

FORESTS FOREVER

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March 21, 2022

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

**RE: Comments Regarding Timber Harvest Plan 1-21-00130MEN, “Boundary 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) 1-20-00130-MEN, “Boundary Creek,” submitted by the California Department of Forestry and Fire Protection (CAL FIRE), proposing timber harvesting activities on the Jackson Demonstration State Forest.

Forests Forever was a signatory group to the comments submitted by the Environmental Protection Information Center (EPIC), dated January 19, 2022. Forests Forever herein incorporates all substantive concerns raised in the EPIC et al. letter into this letter by reference, and provides additional, supplemental comments and evidence to demonstrate that approval of the “Boundary Creek” THP would constitute a prejudicial abuse of discretion.

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

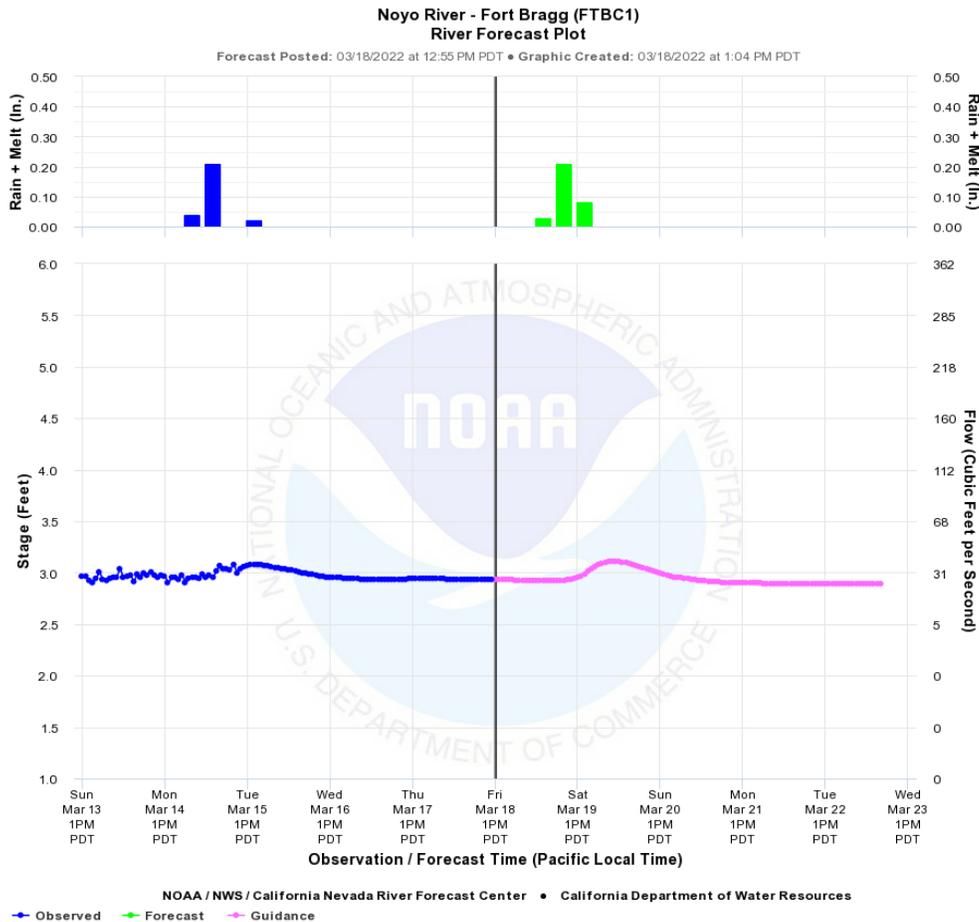
**Additional Comments and Evidence Regarding Water Drafting and Potential for
Unauthorized Take of Listed Aquatic Species**

The “Boundary Creek” THP proposes to allow water drafting in amounts of 5,000-10,000 gallons-per day from the South Fork Noyo and the tributaries during summer months, with a potential maximum allowable water drafting of 300,000 gallons per-day during the life of the THP. The Noyo River is 303(d) listed by the EPA as an impaired water body for both excessive sediment and excessive impacts to the system.

According to the National Weather Service, the gaging station on the mainstem Noyo River near Fort Bragg, California, is forecasted to be below three-feet of total stage height, and at, or below an abysmal 30 cubic feet per second of stream flow on the day that the public comment will close for the “Boundary Creek” THP, Monday, March 21, 2022.

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The following graph was generated by the National Weather Service’s California-Nevada River Forecast System for the mainstem Noyo River gage at Fort Bragg, and shows actual and forecasted river stage and flow data from March 13, 2022 through March 23, 2022:



(Source website link: <https://www.cnrfc.noaa.gov/graphicalRVF.php?id=FTBC1>)

For the same ten-day period in 2021 (March 13-March 23), The California-Nevada River Forecast System the river stage on the Mainstem Noyo gage at Fort Bragg, California, fluctuated from between 4.5 feet to below four feet. The river flow data demonstrates that cubic feet per second fluctuated from 155 to under 90 cfs. (NOAA California-Nevada River Forecast System)

In 2020, the California-Nevada River Forecast System records for the same time period that year, (March 13-March 23), that the river height stage for the Mainstem Noyo at the Fort Bragg gage remained relatively stable at around three feet, while the river flow remained consistently between an abysmally low 20-30 cfs. (*Ibid.*)

It is important to note that all of these values represent the state of river height and flow of the Mainstem Noyo near its mouth. It would stand to reason that individual forks and other

tributaries would display even less river height and less flow than does the mainstem near its mouth.

The THP itself states that, “At the time of preparation of this Timber Harvest Plan California is in a drought. The July discharge rates at the USGS gage station on the Noyo River show daily discharge rates close to or slightly above the 1977 historic lows.” (THP at Section III, p. 119)

March is a significant time for federally-listed species in the Noyo, most notably coho salmon (*Oncorhynchus kisutch*). The 1999 Total Maximum Daily Load (TMDL) for the Noyo prepared for the Environmental Protection Agency (EPA) states that, “Coho fry emerge from their gravel nests from early March to mid-May. The fry first congregate along stream margins, in shallow pools, and in backwaters and eddies.” (Noyo TMDL, EPA 1999, at p. 12)

The TMDL further cites to the Department of Fish and Wildlife’s stream habitat evaluation methodology (Flosi and Reynolds, 1994), stating:

DFG has described a system for evaluating the quality of stream habitat, based on the ability of the habitat to provide shelter for fish (Flosi and Reynolds, 1994). They have determined that streams should have a shelter rating of at least 100 to provide adequate shelter for coho. Further, they suggest that good coho streams in California have 40% of their habitat length in primary pools. Primary pools are defined for 3rd and 4th order streams as those at least three feet deep. (*Ibid*)

It is difficult to imagine that the South Fork Noyo or other tributaries to the mainstem Noyo can consistently offer adequate pool depths of 3-4 feet during the critical period of March-May, or thereafter into summer months, given the current state of mainstem river stage and flows recorded over the last three consecutive years. Water stage depths and flow rates are likely only to decrease further in April and May unless substantial additional rainfall occurs.

Coho salmon in California are generally known to remain in their native freshwater stream environments for about two years following emergence of fry from eggs. (*Ibid*). Drafting 5,000-10,000 and up to 300,000 gallons of water per-day from forks and tributaries of the Noyo could have a significant adverse impacts and rearing, feeding, and sheltering habitat availability for coho, thereby leading to unauthorized “take.”

For every 7.48 gallons of water drafted, one cubic foot of stream flow is removed. The THP fails to provide substantial evidence to demonstrate that stream flow capacity will be adequate to handle the amounts of water that could be drafted without resulting in significant adverse impacts to stream flow and/or resulting in death, injury, or impairment of essential life history behaviors of coho salmon.

The timing of implementation of the THP, the amount of available stream flow during that time, and the amount of water that will actually be drafted at any single point in time must be disclosed, calculated, and evaluated in order for the THP to be able to demonstrate that no significant impacts or unauthorized “take” of coho salmon will occur.

Project Timing Can and Should be Delayed

The Project Alternatives Analysis contained in Section III of the “Boundary Creek” THP, itself makes a compelling case that delaying the timing of the project would potentially have numerous environmental benefits.

For example, under Item (4), Timing of Project, states, “[d]elaying the project by 5 to 10 years would attain most of the project objectives by allowing the landowner to manage the parcel as directed by PRC and Board of Forestry Policy. During this time, the conifer volume would increase, which may offset the cost of implementation.” (THP Section III, p. 125) The THP goes on to state that, “[u]nder this alternative, most of the demonstration and timber management objectives could still be met for the project area, just at a later time.” (*Ibid.*)

The THP further admits that current climactic conditions for THP implementation are not favorable, stating, “[g]iven the existing drought and severe fire seasons, the THP could be delayed until a more favorable condition presents itself.” (*Ibid.*)

The Project Alternatives Analysis otherwise refers to an “economic management” imperative, and the need to provide demonstration opportunities as reasons why a delay in project timing was not selected as the preferred alternative. These factors do not constitute a significant adverse impact on an environmental resource area of concern. (*See*: California Forest Practice Rules 14 CCR 895.1, Significant Adverse Impact on the Environment: “An economic or social change in and of itself shall not be considered a significant effect on the environment.”) Otherwise, the Project Alternatives Analysis falls back on management regimes codified in the JDSF Option-(a) as reasons why project timing could not be delayed.

Jackson Demonstration State Forest and its land base lie within the traditional territory of Native American tribal peoples that must be given the opportunity for co-management and access to these ancestral lands, consistent with Governor Newsom’s September 25, 2020 Statement of Administrative Policy and previous Executive Orders incorporated into this Statement of Policy.

As stated in the January 19, 2022, letter submitted by EPIC et al., The “Boundary Creek” THP was submitted without adequate notification of, or consultation with, the Coyote Valley Band of Pomo Indians tribe, even after formal consultation on all THPs within JDSF had been requested by the tribe.

Delaying the timing of implementation of the “Boundary Creek” THP appears to be feasible based on the statements provided in Section III of the THP itself. JDSF must delay implementation of the THP unless and until adequate notification and consultation occurs.

JDSF and CAL FIRE risk proceeding in a manner that is inconsistent with applicable state laws, regulations, policies and Executive Orders, thereby committing a prejudicial abuse of discretion if the “Boundary Creek” THP is approved and implemented under the current circumstances.

RPF Revised Pages and Second Review Recommendations

The CalTrees website page for the “Boundary Creek” THP contains an attachment document named, “RPF Second Review Response,” which was uploaded on 3/16/22. This document is over 25 mega-bytes in size. More problematic however, is the fact that this document was emailed to CAL FIRE at 1:23 p.m. on Friday, March 11, 2022, the same day that it appears the Second Review Team Meeting and the Recommendation for approval of the THP by CAL FIRE occurred. Yet, it took CAL FIRE five days to upload the document to CalTrees and make it available to the public.

The CalTrees site indicates that the public comment period on the “Boundary Creek” THP is set to close on Monday, 3/21/2022, five days after the document was uploaded. What’s more, the CAL FIRE Second Review Team “Acceptance Letter” dated March 11, 2022, contains no request for the document/revised pages received from the RPF, which itself is titled, “Revised Pages” in the email subject line.

Further, a report query of CalTrees for the Coast/Santa Rosa Office, where the “Boundary Creek” THP and JDSF are actually located, for the time period of March 1, 2022 through March 12, 2022, does not show the THP listed as having gone through second review or having been recommended for approval by the Santa Rosa office.

The same exact CalTrees query, for the same date range, March 1, 2022 to March 12, 2022, was also run for the Cascade Region based out of Redding, where the CAL FIRE review team chair who signed the recommendation for approval is located. This query similarly does not list the “Boundary Creek” THP as having been run through a second review team meeting or as having been recommended for approval. Additionally, the CAL FIRE “Acceptance Letter” constituting the recommendation for approval by the Cascade Region representative, is in fact on CAL FIRE letterhead with the address of the CAL FIRE Santa Rosa office.

An additional query of CalTrees for the Coast/Santa Rosa office region for THPs that were tentatively scheduled for second review from March 1, 2022 through March 12, 2022, also does not list the JDSF “Boundary Creek,” THP as being tentatively scheduled for second review during the time window.

A similar query of CalTrees was again run for the same date range window, March 1, 2022 through March 12, 2022 for the Cascade Region based in Redding. The query results once again do not list the JDSF “Boundary Creek” THP as being tentatively scheduled to be considered at second review during the timeframe during which the THP apparently did go through second review.

It appears that CalTrees did not record or disclose the proceeding of the second review team meeting for the “Boundary Creek” THP, or identify that it was to be scheduled for second review. How then could the interested public be expected to know that the THP was being

scheduled for second review? How then could or would the interested public know that the THP had been recommended for approval? Why did it take CAL FIRE five days to upload the RPF Revised Pages, which seem to have been submitted unsolicited, on the same day the second review team meeting presumably occurred, if it in fact ever occurred at all.

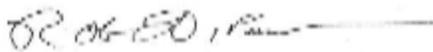
Whether by accident or by design, CAL FIRE has prevented the public from knowing that the "Boundary Creek" THP was to be scheduled for second review. CAL FIRE has also prevented the public, by extension from participating in the review team meeting proceedings by not making the public aware that it was to occur. CAL FIRE has further compounded these egregious errors by then not uploading the RPF Revised Pages document until five days after it was received, and only five days before the public comment period on the THP was scheduled to close.

By these actions CAL FIRE has committed numerous violations of the Forest Practice Act, and the Forest Practice Rules, failing to properly proceed in a manner that is clearly prescribed by applicable law and regulation thereby committing a prejudicial abuse of discretion in recommending the "Boundary Creek" THP for approval.

Conclusion

JDSF and CAL FIRE must postpone approval and implementation of the "Boundary Creek" THP. The THP lacks substantial evidence in light of the whole of the record that significant adverse impacts on the environment will not occur. Further, it is clear that alternative timing for project approval and implementation are feasible, and indeed necessary. Finally, approval and implementation must be delayed until a properly-noticed, transparent, and legitimate second review team meeting can be scheduled, and until adequate notification and consultation with Native American tribal interests occurs.

Rob DiPerna



for Forests Forever