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5 Attorney for Petitioner
6 FRIENDS OF THE GUALALA RIVER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SONOMA

9 FRIENDS OF THE GUALALA RIVER,
10
11 Petitioner,
12 v.

No.:

13 PETITION FOR WRIT OF
14 ADMINISTRATIVE MANDATE (CCP
§ 1094.5)

12 CALIFORNIA DEPARTMENT OF
13 FORESTRY AND FIRE
14 PROTECTION, and Does I through X
inclusive;

15 Respondents.
16 _____/

17
18 RAUL HERNANDEZ, WARREN
19 LINNEY, JOAN LINNEY, A. TERRY
20 PATTEN, EMILY MARTIN, ROBERT
inclusive,

21 Real Parties in Interest.
22 _____/

23 **GENERAL ALLEGATIONS**

24
25 1. Friends of the Gualala River (FoGR) is a non-profit, grassroots watershed
26 protection association formed to share common concerns and research regarding the welfare
27 of the Gualala River, its estuary and habitat. FoGR's goal is to protect the Gualala River
28 watershed and the species that rely on it. FoGR is composed of persons whose personal

1 interests will be injured if the Nonindustrial Timber Management Plan 1-06NTMP-009
2 SON (NTMP) as approved by the California Department of Forestry and Fire Protection
3 (CDF) is allowed to proceed as planned. FoGR brings this petition on behalf of all others
4 similarly situated who are too numerous to be named and brought before this Court as
5 Petitioner. FoGR is within the class of persons beneficially interested in, and aggrieved by,
6 CDF's approval as alleged below. FoGR voiced objection to the NTMP prior to its
7 approval by CDF.
8

9 2. The land subject to the NTMP is located between one-quarter mile north, northeast
10 and one mile northwest of the Town of Annapolis in Sonoma County, California.

11 3. Respondent CDF is an agency of the State of California.

12 4. The true names and capacities, whether individual, corporate, or otherwise, of
13 DOES I through X are unknown to Petitioner, who therefore sue said Respondents by such
14 fictitious names. Petitioner will seek leave to amend this petition when they have been
15 ascertained.

16 5. Real party in interest Raul Hernandez is listed in the NTMP as a plan submitter and
17 one of the timber and timberland owners of three of the four parcels making up the NTMP.

18 6. Real parties in interest Robert Martin and Emily Martin are listed in the NTMP as
19 plan submitters, and timber and timberland owners of one of the parcels.

20 7. Real parties in interest Warren Linney and Joan Linney are listed in the NTMP as
21 plan submitters, and timber and timberland owners.

22 8. Real party in interest A. Terry Patten is listed in the NTMP as a plan submitter, and
23 timber and timberland owner.

24 9. The true names and capacities, whether individual, corporate, or otherwise, of
25 DOES XI through XX, are unknown to Petitioner who therefore sues said real parties in
26 interest by such fictitious names. Petitioner will seek leave to amend this petition when
27 they have been ascertained.
28

1 aged managed timber stand and sustained yield for each parcel or group of *contiguous*
2 parcels meeting the requirements of section 4593.3.” (Pub. Res. Code, § 4593.2, subd. (e),
3 italics added.)
4

5 17. Thus, under the plain language of the FPA, an NTMP may only apply to a parcel
6 or contiguous parcels.

7 18. The NTMP here comprises four parcels, only two of which are contiguous. The
8 westernmost parcel is almost a mile from the central parcel to the east. The central parcel in
9 turn is several hundred feet from the two contiguous easternmost parcels.

10 19. The NTMP thus violates the FPA as a matter of law and CDF prejudicially abused
11 its discretion by approving the plan.

12 **Second Claim for Relief**

13 20. Under the FPA, an owner of timberland who has an approved nonindustrial timber
14 management plan may not be “primarily engaged in the manufacture of forest products.”
15 (Pub. Res. Code, § 4593.2, subd. (b).)
16

17 21. Real party Raul Hernandez is the founder and a principal with Old Growth Again
18 Restoration Forestry, Inc., which is listed as a for-profit corporation with the California
19 Secretary of State. Real parties Warren Linney and A. Terry Patten are also principals and
20 investors in Old Growth Again Restoration Forestry, Inc.

21 22. Old Growth Again Restoration Forestry, Inc. is in the business of manufacturing
22 furniture from redwood trees obtained in part from lands owned by Hernandez, his partners,
23 and investors.

24 23. As such, Petitioner maintains that Hernandez is “primarily engaged in the
25 manufacture of forest products” within the meaning of the FPA. (Pub. Res. Code, § 4593.2,
26 subd. (b).)
27
28

1 24. Accordingly, Hernandez is prohibited from having “an approved nonindustrial
2 timber management plan.” (Pub. Res. Code, § 4593.2, subd. (b).) CDF prejudicially
3 abused its discretion by approving the plan.
4

5 **SECOND CAUSE OF ACTION (California Environmental Quality Act)**

6 **First Claim for Relief**

7 25. CDF is required to respond in writing to significant environmental issues raised by
8 members of the public. (Pub. Res. Code, § 21080.5, subd. (d)(2)(D).) Such response must
9 include a detailed and reasoned analysis of the concern raised and why it was rejected.
10

11 26. Members of the public expressed their concern to CDF that real party Hernandez
12 and his partners and investors were engaged in the practice of removing downed trees from
13 their properties to supply Old Growth Again Restoration Forestry, Inc. for furniture
14 manufacture. Such downed trees are considered a vital component of forest ecosystems,
15 and their removal can cause adverse environmental impacts.

16 27. In its response, among other things, CDF conceded that Hernandez had been
17 removing downed trees pursuant to the exemption for dead, dying, and diseased trees set
18 forth in FPA Rule 1038, subdivision (b). (Cal. Code Regs., tit. 14, § 1038, subd. (b).) In
19 addition, CDF noted that the NTMP contains an enforceable standard for the preservation of
20 large woody debris and downed trees.

21 28. Petitioner contends that CDF response is inadequate for several reasons. First, the
22 exemption for dead, dying, and diseased trees is not intended to apply to downed logs and
23 large woody debris. If it were, at the allowable rate of ten percent removal per year, large
24 woody debris would be rapidly eliminated from the environment, causing significant and
25 cumulative adverse ecological consequences. Second, the protection standard that CDF
26 cites applies only to stands 1 and 2; it does not appear to apply to stands 3 and 4.
27
28

1 **Third Claim for Relief**

2 34. Under CEQA, CDF is required to identify, analyze, and mitigate significant and
3 cumulative adverse impacts on the environment. (Pub. Res. Code, § 21080.5, subd.
4 (d)(3)(A).) If feasible mitigations are not available, CDF should so state and deny the
5 project or issue a statement of overriding considerations why the project should go forward
6 despite its negative environmental consequences. (Pub. Res. Code, § 21081, subd. (b).)

7 35. Based on CDF's response to comment, it appears that real parties will need to use
8 Little Creek Road to haul their harvested timber. Little Creek Road is a continuing source
9 of deleterious amounts of sedimentation caused in part by heavy truck and equipment
10 traffic.

11 36. CDF refused to acknowledge that the real parties' use of Little Creek Road and its
12 production of sedimentation to the watershed constituted a potential cumulative impact,
13 reasoning that the real parties do not own or control the road or its use, and have no legal
14 right to improve it.

15 37. However, real parties inability to mitigate an impact caused by their project does
16 not lessen CDF's obligation under CEQA to acknowledge and analyze the impact.

17 38. Accordingly, CDF prejudicially abused its discretion, because it failed to analyze
18 an unmitigated impact of the project, and because it approved the project in the absence of
19 an overriding statement of considerations. (Pub. Res. Code, §§ 21080.5, subd. (d)(3)(A),
20 21081, subd. (b).)

21 39. In addition, to the extent CDF concludes that use of Little Creek Road will not
22 cause and adverse significant or cumulative impact, its conclusion is not supported by
23 substantial evidence as required by CEQA. (Pub. Res. Code, §§ 21168, 21168.5.)

24 40. CDF also prejudicially abused its discretion because it failed to adequately
25 respond to comments regarding real parties' use of Little Creek Road. (Pub. Res. Code, §
26 21080.5, subd. (d)(2)(D).)

1 **Fourth Claim for Relief**

2 41. CDF acknowledges that large woody debris and downed logs constitute an
3 important environmental resource, particularly for wildlife. It further concedes that
4 Hernandez has been removing large woody debris and downed logs from his ownerships
5 pursuant to an exemption.

6 42. CDF contends that the removal of additional amounts of large woody debris will
7 not result in a significant or cumulative adverse impact because the NTMP contains a
8 prescriptive standard limiting the amount of large woody debris and down logs that can be
9 removed. However, that standard does not appear to apply to stands 3 and 4.
10

11 43. Accordingly, CDF's conclusion that the removal of large woody debris from
12 stands 3 and 4 will not cause an adverse environmental impact is not supported by
13 substantial evidence as required by CEQA. (Pub. Res. Code, §§ 21168, 21168.5.)

14 WHEREFORE, Petitioner prays for judgment as follows:

15 1. For Writ of Mandate ordering CDF to set aside its approval of 1-06NTMP-009
16 SON as required by the FPA and CEQA and their regulations.

17 2. For a permanent injunction enjoining real parties in interest, their agents,
18 employees, representatives, and all persons acting in concert or participating with them,
19 from engaging in any activity, including timber harvesting and removal, pursuant to CDF's
20 approval of the NTMP until those activities have been lawfully approved under California
21 statutes and regulations.

22 3. Alternatively, for a stay of CDF's decision approving the plan pending judgment
23 pursuant to Code of Civil Procedure section 1094.5, subdivision (g).

24 4. For reasonable attorney's fees under California Code of Civil Procedure Section
25 1021.5.

26 5. For costs of suit.
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6. For such other and further relief as the Court deems proper.

Dated: September 18, 2007

PAUL V. CARROLL
Attorney for Petitioner

1 PROOF OF SERVICE

2 I am a citizen of the United States and a resident of the County of San Mateo. I am
3 over the age of eighteen years and not a party to the within entitled action; my business
4 address is: 5 Manor Place, Menlo Park, CA 94025.
5

6 On September 18, 2007, I served one true copy of PETITION FOR WRIT OF
7 ADMINISTRATIVE MANDATE, by placing a true copy thereof enclosed in a sealed
8 envelope, and postage thereon fully prepaid, in the United States mail at Menlo Park,
9 California addressed as follows:

10 Attorney General, Resources Div.
11 455 Golden Gate Ave., Ste. 11000
12 San Francisco, CA 94102

Cal. Dept. of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

13 Robert and Emily Martin
14 3045 Monte Rosa Avenue
15 Las Vegas, Nevada 89120

A. Terry Patten
621 Blackstone
San Rafael, CA 94903

16 Raul Hernandez
17 P. O. Box 42
18 Annapolis, CA 95412

Warren and Joan Linney
7899 St. Helena Rd.
Santa Rosa, CA 95404

19 I, Paul V. Carroll, declare, under penalty of perjury, that the foregoing is true and
20 correct. Executed on September 18, 2007, at Menlo Park, California.
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