

1 Force looked beyond this focus to all lands growing hardwoods and identified a number
2 of problem areas including:

3 2) the degree of hardwood harvesting by species and geographical area is generally
4 unknown ;...

5 5) the consumption of hardwood fiber (total use-lumber, chips, fuelwood) is projected
6 to increase dramatically, but relatively little is known about specifics; ...

7 6) harvesting of hardwoods can, and does, cause damage to soil and water-related
8 resources. Enough is known to recognize that there is a problem, but its full
9 significance statewide has not yet emerged....

10 16) the harvesting of hardwoods from hardwood range lands and which are not now
11 subject to forest practice rules can have a detrimental impact on fish and wildlife;...

12 (See Pls. 1st RJN, Ex. 3, pp. 2-3). The Task Force recommended that “the Board extend
13 application of the [Forest Practice] Act to hardwood species on hardwood-range lands.”
14 (*Id.*, p. 44). The Task Force recommended that the term “Timberland” in the Forest
15 Practice Act include both “the conifer land resource base and the hardwood-range land
16 resource base,” each of which should be defined in accordance with the statutory
17 language of Public Resources Code § 4526 (*Id.* at 44-45) and that a number of
18 hardwoods be declared “commercial species,” including eight oak species comprising oak
19 woodlands around the state. (*Id.*, p. 46.)¹⁷

20 The Task Force’s found that harvesting hardwoods causes “resource
21 damage...through soil erosion, stream bank degradation, degraded water quality and
22 sedimentation of spawning grounds or other destruction of fish habitat,” but that the
23 extent of this resource damage was difficult to evaluate because “these activities take
24 place on lands that are not presently classified as timberland under the FPA; thus, they
25 are not being monitored by anyone.” (*Id.* p. 27.) The Task Force also found that
26 harvesting of oak woodlands had a detrimental impact on wildlife by eliminating habitat, food

27 ¹⁷These included California black oak (*Quercus kelloggii*), Oregon white oak (*Quercus garrayana*),
28 valley oak (*Quercus lobtata*), blue oak (*Quercus douglasii*), coast live oak (*Quercus agrifolia*) interior live
oak (*Quercus wislizenii*), canyon live oak (*Quercus chrysolepsis*), and Engelman oak (*Quercus
engelmannii*). (*Id.*)

1 sources and migration corridors. (*Id.*, pp. 62-63).

2 In response to the Hardwood Task Force Report, the Board commissioned a
3 second report to serve as a reference document to develop a hardwood policy. (See Pls.
4 1st RJN, Ex. 4, pp. 2-3). The 1986 Report reported the loss of almost 1 million acres of
5 oak woodland between 1946 and 1973 due to a combination of harvest and conversion.
6 (*Id.*, p. 2.)^{1/} Of the remaining total of oak woodlands, the Report noted that
7 approximately 70% was privately owned. (*Id.*, p. 62).

8 The 1986 Status Report was accompanied by an internal Board staff report entitled
9 “Policy Options for California’s Hardwoods.” (See Pls. 1st RJN, Ex. 5). The Policy
10 Options Report noted the great deal of uncertainty regarding the levels of harvesting and
11 conversion of oak woodlands in California. (*Id.* p. 3, Table 1). The Policy Options Report
12 also recommended that the Board define hardwoods as commercial species, thereby
13 bringing them within the Timber Harvest Plan and Timberland Conversion Permit
14 requirements of the Forest Practice Act, noting: “The scheme also would establish a
15 framework from which to monitor harvesting. Use of conversion permits could lead to
16 regional analysis of changes in land use.” (See Pls. 1st RJN, Ex. 5, pp. 12-13).

17 On February 3, 1987, the Board approved a resolution refusing to define
18 hardwoods as commercial species, stating:

19 While the Board believes that it has the authority and obligation under the Forest
20 Practice Act to protect the hardwood resource, we conclude that it is premature to
21 declare hardwoods as commercial species at this time.

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23 ^{2/}The Report noted that the figures on hardwood harvesting did not accurately indicate the actual
24 amount harvested, since it was “known that much of the hardwood being cut is not reported, especially
Id., p. 28.)

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egulations would tend to interfere with their ability to manage their land as they see fit.” (See Pls. 1st RJN, Ex. 9, p. 10). Instead, the Board instructed CDF to take the lead in implementing a series of non-regulatory program options relating to research, education, and monitoring to be coordinated through the Integrated Hardwood Range Management Program (“IHRMP”).^{1/}

In 1993, further concern that its three-pronged, non-regulatory approach was failing to protect oak woodlands led the Board to reevaluate its position. (See Graf Decl., Ex. 1, p. 17:3-9). A follow-up 1993 Status Report noted that visual monitoring between 1989 and 1993 had shown approximately 27,000 acres of oakwoodlands with some amount of firewood harvesting, a high percentage of which was occurring at an unsustainable pace in Shasta and Tehama Counties. (Pls. 1st RJN, Ex. 12, pp. 4-5). The Report noted that accelerating conversion of oak woodlands remained the greatest threat to the resource:

It is painfully clear that the conversion of hardwood rangelands by land use change is having the largest impact on sustainability of resource values. To address conversion issues, the IHRMP will need to develop regional goals for landscape patterns that can help direct the development process.

(*Id.*, p. 5). Nevertheless, the Board again chose to continue its non-regulatory approach of encouraging local government and citizens to conserve oak woodlands. (See Pls. 1st RJN, Ex. 16, p. 2).

^{3/}(*Id.*, p. 11; *see also* Graf Decl., Ex. 1, p. 12:15-25) **Over the next eight years, the IHRMP issued a series of progress reports on the status of continuing research, education and monitoring of oak woodlands. (See e.g., Pls. 1st RJN, Ex. 17).**

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The Board's failure to stem the tide of continuing loss of oak woodland habitat also raised concern with the California Department of Fish and Game, the agency charged with conserving California's wildlife species.^{4/} Based on its concern that oak woodlands were disappearing at an unsustainable rate, the Department of Fish and Game recommended revisions to the Joint Hardwoods Policy between the Board and the Fish and Game Commission. The Department suggested the following language:

The Commission has determined that human uses in hardwood habitats are widespread and have reached a level of intensity in many areas which have and will continue to result in significant adverse impacts to fish and wildlife resources. ... Further, the Fish and Game Commission encourages the Board of Forestry to use the authority provided by the Forest Practices Act to regulate hardwood harvesting both on conifer forest lands and on hardwood rangelands in a manner which will ensure the protection of fish and wildlife resources and a continuous supply of hardwood products for future generations.

(See Pls. 1st RJN, Ex. 15, pp. 4-5) (emphasis added). The Joint Policy finalized on May 27, 1994 between the Board and the Fish and Game Commission declined to heed Fish and Game's suggestion. Instead, the Joint Policy required further monitoring regarding the status of the hardwood resource:

Departmental personnel should jointly establish a process, which includes both satellite imagery and ground checking, to monitor the status of the hardwood

^{4/}The Department noted:

A substantial portion of the State's important game species such as deer, black bear, California and mountain quail, band-tailed pigeon, mourning dove, wild turkey, and wild pig find optimum conditions in California's hardwood dominated habitats. In addition, these habitats support the greatest number of wildlife species of any comparable habitat in the State. Because of this great biodiversity, the loss or adverse modification of these habitats has permanent and far-reaching implications to California's natural heritage. Direct hardwood habitat losses are estimated at several thousand acres annually. Thus, conservation of hardwood habitats is of great importance to the Department.

(See Pls. 1st RJN, Ex. 14, p. 3.) (emphasis added)

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resource, to examine the effectiveness of local politics with respect to hardwoods, and to evaluate the performance of the Integrated Hardwood Management Program; staff should report annually, in joint session, to the Commission and the Board.

(See Pls. 1st RJN, Ex. 16, p. 3). As discussed below, however, despite this language neither the Board nor CDF has conducted monitoring that would provide an overall assessment of the continued loss of oak woodlands in California.

D. THE CONTINUED LOSS OF OAK WOODLANDS IN CALIFORNIA

Oak woodlands in California decreased by approximately 1.2 million acres from 1945 to 1985 from a combination of rangeland clearing, fuelwood cutting and residential development. (See Pls. 1st RJN, Ex. 8, pp. 1-2). Data for losses of oak woodlands after 1985, however, have not been quantified in a comprehensive manner. In the late 1980s, a CDF visual survey estimated that 27,000 acres of woodlands were harvested for firewood between the years 1989 to 1993, 50% of which was recorded from Shasta and Tehama Counties. (See Pls. 1st RJN, Ex. 12, pp. 4-5.)^{5/} The Board’s 1993 Status Report on oak woodlands notes that “conversion of hardwood rangelands by land use change” was having the largest impact on the sustainability of the resource, but provides no numbers to gauge this impact. (*Id.*, p. 5). The 1993 Report is the last Board or CDF document which attempts to assess the rate at which oak woodlands are being eliminated in California.

Defendants’ earlier promise to monitor environmental impact to these woodlands and assess the cumulative impacts of these changes over time has been undermined by the lack of coherent and accurate information regarding the presence of oak woodlands in California

^{5/}The Board’s 1993 Status Report noted that these levels of harvest were not sustainable. (See Pls. 1st RJN, Ex. 12, p. 5).

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The 1994 6th Progress Report of the IHRMP acknowledged this shortcoming:

Due to the problems associated with changing technologies, CDF has not been able to definitively estimate changes in hardwood cover over the last decade. The short term monitoring results, generated by an informal method, are of unknown accuracy and precision. Monitoring data is critical, nonetheless, to assessing the sustainability of oak woodland ecosystems. Monitoring is essential to tracking changes in the system and to providing for adaptive policy making and resource management.

(See Pls. 1st RJN, Ex. 17, p. 33).^{1/}

^{6/}In response to Plaintiffs' request for information regarding the number of acres on which oaks grow naturally, for example, Defendants' response refers to a "comprehensive mapping and monitoring program" to be completed in the future, but states that "until this new monitoring system can be fully implemented," Defendants will continue to rely on the 1988 Forest Service Report, which estimated hardwood cover based on data collected between 1981 and 1984. (See Graf Decl., Ex. 2, p. 19:13-17) Defendants' discovery responses also refer to several studies that differ in their method of assessing the amount of available "hardwood rangeland" but do not provide information about the loss of oak woodlands over the last two decades. (See Graf Decl., Ex. 2, pp. 6-7).

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In the absence of comprehensive data, it is difficult to estimate the statewide losses of oak woodlands since 1994, but the evidence that does exist indicate that the declines are accelerating due to conversion to non-forestry land uses such as agriculture or residential housing. In Santa Barbara County, vineyard expansion has accelerated in the 1990s, mostly at the expense of oak woodlands. (See Pls. 1st RJN, Ex. 22, pp. 5-6).^{1/} Similarly, in Sonoma County between 1990-1997, IHRMP researchers identified 11,600 acres of new vineyards, over 7,000 acres of which had replaced oak habitats. (See Pls. 1st RJN, Ex. 27, pp. 8-9).^{1/} The accelerating loss of woodlands in these counties are only snapshots of what is happening throughout the state. (See *e.g. Id.* at p. 8 (reporting that vineyard acreage statewide has more than doubled between 1990 and 1997); at p. 9 discussing expanding vineyard acreage in Mendocino and San Luis Obispo Counties.))

^{1/} On September 21, 2000, the U. S. Fish and Wildlife Service permanently listed the California tiger salamander in Santa Barbara County as an endangered species. (See Pls. 1st RJN, Ex. 25) This listing was prompted in part by the rapid conversion of oak savanna to vineyards, and the resulting loss of this genetically-distinct species' habitat. (*Id.*, pp. 2, 5-6, 12, 13, 17, 18-19, 25)

^{2/}An addition 3,500 acres of vineyards were reported in Sonoma between 1997 and 1999. (*Id.*)

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The actual numbers of acres of oak woodland habitat lost each year statewide through harvesting or conversion can only be estimated since no state agency currently exercises regulatory jurisdiction over these commercial activities. Unfortunately, despite Defendants' research and education programs, most local jurisdictions have not adopted mandatory ordinances regulating the harvest or conversion of oak woodlands. (Pls 1st RJN Exs. 18, 26, 28).^{9/} Even in the few counties which have adopted ordinances, oaks still lack protections against harvesting and conversion. "Grading ordinances" such as

^{9/} Many, including Mendocino, Nevada, Orange, San Bernardino, Kern, Amador, Stanislaus, and Tulare Counties have no specific protections. (See Pls. 1st RJN, Ex. 28, pp. 1-2) Others, including Calaveras, Fresno, El Dorado, Madera, Mariposa, Shasta, Madera, Mariposa, Tuolumne and Santa Clara Counties, set only voluntary guidelines without enforcement authority. (*Id.*)