



March 29, 2021

California Department of Forestry and Fire Protection  
135 Ridgway Ave  
Santa Rosa, CA 95401

**RE: Comments Regarding Timber Harvest Plan 1-20-00193MEN, “Mitchell Creek,”  
Jackson Demonstration State Forest**

Dear CAL FIRE Director:

The following comments are prepared and submitted on behalf of the Forests Forever Foundation. These comments are specific to Timber Harvest Plan (THP) 1-20-00193-MEN, “Mitchell Creek,” submitted by the California Department of Forestry and proposing timber harvesting activities on the Jackson Demonstration State Forest.

Please provide a written response to all points and concerns raised in these comments prior to issuance of the Notice of Conformance for the “Mitchell Creek” THP.

**Summary**

Approval of the “Mitchell Creek” THP as currently proposed would constitute a prejudicial abuse of CAL FIRE’s discretion. A prejudicial abuse of discretion occurs when CAL FIRE does not base a decision to approve a THP on substantial evidence in light of the whole of the record, or if CAL FIRE fails to proceed with the review and approval of a THP as otherwise prescribed by applicable laws.

The “Mitchell Creek” THP was not complete, accurate, or in proper order upon its resubmission and should not have been accepted for filing. CAL FIRE has failed in its duties to conduct an honest, thorough, and complete review of the THP upon its resubmission and to ensure that the

THP it circulated to the other trustee review team agencies and the public for inspection and comments was complete, accurate, and in proper order.

CAL FIRE has abused its discretion by allowing the “Mitchell Creek” THP to proceed through the review process as resubmitted, and has deprived trustee state agencies and the public of the opportunity to provide meaningful input and comments on a true, accurate, complete and correct Timber Harvest Plan.

The “Mitchell Creek” THP itself fails to provide necessary information about the nature and characteristics of the forest stands proposed for timber harvest and how the proposed silvicultural applications will alter those forest stands. The “Mitchell Creek” THP is therefore incomplete and inadequate to allow meaningful assessment of potentially significant, adverse impacts on the environment.

Finally, the “Mitchell Creek” THP fails to adequately represent, consider, or analyze potentially significant adverse cumulative impacts to recreation resources that will occur from implementation of the THP. The “Mitchell Creek” THP also fails to provide evidence that the RPF considered, or conducted any analysis or investigations to implement and comply with the provisions of the Jackson Demonstration State Forest Management Plan’s Recreation Management Plan when assessing potentially significant adverse and cumulative impacts to recreation.

### **Baseline, Setting, and Timber Harvest Activities as Proposed**

The “Mitchell Creek,” THP is located within the Mitchell Creek, Hare Creek, and Caspar Creek State Planning Watersheds. The THP is located on the State of California’s Jackson Demonstration State Forest and is boarded on the west of the State of California Department of Recreation’s Jughandle State Natural Reserve.

The “Mitchell Creek” THP proposes timber harvesting and related activities on a total of 542 acres, which includes 419 acres of selection silviculture harvest, 14 acres of harvest in a Special Treatment Area (STA), and 109 acres of fuelbreak/defensible space harvest activities. Forested areas within the THP boundary are characterized as being Site Class II and III timberlands dominated by coast redwood and Douglas-fir trees.

### **The CAL FIRE Review and Review Procedure for the “Mitchell Creek” THP was Flawed and Improper**

CAL FIRE has abused its discretion by failing to conduct a thorough, complete, and proper review of the “Mitchell Creek” THP upon submission after the THP was withdrawn under a different number. CAL FIRE has also abused its discretion by failing to reject the THP upon resubmission under the current THP number and returning it as unacceptable for filing on the

basis that the THP was incomplete, inaccurate and not in proper order upon resubmission as required by the Forest Practice Rules.

The “Mitchell Creek” THP upon its initial submission was assigned THP number 1-20-00168-MEN. According to information on the CalTrees website, the THP was subsequently withdrawn by the RPF on 10/23/2020. No record attachment documents remain on the CalTrees website for THP 1-20-00168-MEN, not even the Withdrawal Request Letter, which would inform the reviewing public why the THP was withdrawn from the review process.

The “Mitchell Creek” THP was resubmitted on 11/03/2020 and was assigned its present number, 1-20-00193-MEN. According to the information on the CalTrees website, the initial intake was conducted by CAL FIRE and the determination made to file the THP and continue with the review team process on 11/12/2020. CAL FIRE review team staff determined that the THP as resubmitted was acceptable for filing, that review could proceed, and a Pre-harvest Inspection could be scheduled and conducted.

Pursuant to the California Forest Practice Rules at 14 CCR 1037, the CAL FIRE director, “shall determine if the plan is accurate, complete and in proper order, and if so, the plan shall be filed.” However, 14 CCR 1037 also provides, “When the Director finds a plan inaccurate, incomplete or otherwise not in proper order, the plan shall be returned to the submitter with written specifications of the deficiencies.”

How it is possible that the CAL FIRE review team and director were able to determine that the “Mitchell Creek” THP was “accurate, complete, and in proper order,” upon its resubmission on 11/03/2020 based on the contents of the THP and the supporting documentation in the THP record is simply mind-blowing.

A laundry list of deficiencies that should have indicated to the CAL FIRE review team and director that the “Mitchell Creek” THP was not in fact complete, accurate, or in proper order upon its submission on 11/03/2020 have since come to light as needing to be addressed by the RPF. Many of these deficiencies were not identified by the CAL FIRE review team staff until the scheduling and attempted conducting of the second review team meeting for the THP on 03/04/2021.

On March 4, 2021, the Review Team Chair identified 14 separate deficiencies in the “Mitchell Creek” THP that constitute incompleteness, inaccuracies, and a lack of proper order of the contents of the THP. These issues include but are not limited to:

Issue #1: failure to accurately characterize and identify the Special Treatment Area (STA) as State Parks, Jughandle State Natural Reserve, and to identify the 200-foot STA buffer in Section

I, Item #7(b) of the THP; Issue #5: Failure to answer questions (j)-(m) in Section II, Item #24 on pages 35-36 of the THP; Issue #6: Failure to answer question (u) in Section II, Item #24 on page 37 of the THP. (CAL FIRE Second Review Letter, 03/04/2021)

To be clear, the RPF not only failed to accurately identify and characterize the Special Treatment Area and its 200-foot buffer for a California State Parks unit adjacent to the THP area in Section I, the legal description and information for the THP, but also failed to fully and properly complete and fill out the THP form for Section II that constitutes enforceable operational provisions of the proposed project.

Yet somehow the CAL FIRE review team staff found the “Mitchell Creek” THP to be complete, accurate, and in proper order upon resubmission and to be acceptable for filing, distribution to trustee state agencies and the public, and the scheduling and conducting of the Pre-Harvest Inspection. Deficiencies that should have warranted rejection of the THP upon resubmission and placing it on a Return-Hold were not identified by CAL FIRE review team staff until four months after the THP was resubmitted.

These are just a few examples of how the “Mitchell Creek” THP was not complete, accurate, or in proper order upon its submission, and the examples eventually brought to light by CAL FIRE’s Review Team Chair at Second Review are not the only examples.

Both the California Department of Fish and Wildlife and the California Department of Parks and Recreation raised numerous questions and made numerous recommendations aimed at addressing the fact that the THP was not complete, accurate, or in proper order throughout the various stages of the review process.

CAL FIRE’s error in failing to do its due diligence to conduct a thorough inspection of the THP upon its resubmission is not without significant adverse consequences. Based on information provided on the CalTrees website, over 100 public comments on the “Mitchell Creek” THP were received by CAL FIRE between 11/17/2020 and 03/04/2021, the date of the initially scheduled second review team meeting during which 14 deficiencies in the THP were identified as needing to be addressed.

Every single member of the public responsible for the over 100 public comment letters on the “Mitchell Creek” THP during this time period was deprived of the opportunity to review, and provide meaningful public comment on a THP that was complete, accurate, and in proper order. Again, the RPF failed to even completely and properly fill out the THP form for Section II, the most important section of the THP, containing the enforceable operational provisions that would apply.

The public, as well as trustee reviewing state agencies including the California Department of Parks and Recreation, the California Department of Fish and Wildlife, and the North Coast Regional Water Quality Control Board, were all deprived of the opportunity to review, inspect, and engage in ensuring that the “Mitchell Creek” THP would avoid significant, adverse, direct and cumulative impacts on the environment because the THP as circulated by CAL FIRE was incomplete, inaccurate, and not in proper order upon resubmission and its filing and circulation for further review and inspection violate the requirements of 14 CCR 1037.

The RPF responses to the 14 second review issues raised by the CAL FIRE Second Review Team Chair on 03/04/2021 were dated 03/12/2021 and, according to information on the CalTrees website, were received by CAL FIRE and made available for public inspection on 03/15/21. The CAL FIRE Review Team Chair then recommended the “Mitchell Creek” THP for approval on 03/18/21. The public comment window for the “Mitchell Creek” THP closed on 03/29/2021.

The version of the “Mitchell Creek” THP that was available for agency and public comment and inspection was not complete, accurate, or in proper order for four months of the review process. Once those deficiencies were addressed by the RPF, other trustee state review agencies and the public were only allotted 15 total days to inspect, review, and write comments on the revised, presumably complete, accurate and properly ordered THP before the public comment closed.

CAL FIRE has abused its discretion by failing to faithfully discharge its duties as specified in the Forest Practice Rules as the lead review team agency for the “Mitchell Creek” THP by accepting the resubmitted “Mitchell Creek” THP for filing instead of returning it to the RPF as incomplete, inaccurate and not in proper order. This abuse of discretion has harmed other trustee reviewing state agencies and the public at large by depriving them of the ability to meaningful inspect, review, and comment on a complete, accurate, and properly-ordered document until the last possible moment and phase of the THP review process.

### **Insufficient Information Presented about Forest Stand Characteristics to Ensure Proper Application of Proposed Silvicultural Methods**

The “Mitchell Creek” THP fails to present necessary information about the pre-harvest condition and characteristics of commercial conifer tree species that would allow a reviewer of the THP or an enforcement inspector to determine if proposed silvicultural prescriptions will be properly applied.

Section III, page 99 of the THP under “Vegetation and Stand Conditions,” states that the conifer component of the timber stand is dominated by redwood and Douglas-fir. No information about the current age or ages within the stand is presented. No information about recent harvest history and the spacing and distribution of commercial conifer tree species is presented.

Section III, page 106 of the THP, “Plan Addendum to Item 14, Silviculture,” presents two tables with very limited stand information broken out by Site Class. These tables provide pre-harvest and anticipated gross volume per acre, growth estimates by percentage pre-harvest and post-harvest, conifer stocking by basal area pre-harvest and post-harvest, and percentage of species composition per-acre pre-harvest and post-harvest.

The information provided tells a reviewer nothing about the age or ages of trees in the forest stands to be harvested, the height or distribution of variations in heights of trees in the forest stands to be harvested, or the diameter or variations in distribution of diameter classes within the forest stands to be harvested. The THP also does not disclose whether the pre-harvest condition of forest stands proposed for harvest is evenaged or unevenaged or a mixture of these two.

The “Mitchell Creek” THP fails to provide basic information to inform reviewing agencies, a public reviewer, or a forest practice inspector about the most fundamental component of a Timber Harvest Plan--the forested stand proposed for harvest for the purposes of converting trees to timber for the creation of wood products.

In the absence of such fundamental information, how can any reviewer reasonably be expected to understand pre-harvest stand conditions and characteristics, how the proposed silvicultural methods will be applied, and what the post-harvest stand conditions will represent?

The “Mitchell Creek” THP is incomplete, and presents inadequate information to allow CAL FIRE or anyone else to determine how the proposed silviculture and its application will impact the forest stands proposed for harvest and whether or not those impacts might be significant, adverse and/or cumulatively considerable in nature.

### **Inadequate Assessment of Cumulative Impacts to Recreation Resources and Failure to Consider JDSF Recreation Management Plan When Conducting the Assessment**

The cumulative impacts assessment presented in the “Mitchell Creek” THP for the recreational resources is incomplete, inadequate, fails to consider JDSF’s own Management Plan and its Recreation Management Plan, and the conclusions presented are not based on substantial evidence in light of the whole of the record.

Section IV, page 149 of the “Mitchell Creek” THP Under (D) “Recreation Resources” presents the RPF’s attempt at evaluation of cumulative impacts on recreation. Here, the RPF states:

“Recreational activities on JDSF include camping, hunting, hiking, target shooting, equestrian use, berry-picking, bicycling, firewood cutting (with permit) and mushroom picking (with permit). The assessment area is frequently used for recreation as compared to other areas on the state forest.” (Section IV (D), p. 149)

The RPF seems to indicate some awareness of the popularity of recreational use within the recreational assessment area for the “Mitchell Creek” THP, but fails to specify or quantify what this information is based upon, or what efforts may have been made, if any, to determine that the assessment area is “frequently used” for recreational purposes and what “frequent use” actually means.

In the absence of a baseline other than a cursory, qualitative statement such as that the area is “frequently used” for recreation purposes, how can the RPF, CAL FIRE, or the reviewing public even begin to assess whether or not the proposed timber harvesting and associated activities of the “Mitchell Creek” THP will have a significant, adverse, direct or cumulative impact on recreational resources?

The RPF then characterizes the impacts to recreational resources from the proposed harvest and related activities as “short-term,” stating:

“A short-term impact to recreational activities will occur during harvesting operations. During this period, the area in and adjacent to the project will be temporarily closed to recreation for safety purposes. Effort will be made to minimize duration of road/trail closures. Alternative hiking and biking routes will be studied and communicated to local bike groups. Ample opportunities to pursue these activities exist on portions of JDSF which are not subject to temporary closure. Firewood cutting with a permit may be allowed at designated areas only. The impact to recreation resources from this project will be temporary and the area will be reopened for recreation following the completion of operations.”(*Ibid.*)

To begin with, this is the first mention in the assessment of cumulative impacts to recreational resources of the existence of hiking and biking trails within and adjacent to the “Mitchell Creek” THP area. One assumes, but cannot be sure, that these hiking and biking trails may be part of what the RPF intends to include when referring to the THP area being “frequently used” for recreational purposes.

Additionally, the characterization of the impacts to recreation as “short-term” does not address the nature of the severity of the impacts on the “frequently used” areas in and adjacent to the THP. A short-term impact may still be significant and adverse and cumulative, yet there appears to have been no effort on the part of the RPF to analyze or mitigate such impacts.

The fact that the closure of the roads and trails in the THP area will be temporary does nothing to inform whether or not the consequences of that impact are deemed to be significant, adverse, or cumulatively considerable.

The RPF states that alternative hiking and biking routes will be “studied” and communicated to local biking groups. What about local hikers? Equestrian trail users? Further, if the RPF has not yet in fact “studied” whether or not there are alternative trails that could be used during the time period that the THP area is closed for harvest, how can the RPF definitely determine that impacts to recreational resources will not be significant, adverse, and cumulative?

What if the RPF’s post-hoc, deferred study finds no feasible or reasonable alternatives? What if those alternatives are not feasibly accessible, or would require substantially greater amounts of travel, or increase traffic and crowding on other trails within JDSF?

Based on the information provided in Section IV (D) on page 149 of the “Mitchell Creek,” THP it appears that the RPF has failed to conduct a meaningful analysis of the potentially significant, adverse and cumulative impacts to recreation, recreation users, and resources within JDSF that may be impacted by closure of the THP area to recreation and funneling that recreational use to other areas of the forest, to the extent that is even feasible.

The 2016 Jackson Demonstration State Forest Management Plan calls upon CAL FIRE to complete a user-needs study for recreational purposes on the forest to guide the creation of recreational plan. (JDSF Management Plan, at p. 11)

The 2016 JDSF Management Plan establishes that recreation and aesthetic enjoyment through low-impact forest uses is a goal of the plan, calling on the forest manager to:

“Demonstrate that recreation is compatible with demonstration and timber management land uses, as well as many research activities, through the integration of recreational development and use with these other activities. Utilize this opportunity to explain forest research and management to the recreating public. Include appropriate mitigations in harvest plans that may impact recreation and aesthetic values.” (JDSF Management Plan, at p. 21)

Based on the information provided in Section IV, (D), page 149 of the “Mitchell Creek” THP, it does not appear that the RPF is aware of, let alone has considered, the goals and objectives of the JDSF Management Plan when evaluating potentially significant, adverse, and cumulative impacts of the proposed “Mitchell Creek” THP harvest and related activities.

Simply stating that alternative trail and road uses will be “studied” and communicated to stakeholders in a post-hoc manner does not address the potential for significant adverse cumulative impacts, nor does it provide any evidence that the RPF considered the responsibility to evaluate the potential for such impacts to occur and, if so, to mitigate those impacts to a point of being less than significant.

Finally, the RPF fails to discuss, or to indicate consideration in any way of the timing of the proposed harvest activities and trail and road closures that will occur if the “Mitchell Creek” THP is approved and carried out.

Timber harvest activities under modern Forest Practice Rules are frequently carried out during the spring and summer months when precipitation and winter weather are least likely to result in significant adverse environmental impacts to soil, water, and aquatic resources.

This exact same time of year, the spring and summer months, is the time when recreational uses such as hiking, horseback riding, and mountain biking will be at their peak use, density, and intensity. Yet, there is no mention of the timing of the harvest and THP area closures, or how that timing and those closures might impact the recreating public.

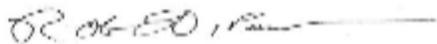
The cumulative impacts assessment for recreational resource impacts contained in Section IV of the “Mitchell Creek” THP is incomplete and inadequate to allow CAL FIRE or the reviewing public to determine what the impacts of the proposed timber operations and associated trail and road closures will be, or even to definitely determine whether or not the RPF believes these impacts will be significant, adverse and/or cumulative, since no such finding appears to have been rendered or offered.

### **Conclusion**

The “Mitchell Creek” THP is incomplete and inadequate to allow for assessment of direct individual, and/or cumulative impacts to environmental and recreational resources. Further, the CAL FIRE review and review procedure for the “Mitchell Creek” THP was egregiously flawed and has deprived other trustee reviewing state agencies and the reviewing public of the opportunity for meaningful inspection, review, and comment during the vast majority of the THPs review process.

CAL FIRE must deny the “Mitchell Creek” THP in order to avoid committing a prejudicial abuse of discretion by issuing a Notice of Conformance for the THP.

For the Forests Forever Foundation,



Rob DiPerna

