



Mr. Matt Dias, Executive Officer  
California Board of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 94244-2460

25 May 2021

RE: Board of Forestry actions related to botanical issues

Dear Mr. Dias,

As you are aware, I've been following the Board's meetings and proposals to address concerns from the CA Department of Fish and Wildlife (CDFW) regarding botanical surveys. I very much appreciate the time and effort that the Board members and you have spent on this issue, as well as the professionalism that has been displayed.

Given the latest iteration of directions for the RPF and landowner communities, I have strong concerns about the need for additional Board action or direction related to botanical resources beyond the rules and guidance already provided in the Forest Practice Rules.

First, I've not yet been able to determine an actual need for this increase in attention to botanical resources – a Purpose and Need statement. CDFW implies that there is a problem without providing evidence that a problem exists. They simply state that they think there's a reason to be concerned, and want the Board to do something about it. This ignores the fact that, as a reviewing agency, they already have input for botanical issues both at the PHI and during all phases of THP review. If surveys or information are inadequate, they can and do request more information after first and second reviews (and after subsequent reviews).

Second, I wonder why these proponents have not gone to their own governing body (Fish and Game Commission) to address this issue. There are processes through the Fish and Game Code, CESA, and other state laws and regulations that allow for appropriate listing of species. If the species are not reasonable candidates for protected status, why are we going to all this effort on regulation and/or guidance.

Next is the desire, stated in their letter of February 26, 2021, to require that botanical survey reports submitted after plan approval be considered a substantial deviation ("major amendment"). While I respect their desire to be informed regarding botanical survey findings, this report is in no way a substantial deviation or significant new information. In my experience THPs include standard language that if sensitive species are located subsequent to plan approval, local operations are halted pending notification to CDFW and CAL FIRE and development of site-specific protection measures. Where the document to be amended is a NTMP, which has a life of 50 years or more, this requirement would be an unwarranted, unnecessary, and onerous burden on the landowner.

In listening to the discussions at Board of Forestry meetings and reading the supporting documents, I get the impression that there are two overall goals from CDFW in this area. The agency wants more control over the timber harvesting process, and they want landowners and RPFs to conduct the botanical surveys for them. In regard to surveys, the courts in Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App4th 1383 ruled that "CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required. The agency has discretion to reject a proposal for additional testing or experimentation."

The case points out that CEQA does not require that every recommended or possible study be done as long as there is substantial evidence to support the conclusion.

I appreciate your work, and the Board's, in conscientiously addressing and considering CDFW's concerns in regards to botanical issues. However, at the end of the day I believe that botanical issues are adequately addressed in the THP, PHI and Review stages. There is no justifiable need for additional regulation or guidance.

Thank you for your consideration of my comments.

Respectfully,



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