on TPZs. Mr. Geinger said the MSG meeting waiver of procedures presentation by the Water Board made for quick process protocol for monitoring procedures. Mr. Geinger said he would like to review the administrative record for the Blacktail THP. Mr. Geinger suggested the Board could use a bond issue for coho.

Ms. Jodi Frediani, representing Sierra Club, Santa Cruz Group, said the procedure for appellate hearings lacked accessibility of information. She encouraged the Board to post what they could on their website and state that other documents relevant to the hearing may be requested from the Board. Ms. Frediani said the process needed to be more transparent, and to simplify the process the Board should have as much information as possible on the Board's website.

15. New and Unfinished business

Member Giacomini said there was much more detailed information in the Board Binder under the tab for Director's Report, and she encouraged the Department to continue this.

16. Adjournment

The Chairman adjourned the December 2007 meeting of the Board of Forestry and Fire Protection.

Respectfully submitted,

ATTEST:

George D. Gentry
Executive Officer

Stan Dixon
Chairman

Copies of the attendance sheets can be obtained from the Board Office.