



California State Board of Forestry and Fire Protection

Precedent Decisions of the Board

The following decisions have been designated as precedential by the Board of Forestry and Fire Protection, as authorized by Government Code § 11425.60. The Board of Forestry and Fire Protection considers its decisions for violations of the Z'Berg-Nejedly Forest Practice Act, and rules and regulations of the Board for precedential value. This decision is based on the violation at issue, and the importance of the decision as guidance for CDF field personnel, interested members of the public, and administrative law judges in determining liability and appropriate penalties in future cases.

CDF Case No./ OAH Case No.	Respondent	Adoption Date	Summary	Link to Decision
CP-01-01/ N2002010307	Cockshott	April 13, 2005	Timber ops conducted w/o a THP or conversion permit	Cockshott Decision
CP-01-08/ N2003020396	Hale	April 13, 2005	Timber ops conducted w/o a THP or conversion permit	Hale Decision
CP-01-12/ N2003100527	Simonis	April 13, 2005	Violation of 14 CCR 933.2(a)2(A)2, 933.2(a)2(A)4	Simonis Decision

- 1 2. Mr. Cockshott timely filed a Notice of Appeal in response to the Administrative Complaint and
2 Proposed Order. Mr. Cockshott requested a hearing to present his defense to the allegations
3 contained in the Statement of Issues. Pursuant to his authority under Public Resources Code
4 (“PRC”) §4601.2(c), the Chairman of the Board elected to utilize an administrative law judge assigned
5 in accordance with GC §11370.3
- 6 3. The evidentiary hearing was conducted before Administrative Law Judge Smith on November 13,
7 2002. The taking of evidence was completed and all submission of evidence was completed with
8 both parties present . Judge Smith asked for supplemental briefing, and the Attorney General's
9 Office submitted a supplemental brief on November 22, 2002. Among the attachments to the
10 Attorney General's supplemental brief was an affidavit, with attachments, from the Chief of the
11 Forest Practice Program, CDF. (Proposed Decision (“P.D.”), page 2, paragraph 3) Judge Smith did
12 not consider the CDF affidavit or its attachments in reaching his Proposed Decision. (Ibid.) Likewise,
13 in reaching the instant Decision, the Board did not consider the affidavit or its attachments.
- 14 4. Perry D. Cockshott has been continuously licensed by the Board as a Licensed Timber Operator, No.
15 8331, since June 24, 1987. He is licensed as the sole owner of his company, Sierra West Logging,
16 P.O. Box 221, 533 Arnold Byway, Arnold, California, 95223. His most recent license was issued
17 December 5, 2000, and was in full force and effect at the time of the initial hearing on this matter.
18 There is no history of any disciplinary action against Mr. Cockshott or Sierra West Logging in the 15
19 years the license has been in effect.
- 20 5. Mr. Cockshott was hired by the landowner to clear the lot of trees, brush and slash sufficiently to
21 provide a site for the building of a single family home. The lot is an approximately .30 acre wooded
22 rural residential lot owned by Charles and Judith Renberg of Stockton, California. It is not disputed
23 that Mr. Cockshott and his crew removed approximately 10 trees of about 18-24 inches in diameter
24 and approximately 15 smaller trees from a lot being cleared and readied for building a single family
25 home located at 2443 Country Club Lane, Arnold, California on two days, about January 10 or 12 and
26 approximately January 16, 2001. The lot is part of a single-family residential development called
27 Meadowmont, subject to governance by the Meadowmont Homeowner's Association, with recorded
28 Covenants, Conditions and Restrictions that control and restrict the type and manner of permissible

1 land uses to which lots in the development may be put. The lot and the surrounding Meadowmont
2 development is part of the Town of Arnold, and subject to the Town of Arnold Community Plan.

3 6. The trees removed were about 80% ponderosa pine and about 20% incense cedar. Approximately
4 10 larger trees removed totaled approximately 3 MBF. The logs manufactured from the cut trees
5 were delivered to a nearby sawmill, Sierra Pacific Industries, on about January 10 and January 15,
6 2001. There is no direct evidence Mr. Cockshott received any money for the trees taken to the mill or
7 how much was received. An additional 2 MBF of smaller trees were hauled away as firewood, with
8 an additional 2 MBF of firewood left on site for the Renberg's personal use. Mr. Cockshott removed
9 tree stumps, brush and slash to clear the lot. Conditions were dry when Mr. Cockshott and his crew
10 removed the trees, stumps, brush and slash from the home site.

11 7. CDF first became aware of the harvesting operations from the president of the Meadowmont
12 Homeowner's Association, which governs the subdivision in which the property was located. The
13 president voiced his concern that logging operations were occurring which did not have the proper
14 state permitting. His concern focused on the fact that the Association generally receives a copy of
15 the approved harvesting document to confirm the type of harvesting to take place and whether trees
16 over ten inches are to be cut. The removal of trees over ten inches requires the specific approval of
17 the Association.

18 8. Mr. Cockshott acknowledges that some form of permitting for the operation was required. When
19 asked by CDF Inspector on the job site to produce the paperwork approving the harvesting
20 operations, Mr. Cockshott indicated that he "...was in a rush to complete the job and didn't get the
21 paperwork." (Reporter's Transcript ("R.T."), page 37, lines 6-7).

22 9. During the same site visit as referenced above, the CDF Inspector spoke with an individual who
23 identified himself as a contractor. That individual verified to the CDF Inspector that the intent was to
24 construct a residential structure on the lot and that no building permit had been obtained yet.

25 10. On the advice of the CDF Inspector, Mr. Cockshott submitted an exemption form to allow the removal
26 of fire hazard trees within 150 feet of a structure. (Title 14, California Code of Regulations ("14 CCR"),
27 section 1038(d). This exemption form was received by CDF on January 22, 2001 and approved on
28 January 25, 2001.

1 11. While Mr. Cockshott maintains that the commercial harvest of timber on the subject lot was not
2 permissible, there are no documents in evidence from either the Meadowmont Homeowner's
3 Association, the Town of Arnold, or Calaveras County which explicitly restrict the commercial harvest
4 of timber. In evidence is Calaveras County Ordinance No. 331, which establishes an "R-1 District"
5 which was alleged to incorporate the lot in question.
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7 8 LEGAL CONCLUSIONS

9 1. In his proposed decision, Administrative Law Judge Smith arrived at two legal conclusions that were
10 fundamental to his recommendation that the CDF's complaint against Mr. Cockshott be dismissed.

11 The Board does not concur with these conclusions. First, Judge Smith determined that the subject
12 parcel was not "timberland" under the definition provided in the Forest Practice Act, because "...the
13 Renberg lot is exclusively limited to building and maintaining a single-family home or leaving the lot
14 undeveloped." (P.D., page 9, paragraph 8) Second, Judge Smith concluded that Mr. Cockshott did
15 not conduct timber operations for commercial purposes, because the "...the primary purpose of [Mr.
16 Cockshott's] work on the Renberg lot was to clear the land for building a home, not to cut trees to
17 have them processed into lumber and forest products for sale or other financial gain." (P.D., page 8,
18 paragraph 5)

19 2. The Administrative Law Judge concluded that "...the Renberg lot has never been timberland. This lot
20 has never been lawfully available for or actually used for growing or harvesting timber, and has not
21 been since at least 1965... The clearing of the lot was not a conversion of the land from a purpose of
22 growing timber for commercial purposes within the meaning of [Public Resources Code] section
23 4526." (P.D., page 8, paragraph 6) The Board does not concur with this conclusion. There is no
24 evidence in the record to support the conclusion that the property has not been subject to harvesting
25 operations prior to, or after, 1965. To the contrary, based on the nature of the timber harvested,
26 small young growth ponderosa pine and incense cedar, the absence of old growth trees and the
27 development on adjacent lots, logic dictates that timber harvesting operations have historically taken
28 place on, and adjacent to, the parcel up to the current time.

- 1 3. "Timberland" is defined in the Forest Practice Act as land that is "...available for, and capable of,
2 growing a crop of trees of any commercial species used to produce lumber and other forest
3 products." (PRC §4526) The Renberg lot contained two commercial tree species which were
4 harvested and removed by Mr. Cockshott and subsequently delivered to a sawmill and firewood
5 wholesaler. The Renberg lot was undeveloped, and had not previously been granted either a
6 timberland conversion permit or a one-time minor conversion exemption, either of which may have
7 arguably precluded the site from timberland status. The Board concludes that the site was both
8 "available for and capable of" producing commercial tree species because commercial species, as
9 defined under 14 CCR §895.1, were in fact present on the site, and the site had not been converted
10 to another use.
- 11 4. A local zoning regulation does not alter whether a parcel meets the statutory definition of "timberland"
12 under PRC §4526. The Administrative Law Judge incorrectly concludes that "...[z]oning restrictions
13 and land use regulation are identified as factors to consider in whether and to what extent timber may
14 be harvested from land and where timber operations may be conducted," (P.D., page 9, paragraph
15 8), in his citation of 14 CCR §897. The only reference to zoning in that regulation is to Timberland
16 Production Zones, which are not relevant to this matter. There was no evidence introduced at the
17 evidentiary hearing, or referenced in Judge Smith's Proposed Decision, that timber operations are
18 prohibited in residential districts in Calaveras County. If CDF were prevented from administering and
19 enforcing the Forest Practice Act and Rules simply because local government zones a site for
20 residential use, 14 CCR 1104.1 would be rendered wholly ineffectual.
- 21 5. The Administrative Law Judge concludes that the purpose of Mr. Cockshott's timber operations on
22 the Renberg lot was a site conversion to residential use. The conversion of timberland to residential
23 use is defined as a commercial purpose under PRC §4527 sufficient to satisfy the definition of timber
24 operations: "'Timber operations' means the cutting or removal or both of timber or other solid wood
25 forest products, including Christmas trees, from timberlands for commercial purposes, together with
26 all work incidental thereto..."Commercial purposes" includes...(2) the cutting or removal of trees or
27 other forest products during the conversion of timberlands to land uses other than the growing of
28 timber which are subject to the provisions of Section 4621, including, but not limited to, residential or

1 commercial developments.” Thus, Mr. Cockshott’s conversion activities on the Renberg lot were
2 timber operations, because the harvesting operations involved the cutting and removal of timber for
3 the purpose of conversion to residential use. The intent to convert this lot to residential use is
4 supported by the contractor’s statement to the CDF Inspector regarding the contractor’s intent to
5 secure a building permit for the lot.

6 6. While there was no direct testimony or evidence verifying the sale of logs generated from the
7 Renberg lot to a local sawmill, the logical inference is that a financial transaction was linked to the
8 delivery of this material. Sawmills do not routinely scale logs for third party transactions at their
9 locations without an associated purchase. The logical assumption, based on industry standards, is
10 that the sawmill invested the monies required to scale these logs in anticipation of purchasing the
11 material based on the scaled volume. Thus, the delivery of these logs to a sawmill satisfies the
12 definition of “commercial purposes” under PRC §4527, in that the logical inference is that these logs
13 and other forest products were sold, as opposed to given, to both the sawmill and wholesale firewood
14 yard.

15 7. The Administrative Law Judge opines that the Renberg lot was not timberland at the time of
16 conversion because it is zoned for residential use by Calaveras County. However, no evidence was
17 in the record to confirm that timber harvesting operations and residential zoning are mutually
18 exclusive. The dedication of land to residential use is a function of zoning, whereas the definition of
19 “timberland” is predominantly a biological and operational function; these definitions are not mutually
20 inclusive or exclusive. Moreover, where an undeveloped, timbered lot is zoned exclusively for
21 residential use, timber operations are generally necessary to clear and convert the site for the
22 subsequent residential development. Such operations conducted on timberland require compliance
23 with the Forest Practice Act.

24 8. The Administrative Law Judge’s comments relative to “commercial operations” imply a nexus to only
25 large-scale industrial type harvesting operations. This is clearly not the case in most instances where
26 timberland conversions are undertaken for commercial and residential purposes. Zoning that permits
27 residential or commercial use is logically presupposed in every instance of timberland conversion.
28 Taken to its ultimate conclusion, the Administrative Law Judge’s Proposed Decision would frustrate

1 CDF's statutory duty to require environmental review and/or documentation of timberland conversions
2 to other uses.

3 9. The Board concludes that Mr. Cockshott intentionally, knowingly, or negligently violated the Forest
4 Practice Act and/or its regulations within the meaning of PRC §4601.1(b). The Board finds that Mr.
5 Cockshott was aware of the requirement to obtain the correct harvesting permit for the harvesting
6 operation he undertook, and that he simply disregarded his duty to obtain such permit . Mr.
7 Cockshott testified at the evidentiary hearing that he "...did not have any paperwork on the job
8 because it was a rush job..." (R.T., page 43, lines, 12-13) Even if Mr. Cockshott was not aware of
9 this requirement, he should have been. Further, based on his knowledge of harvesting requirements,
10 and the statement of the building contractor indicating that a building permit would be applied for, the
11 Board finds that Mr. Cockshott was aware, or should have been aware, that his operation constituted
12 a less than three acre timberland conversion pursuant to 14 CCR § 1104.1. Moreover, in
13 determining the appropriate amount of administrative civil penalty to be assessed upon Mr.
14 Cockshott, the Board has reviewed all relevant circumstances. (PRC § 4601.2(b).) The Board notes
15 that by avoiding the submission of a less-than three acre conversion, Mr. Cockshott circumvented the
16 Board's regulations which require the input of a Registered Professional Forester and provide for
17 neighborhood notification of the proposed operation. (14 CCR § 1104.1 (a)(1),(3).) Moreover, Mr.
18 Cockshott saved considerable time in commencing the job by avoiding the permitting process.
19 Accordingly, the Board determines that it is appropriate to levy an administrative civil penalty which
20 equals approximately twice the amount of the fee which would be generally charged by a Registered
21 Professional Forester for preparing and submitting the required documents.

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24 **ORDER**

25 WHEREFORE, the following order is hereby made:

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27 Based on the Factual Findings and Legal Conclusions, Perry D. Cockshott, shall pay an civil
28 administrative penalty of \$1,000.00.

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The administrative penalty must be paid within ninety (90) days from the date of this decision, by cashier's check or money order. The check or money order shall be made payable to the Department of Forestry and Fire Protection, and shall identify the appellant and case number as shown above. The payment shall be delivered to the Department at:

1416 9th Street, Room 1516-20
P.O. Box 944246
Sacramento, CA 94244-2460

This Order is effective on April 9, 2003.

Stan L. Dixon, Chairman
State Board of Forestry and Fire Protection

- 1 2. Complainant Andrea Tuttle, acting in her official capacity only as Director, California Department of
2 Forestry and Fire Protection filed an Amendment to Complaint and Proposed Order, seeking to
3 reduce the amount of the initial administrative civil penalty, shortly after April 28, 2003.
- 4 3. John Douglas Hale timely filed a Notice of Appeal in response to the Administrative Complaint and
5 Proposed Order. Mr. Hale requested a hearing to present his defense to the allegations contained in
6 the Statement of Issues. Pursuant to his authority under Public Resources Code ("PRC") §4601.2(c),
7 the Chairman of the Board elected to utilize an administrative law judge assigned in accordance with
8 GC §11370.3.
- 9 4. The evidentiary hearing was conducted before Administrative Law Judge Astle on July 8, 2003. The
10 taking of evidence was completed and all submission of evidence was completed with both parties
11 present on that date.
- 12 5. Mr. Hale owns approximately 160 acres of land in Redway, California. In May 2000, Mr. Hale
13 conducted timber operations in four separate areas of his property along Seely Creek. Seely Creek
14 is a Class I Watercourse, as defined in 14 CCR §895 et seq. At the time of timber operations, Mr.
15 Hale did not have a timber operator's license, nor did he have a timber harvesting plan or an
16 exemption from the requirement to obtain a timber harvesting plan. The trees harvested by Mr. Hale
17 were healthy, green trees, and were not dead, dying or diseased.
- 18 6. On June 30, 2000, Mr. Hale was issued a timber operator's license. On July 7, 2000, he filed for a
19 Dead, Dying or Diseased Tree removal exemption, which included a map marked by Mr. Hale that
20 purported to identify areas to be logged pursuant to the exemption. In fact, the map did not identify
21 areas that Mr. Hale had logged but identified an area that he did not log. Mr. Hale obtained the
22 license and exemption as post-hoc measures for logging he had already completed, not for planned
23 future logging. Thereafter, in late July 2000, Mr. Hale sold the timber he harvested to Pacific Lumber
24 Company for \$40,948.75.
- 25 7. In December 1999, Mr. Hale was arrested and charged with a felony for possession of marijuana with
26 intent to sell. On July 10, 2000, Mr. Hale was convicted of charges and sentenced to two years in
27 prison. Mr. Hale testified that he had intended to use the timber he harvested in May 2000 to build a
28 house for his son and only decided to sell the timber to Pacific Lumber Company after he learned of

1 his prison sentence in July 2000. However, based on the testimony given by the local CDF forest
2 practice inspector, the volume of timber cut and sold to Pacific Lumber Company was far in excess of
3 the amount needed to build a house and the species of lumber, redwood, is not generally appropriate
4 for structural residential construction. The purportedly planned house was never built.

5 8. On September 1, 2000, CDF initiated an investigation after receiving an anonymous complaint
6 regarding Mr. Hale's operations along Seely Creek. Mr. Hale met with the local CDF forest practice
7 inspector on that date and, in response to the forester's inquiry as to his timber operations, identified
8 only two of the four areas he had logged. The CDF forester inspected the two areas and observed
9 several violations of the Forest Practice Act and Rules. The CDF forester then returned to the Hale
10 property on September 8, 2000 with his supervisor, who confirmed the accuracy of the forester's
11 assessment. CDF then issued a Notice of Violation to Mr. Hale.

12 9. The CDF forester next returned to the Hale property on or about March 7, 2001 along with
13 representatives from other health and environmental agencies to follow up on his concerns about the
14 environmental impacts both from Mr. Hale's timber operations and the presence of discarded
15 vehicles and debris nearby to Seely Creek. During this visit, the CDF forester inspected the two
16 logging areas he had previously visited but also discovered two other logging areas that Mr. Hale had
17 not shown him. The CDF forester observed the same violations had occurred in the two newly
18 discovered areas and he confirmed this assessment during a return visit with his supervisor on March
19 23, 2001.

20 10. Thereafter, on December 20, 2002, CDF issued a Complaint and Proposed Order charging Mr. Hale
21 with the violations detected during the various inspections. These violations include:

- 22 1. Harvesting timber without an approved timber harvesting plan or valid exemption in four
23 distinct areas.
- 24 2. Operating heavy equipment in a watercourse and lake protection zone (WLPZ).
- 25 3. Failing to have and RPF flag the boundaries of the Seely Creek WLPZ and failing to mark
26 all trees prior to operations.
- 27 4. Constructing and/or using tractor roads in a WLPZ both within and outside the area
28 covered by Exemption 1-00EX-486-HUM

1 5. Failing to install waterbreaks on the tractor roads in and adjacent to the WLPZ by the
2 beginning of the winter period operations in May 2000.

3 6. Felling a tree directly across Seely Creek.
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6 LEGAL CONCLUSIONS

- 7 1. In her proposed decision, the Administrative Law Judge dismissed the Complaint and Proposed
8 Order for Administrative Civil Penalties against Mr. Hale, concluding the actions of Mr. Hale are not
9 under the jurisdiction of the Department of Forestry and Fire Protection. The Board does not concur
10 with this conclusion for two reasons, as described below. First, the Board does not concur with the
11 Administrative Law Judge's finding that Mr. Hale harvested timber only for his personal use.
12 Secondly, even accepting Mr. Hale's testimony at face value, PRC §4527 should not be read to allow
13 a person to circumvent regulation under the Forest Practice Act and Rules because they did not
14 decide to sell timber until retroactively after harvesting was completed. Such a reading would provide
15 an exemption to the requirement for a timber harvesting plan that the legislature did not enact.
16 Additionally, the Board does not concur with Finding 8 of the Administrative Law Judge's proposed
17 decision regarding environmental harm from Mr. Hale's operations. The Board believes this finding is
18 contrary to the weight of evidence presented.
- 19 2. As noted above, Mr. Hale testified that it was his intent to use the timber he harvested to build a
20 house for his son and that he decided to sell the timber only when he learned he was going to prison
21 for two years and would not have time to build the home. Mr. Hale admitted that he was charged with
22 a felony in December 1999, many months before he harvested the timber in question (Reporter's
23 Transcript ("RT"), page 100, line 21-22). Thus, he was well-aware before harvesting in May 2000
24 that he faced the possibility, and the probable likelihood, of incarceration that would prevent him from
25 building the alleged house. The Board does not concur with the Administrative Law Judge's finding
26 that these "unusual circumstances...occurred after the trees had already been cut." (Proposed
27 Decision ("PD"), ¶ 10) because, even assuming that Mr. Hale actually intended to build a house with
28 the timber, the events that led to the sale of the timber were well under way before Mr. Hale

1 harvested in May 2000. The Administrative Law Judge's line of reasoning would have the effect of
2 exempting Mr. Hale from regulation, associated environmental safeguards, and providing him with an
3 economic windfall. CDF provided rebuttal testimony at the hearing that the Administrative Law
4 Judge's proposed decision fails to address and which undermines Mr. Hale's testimony. CDF
5 forester McCray testified that 1) the quantity of timber harvested was almost double the amount
6 needed to build a three-bedroom, two bath house; and 2) the timber in question is not approved for
7 use in residential construction. (RT, page 114, line 21 through page 115, line 16 and RT, page 117,
8 line 4 through page 118, line 22) Even assuming that Mr. Hale intended to circumvent the building
9 code and build the alleged house with redwood, this "personal use" would still only account for only
10 slightly more than half of the timber harvested. Thus, the Board concludes that there is sufficient
11 basis in the record to find that Mr. Hale had a commercial purpose, i.e. an intent to sell, for close to
12 half of the timber he harvested.

- 13 3. The Board concludes that Mr. Hale's activities fit squarely within the definition of "commercial
14 purposes" because he: 1) cut trees; 2) the trees were processed into logs; and 3) the logs were
15 offered for sale. (PRC §4527) ~~The definition does not call for CDF to make a subjective inquiry into
16 when a harvester first formulated the intent to sell their logs. If the Board chose to adopt the
17 Administrative Law Judge's interpretation of PRC §4527, then CDF would be required to ascertain
18 what was in the mind of a timber harvester at the time of harvesting before it could determine whether
19 a timber operation had occurred.~~ This type of system is unworkable and is not what the legislature
20 intended when approving PRC §4527. For many timberland owners, other than owners of solely
21 commercial properties, the Administrative Law Judge's interpretation of PRC §4527 would be an
22 invitation to harvest timber for "personal use" without meeting any of the environmental protections of
23 the Forest Practice Act and Rules, and then sell the timber for a profit upon changing their mind about
24 personal use. The Board does not concur with the Administrative Law Judge's interpretation of PRC
25 §4527 and concludes that Mr. Hale's operations were subject to CDF's jurisdiction.
- 26 4. Relative to environmental harm, the Administrative Law Judge found that "Respondent...attempted to
27 harvest trees in an environmentally sound manner. He was concerned with preserving the canopy
28 and only took trees when they were crowded. Respondent's son worked...to repair any damage

1 done to the environment including removing two steel culverts and putting in water bars across the
2 creek as requested.” (PD, ¶ 8) In light of the hearing testimony of CDF Inspectors McCray and
3 Johnson, the declaration testimony of Joelle Geppert of the North Coast Regional Water Quality
4 Control Board, and photographs of the site submitted at the hearing, the Board does not concur with
5 this finding. As opposed to Mr. Hale’s general assertions on this topic, Mr. McCray provided
6 extensive, specific descriptions of environmental harm that he personally observed and
7 photographed. (RT, page 21, line 10 through page 22, line 11 and RT, page 29, line 19 through page
8 32, line 14.) The testimony of Ms. Geppert directly refutes the finding that Mr. Hale’s son had
9 “worked with...Water Quality to repair any damage done to the environment.” Contrary to the
10 Administrative Law Judge’s finding, Ms. Geppert testified that “there is no mitigation that can counter
11 the long-term damage that has been caused by the sedimentation of Seely Creek, or the short term
12 damage caused by the removal of the shade canopy.” (Geppert Declaration, ¶17) Additionally, Mr.
13 McCray testified that the roads used for logging activities had still not been adequately repaired by
14 the spring of 2003 and that the culvert replacement work touted by Mr. Hale as evidence of his
15 mitigation work was entirely unrelated to the harm from logging that was addressed in the Complaint
16 and Proposed Order (RT, page 116, lines 2-23)

- 17 5. The Board concludes that Mr. Hale intentionally, knowingly, or negligently violated the Forest Practice
18 Act and/or its regulations within the meaning of PRC §4601.1(b). The Board finds that Mr. Hale was
19 aware, or should have been aware, that his operation constituted timber harvesting for “commercial
20 purposes” as defined in PRC §4527. Moreover, in determining the appropriate amount of
21 administrative civil penalty to be assessed upon Mr. Hale, the Board has reviewed all relevant
22 circumstances. (PRC § 4601.2(b).) The Board notes that by avoiding the submission of a timber
23 harvesting plan, Mr. Hale circumvented the Board’s regulations which require the input of a
24 Registered Professional Forester, a multi-disciplinary review of the proposed operations and
25 prohibitions on unrestricted harvesting in Watercourse and Lake Protection Zones.

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3 **ORDER**

4 WHEREFORE, the following order is hereby made:

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6 Based on the Factual Findings and Legal Conclusions, John Douglas Hale, shall pay a civil administrative
7 penalty of \$41,500.00.

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9 The administrative penalty must be paid within fifty (50) days from the date of this decision, by cashier's
10 check or money order. The check or money order shall be made payable to the Department of Forestry
11 and Fire Protection, and shall identify the appellant and case number as shown above. The payment
12 shall be delivered to the Department at:

13
14 1416 9th Street, Room 1516-20
15 P.O. Box 944246
16 Sacramento, CA 94244-2460

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18 This Order is effective on January 8, 2004.

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21 _____
22 Stan L. Dixon, Chairman
23 State Board of Forestry and Fire Protection
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BEFORE THE
DEPARTMENT OF FORESTRY AND FIRE PROTECTION
STATE OF CALIFORNIA

In the Matter of:

WALTER L. SIMONIS
22509 Knollwood Drive
Palo Cedro, California 96037

Respondent.

CDF Docket No. CP-02-06

OAH No. N2003100527

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on February 23 – 25, 2004.

Denise F. Hoffman, Deputy Attorney General, Department of Justice, State of California, represented complainant.

Respondent Walter L. Simonis appeared and represented himself.

Evidence was received and, to permit the filing of an amendment to the Complaint and Proposed Order,¹ the matter deemed submitted on March 1, 2004.

FACTUAL FINDINGS

1. On January 15, 2003, complainant Andrea E. Tuttle, Director of the California Department of Forestry and Fire Protection (“CDF”), solely in her official capacity made and filed a Complaint and Proposed Order against respondent Walter L. Simonis (“respondent”).

2. At all times relevant and since 1987, respondent, issued CDF License No. A-8369 and doing business as Simonis Logging and Construction (“Simonis Logging”), as a licensed timber operator (“LTO”).

¹ Government Code §11507. The amendment, filed March 1, 2004, was included as part of Exhibit 1.

3. On September 9, 1997, and October 15, 1997, a Preharvest Inspection was conducted by Registered Professional Forester Jack Millett, CDF Forester Ray Stine, and Mark Harvey, Department of Water Quality. On October 15, 1997, Andrew Cardin, designated by Mr. Millett as “LTO Representative” was present at the Preharvest Inspection.

4. On September 26, 1997, Timber Harvesting Plan 2-97-323 PLU(1) (“the THP”) for a parcel of real estate commonly referred to as the Walker Mine property was submitted to CDF. Filed on October 6, 1997; the THP, reviewed and conforming to the Forest Practice Act² and the Board of Forestry and Fire Protection’s (“the Board”) rules and regulations,³ was approved by CDF Deputy Chief and Registered Professional Forester David T. McNamara on October 30, 1997, with an expiration date of October 29, 2000. The THP, serving the same function as an environmental impact report,⁴ provided, inter alia:

- A. Cedar Point Properties Incorporated, with a physical address at 800 Cynthia Lane, Paradise, California, was the Timberland Owner of Record.
- B. Daniel Kennedy, with a physical address at 800 Cynthia Lane, Paradise, California, was the Timber Owner of Record, and Plan Submitter.
- C. The LTO at the time of submission was unidentified. “If the LTO is not present on-site list person to contact on-site who is responsible for the conduct of the operation and represents the interests of the LTO. Andrew Cardin will be present on-site contact person during timber operations.” Mr. Cardin’s physical address, as reported on the THP, was 800 Cynthia Lane, Paradise, California.
- D. The timber operator would be employed and responsible for the construction and maintenance of roads and landings during conduct of timber operations.
- E. The timber operator would be responsible for erosion control maintenance after timber operations have ceased and until certification of the Work Completion Report.
- F. Mr. Millett⁵ or his supervised designee personally inspected the THP area and the plan complied with the Forest Practice Act, the Forest Practice Rules and the Professional Foresters Law.

² Public Resources Code §4511, et seq.

³ Denominated the “Forest Practice Rules.” Title 14, California Code of Regulations, §895, et seq. “The Legislature has vested in the board the authority to adopt forest practice rules and regulations ‘to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources...’” *Public Resources Protection Association of California, et al v. California Department of Forestry and Fire Protection* (1994) 7 Cal.4th 111, 115; citing Public Resources Code §4551.

⁴ *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 522.

⁵ Mr. Millett’s address was reported as P.O. Box 732, Blairsden, California—a locale not collocated with Paradise.

- G. The harvest area, involving 19-acres, included areas of commercial thinning, selection, and shelterwood removal.

5. In anticipation of the THP submission, Andrew Cardin, on September 5, 1997, representing himself simply as “Assistant”, executed and submitted correspondence to affected property owners within 1000 feet of the THP area, soliciting particular information and directing that such information be provided to Mr. Millett.

6. On September 18, 1997, incident to his duties with respect to the THP, Mr. Millett directed letters to the Timber Owner of Record and the Timberland Owner of Record observing, in pertinent part, “Trees to be harvested shall be marked or designated by a Registered Professional forester prior to timber harvest operations.”

7. Following submission and approval of the THP, it was subsequently amended.

- A. On September 10, 1999, Mr. Kennedy requested amendment of the THP to add respondent as LTO.

- B. On January 31, 2000, Mr. Kennedy requested amendment of the THP to add Tom Jones as THP LTO and remove respondent.

- C. On July 20, 2000, Mr. Kennedy, as Plan Submitter, requested amendment of the THP to remove Mr. Millett as RPF and substitute Steven Windward as THP RPF.

- D. On August 2, 2000, Mr. Kennedy requested the removal of all previous LTOs on the THP and requested THP amendment to include respondent as the THP LTO.

- E. On October 16, 2000, Mr. Kennedy, as President of Cedar Point Properties Incorporated and Plan Submitter, requested a one year extension of the THP.

- F. On December 4, 2000, Mr. Millett requested that the THP be amended to include Christmas Tree harvesting, designating the then-listed LTO as responsible.

8. The THP required in designated locations of the site that LTO activities fall particularly marked trees. Timber falling practices require an RFP to mark trees in particular places with various colors so that loggers cutting trees know whether a tree should or should not be cut. The color chosen for marking was pursuant to the color designated in a THP. Common practice provided for the RFP or his designee to spray or paint a mark at the tree’s stump and, using the same color, ordinarily at breast-high level on both sides of the tree selected for falling.

9. Respondent readily acknowledges and admits undertaking timber operations⁶ at the Walker Mine site. Contracted, he proceeded on the job, only to be removed after several months; then reinstated with a time limitation requiring job completion. The job, he acknowledges, was larger than any other job he had previously undertaken and clearly tasked his capacity.

10. Respondent further relates that the Walker Mine site had trees marked in various colors at various times. Some markings were relatively faded and, in several instances, not marked as more commonly practiced (e.g., both sides of the tree) or included trees that would not ordinarily have been selected for falling.

11. Several witnesses competently and candidly testified that Mr. Cardin, dressed and acting as a RFP, toured the site, marking several trees for falling. Believing, incident to the THP, that Mr. Cardin was serving as the RFP's assistant and under his supervision, and responding to Mr. Cardin's periodic, vocal and animated insistence that particular trees be cut prior to entering another location at the site for falling, respondent crewmembers cut Cardin-marked trees.

12. In August 2000, CDF Forester Mary Brown Huggins arrived at the Walker Mine site and observed one of respondent's sons cutting an unmarked tree. Seeking to maintain a positive relationship, she discussed the matter with respondent who made general references to marking issues at the site. Ms. Huggins, consistent with her interest in working with respondent, elected to defer any citation or other action against respondent.

13. On December 12, 2000, CDF Forester Mary Brown Huggins returned to the Walker Mine site and, at a particular location, observed the effect of respondent's timber operations. This particular location of the property required, incident to the THP, the use of unevenaged management⁷ and the selection regeneration method.⁸ In examining felled trees at this location on December 12, 2000, Forester Huggins, concerned with respondent's evident explosive and hostile temperament, was joined by U.S Forest Service Special Agent Wayne Lee Crowder and Forester Stine. She observed several butt logs and a stump that lacked any markings. Concerned with the observations and aware of its implications as it related to the THP, the U.S. Forest Service and CDF employees all carefully examined the site, butt logs and stumps to ascertain respondent's complicity or lack of complicity with the THP.

⁶ "Timber operations" are defined as, "the cutting or removal or both of timber or other solid wood forest products...from timberlands for commercial purposes, together with all the work incidental thereto...." Public Resources Code §4527.

⁷ Unevenaged management is utilized to establish and maintain an unevenaged, multi-aged, balanced stand structure, promote growth on leave trees throughout a broad range of diameter classes, and encourage natural reproduction. Title 14, California Code of Regulations §933.2.

⁸ Under the selection regeneration method, trees are removed individually or in small groups sized from .25 acres to 2.5 acres. Title 14, California Code of Regulations §933.2(a). The THP required that, under the selection regeneration method, trees to be harvested or trees to be retained shall be marked by, or under the supervision of, the RFP prior to felling operations with red paint at or near the diameter at breast height ("dbh") and below the stump height. Title 14, California Code of Regulations §933.2(a)(1).

14. On December 21, 2000, while inspecting the site with Forester Huggins and Special Agent Crowder; Forester Stine observed that at least 8 trees per acre that were at least 18 inches dbh had not been retained. Unmarked trees in two decks he observed were greater than 18 inches dbh. Having harvested these larger unmarked trees, respondent had concomitantly reduced the number and size of residual trees per acre below the minimum level required at the Walker Mine property.

15. On December 27, 2000, Special Agent Crowder, accompanied by a U.S. Forest Service road inspector, Ralph Koehne, arrived at the Walker Mine site and, at a particular location, observed respondent personally cutting two trees—neither of which had been marked. While respondent and Mr. Koehne were engaged in conversation, Special Agent Crowder examined both the butt logs and stumps of the 16 to 18-inch trees cut by respondent. Special Agent Crowder observed neither tree to be marked. Examining other felled trees, the Special Agent observed that some butt logs had red-orange paint but that several other trees were unmarked. He subsequently reported his findings to CDF.

16. Forester Huggins, incident to her observations on December 21, 2000, noted the area to be over-harvested. Believing that the minimum stocking level appeared to be less than 75 square feet of basal area per acre,⁹ she issued a Notice of Violation on February 6, 2001, and directed respondent to have a RPF conduct a stocking survey of the area and submit a report to CDF no later than June 23, 2001.

17. In the Spring of 2001, Albert E. Cornelius, a RPF hired by respondent, conducted a stocking survey in the relevant section and prepared and submitted a report to the CDF. Verifying that the survey was conducted in accordance with standardized stocking sampling procedures,¹⁰ Mr. Cornelius determined that only 47.82% of the area surveyed had been left properly stocked, leaving 52.17% of the area not properly stocked, following timber operations. Because less than 55% of the plots¹¹ were properly stocked, Mr. Cornelius concluded that the sampled area was understocked.

18. Factors concerning the credibility of evidence are set forth, in part, at Evidence Code §§412, 780, 786 and 790 and 791, it is established by a preponderance of evidence¹² that:

⁹ “Basal area per acre” means the sum of the cross-sectional areas at breast height of the tree stems of commercial species per acre. See Title 14, California Code of Regulations §933.2(a)(2)(A)(2); and Public Resources Code §4528(a). As illustrated by complainant’s counsel, “...if a tree were cut down 4½ feet from the ground, the measurement of the surface area of the remaining stump would be the basal area. In other words, in order to achieve the required stocking level, the sum total of the basal area of the remaining trees in an acre, measured at breast height, must not be less than 75 square feet.”

¹⁰ Title 14, California Code of Regulations §§1072(a), 1072.1, 1072.5, and 1073(c).

¹¹ Title 14, California Code of Regulations §1073(c).

¹² Respondent repeatedly argued that the standard of proof in this matter is “beyond a reasonable doubt.” It is not. The standard of proof for an occupational license in an administrative disciplinary proceeding is “preponderance of evidence.” *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889; *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312.

- A. Respondent, repeatedly demonstrating antagonism and hostile regard for CDF Forester Huggins and Special Agent Crowder in this proceeding, claimed, alternatively, that the trees observed by Special Agent Crowder or Ms. Huggins as unmarked were either cut in an area permitting the falling of unmarked trees and subsequently relocated where observed by them; were marked—either partially or with faded paint—but, placed on a deck, not readily available for observation; or were inappropriately marked by Mr. Cardin but, because Mr. Cardin was ostensibly under the supervision of a RFP, properly cut.
- B. Mr. Cardin, cavalierly, unlicensed by the Board, and without appropriate or apparent supervision by any RFP, arbitrarily marked trees for cutting at the Walker Mine site with little regard for the THP or little evident comprehension of the Forest Practice Act or Rules or timber conservation or management.
- C. Respondent and his crewmembers, notwithstanding Mr. Cardin's evident lack of knowledge with respect to the Forest Practice Act or Rules or appropriate timber conservation or management, abdicated responsibility to Mr. Cardin and inappropriately cut Cardin-marked trees.
- D. This hearing devoted substantial time to whether a particular butt log and stump associated with that log were marked. Complainant's witnesses attested to the referenced log and stump being unmarked. Respondent and many of his witnesses attested that the log and stump were marked. What is competently and credibly established is that respondent, by and through his employees, inappropriately cut several unmarked trees at the Walker Mine site. It is competently established that the singularly referenced tree was not the only tree selected for falling and that amid the trees timbered by respondent, several were unmarked and several were cut. Acceding to the particularly perceptive testimony of respondent's son and employee, Joseph Simonis, that the particular tree at issue, at its butt log, was marked; it is nevertheless demonstrated by the equally cogent and credible testimony that its associated stump was not marked. With respect to this singular tree and its stump, and deferring to Joseph Simonis' credible testimony that Mr. Cardin was less than professionally responsible in the marking of timber at the Walker Mine property, it is competently established that the tree at issue was not properly marked.
- E. Notwithstanding respondent's self-serving claims that Special Agent Crowder's observation of December 27, 2000, were lacking in geographic competency (i.e., where the trees were cut at the site); it is abundantly clear that the Special Agent took care in not only observing respondent's conduct in the cutting of two trees, but carefully examined the trees, their stumps, other

felled trees at the site, and, more importantly, undertook significant efforts to verify the location by returning to the site with a GPS and employ a U.S.G.S. map and the THP site map to carefully pinpoint his and respondent's location on December 27, 2000. Respondent's claims, lacking any equally measurable factual underpinnings, are not found credible or competent.

- F. At the hearing, the most telling and singularly poignant comment of the effect of respondent's timber operations at the Walker Mine project were uttered by CDF Forester Huggins: "The trees were gone." Respondent, repeatedly seeking to challenge Forester Huggins' visual acuity and observations with respect to site stocking, merely argues that the Cornelius stocking survey effected at the behest of Forester Huggins employed inappropriate plot divisions.¹³ It is established that Mr. Cornelius' survey not only tellingly and competently confirms Ms. Huggins', and concomitantly Mr. Stine's, competent observations but also functions to refute respondent's self-serving claims and underscore his lack of professional competency.

Circumstances in Mitigation

19. It is evident that Mr. Cardin, a Cedar Point Properties Incorporated employee, undertook tree marking not at the direction of the designated THP RFP—but another. The effect of such action functioned to deceive respondent and his crewmembers as to the propriety of trees designated for falling. And, to the extent relied on by respondent's crew, functions to mitigate—not excuse however—respondent's culpability.

20. Respondent presented several letters¹⁴ and testimony referencing his competency and reputation in timber operations.

Circumstances in Aggravation

21. Notwithstanding Mr. Cardin's evident culpability in the perpetration of inappropriate timber marking at the Walker Mine site; it becomes equally evident that between Mr. Cardin and respondent, it is the latter (i.e., respondent) and not the former (i.e., Mr. Cardin) who possessed the special education, training, experience and knowledge reposed by Board licensure. Respondent, with little regard for his own personal licensure as an LTO, abdicated his responsibility in an environment where both crewmembers and respondent observed clear improprieties in Cardin's selection of trees for falling. Respondent's puerile effort to shift his

¹³ Interestingly, respondent, although attacking Mr. Cornelius' findings, determinations and conclusion as set forth in Mr. Cornelius' report to the CDF, submits a December 6, 2000 letter of recommendation by Mr. Cornelius extolling respondent's competency.

¹⁴ Respondent's submission of correspondence relating to his competency was largely diminished by a lack of correspondents familiar with the instant proceeding. *In re the Matter of Respondent K* (1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *In re Aquino* (1989) 49 Cal.3d 1122, 1130 - 1131; *Grim v. State Bar* (1991) 53 Cal. 2d 21, 33; *In the Matter of Grueneich* (1993) 2 Cal. State Bar Ct. Rptr. 439, 443; *In re Rivas* (1989) 49 Cal.3d 794, 798; *In the Matter of Brazil* (1994) 2 Cal. State Bar Ct. Rptr. 679, 688.

scope of responsibility to an unlicensed and clearly unsupervised person lacks merit. While respondent protests that he had little to gain, the clear scope of the Walker Mine project contract, respondent's evidently emerging (but misguided) perception that he could shift responsibility to an evidently unsupervised and unlicensed person with impunity, combined with his evident interest in completing the project and access as much timber (with axiomatic incremental financial gain) on the project before project cessation clouded his judgment. In sum, respondent's actions were motivated by pecuniary gain.

22. Respondent has been the subject of prior and recent disciplinary actions.

23. Respondent demonstrates little circumspection into the scope and import of Board licensure. Treating his licensure as little more than a permit to cut trees, he fails to comprehend the particular responsibilities and public obligations imposed by his Board license.

24. Respondent by his inappropriately conducted timber operations has effected significant harm to the timberland and associated environment that will require decades to repair.

25. Balancing various factors in mitigation and aggravation, the CDF seeks administrative penalties in the total sum of \$16,000. Respondent appeals.

LEGAL CONCLUSIONS

1. Harvesting of timber is strictly regulated in California, and is governed by the Forest Practice Act and Rules. CDF is charged with enforcement of the Act and Rules. Under this Act, "No person shall conduct timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted for such operations to the department..."¹⁵ and approved by CDF.¹⁶ Such plan "governs and carefully delimits the parameters of the proposed timber operations."¹⁷

In the instant matter, the THP set forth the marking to be employed in the harvesting of trees by the LTO. Respondent harvested unmarked trees. It is fundamental that a "timber operator...is responsible for the actions of his or her employees."¹⁸

Cause accordingly exists to impose an administrative civil penalty on respondent for inappropriately harvesting unmarked trees pursuant to Public Resources Code §§4511, et seq., and 4601.1(b), in conjunction with Title 14, California Code of Regulations, §§933.2(a)(2)(A)(1) and 1035.3, and as set forth in Findings 2 – 18.

¹⁵ Public Resources Code §4527.

¹⁶ *Public Resources Protection Assn.*, *supra* at p. 115.

¹⁷ *Public Resources Protection Assn.*, *supra* at p. 119.

¹⁸ Title 14, California Code of Regulations §1035.3(c); cf. Public Resources Code §5093.68(a)(1).

2. Cause exists to impose an administrative civil penalty on respondent for inappropriately reducing basal stocking levels pursuant to Public Resources Code §§4511, et seq., and 4601.1(b), in conjunction with Title 14, California Code of Regulations, §§933.2(a)(2)(A)(1) and 1035.3, and as set forth in Findings 2 – 18.

3. Cause exists to impose an administrative civil penalty on respondent for failing to retain sufficient timber pursuant to Public Resources Code §§4511, et seq., and 4601.1(b), in conjunction with Title 14, California Code of Regulations, §§933.1(c)(1)(A), 933.2(a)(2)(A)(1), and 1035.3, and as set forth in Findings 2 – 18.

4. The significance of the California natural environment cannot be overstated. Our State's (and her peoples') natural resources are limited. The California Department of Forestry and Fire Protection and, in particular, the Board,¹⁹ has both a constitutional and statutory obligation to further this State's and her peoples' interest in maintaining an environment increasingly fragile.²⁰

To further such interest, the CDF promulgates regulations, in concert with the Legislature's statutory direction,²¹ to carefully and deliberately monitor, inter alia, inappropriate timber operations of the California timberland. Particular registrations, licenses, permits and plans are required by CDF of various persons and entities seeking to both use and benefit from the California timberland resources.²² Such requirements are compelled to further the Board's responsibilities.²³

Respondent is a duly licensed LTO possessing a long history of timber operations. His defense rests more on an antagonism that does little to demonstrate the import of both the CDF's statutory obligations and his own Board licensure. Simply put, respondent has little comprehension of the obligations and responsibilities attendant to his license.²⁴ Such license effectively represents a level of competency and knowledge that, when properly employed, functions to serve the interests of the People of the State of California and their timberland.

Respondent was clearly aware of Mr. Cardin's irresponsibility at the Walker Mine site; however, rather than undertaking appropriate regard for his environmental and professional responsibilities at the site; respondent abdicated his responsibility and licensure. Indeed, the Forest Practice Rules impose affirmative obligations on its LTOs vis-à-vis the RFP in timber operations at sites.²⁵

¹⁹ Public Resources Code §4521.3.

²⁰ Cf. *County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826; *Schoen v. Department of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556; *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383.

²¹ Public Resources Code §§4551 and 4582.3. See also *Public Resources Protection Assn.*, supra at p. 111.

²² Public Resources Code §§4524, 4571, 4581 and 4584.

²³ *County of Santa Cruz*, supra; *Schoen*, supra; *Friends of the Old Trees*, supra.

²⁴ See Title 14, California Code of Regulations §1035.3.

²⁵ Title 14, California Code of Regulations §§1035.3(b), 1035.3(f), 1035.3(g), 1035.3(h) and 1035.3(i).

Pursuant to Public Resources Code §§4601.1(b) and 4601.2, the CDF may administratively impose civil penalties well in excess of that sought herein. The CDF however has sought, after properly balancing relevant factors of mitigation and aggravation set forth in the Forest Practice Rules, to impose civil penalties as follows:

- A. For the violations set forth in Legal Conclusion 1, a concurrent penalty of \$4,000.
- B. For the violation set forth in Legal Conclusion 2, a penalty of \$4,000.
- C. For the violation set forth in Legal Conclusion 3, a penalty of \$8,000.

Mindful of the enduring affect of respondent's errant conduct on the environment as a direct consequence of his professional irresponsibility, CDF's imposition of a total penalty of \$16,000 is modest.

Accordingly, giving due consideration to the facts and circumstances underlying the Amended Complaint and Proposed Order (Legal Conclusions 1 – 3, and each of them), the undersigned concludes that the cause exists to affirm the administrative penalties pursuant to Public Resources Code §§4529, 4601.1(b) and 4601.2, and Title 14, California Code of Regulations §1035.3, in the sum of \$16,000.

ORDER

1. Respondent Walter L. Simonis is hereby ordered to pay forthwith to the California Department of Forestry and Fire Protection an administrative civil penalty of \$4,000 pursuant to Legal Conclusions 1 and 4.

2. Respondent Walter L. Simonis is hereby ordered to pay forthwith to the California Department of Forestry and Fire Protection an administrative civil penalty of \$4,000 pursuant to Legal Conclusions 2 and 4.

3. Respondent Walter L. Simonis is hereby ordered to pay forthwith to the California Department of Forestry and Fire Protection an administrative civil penalty of \$8,000 pursuant to Legal Conclusions 3 and 4.

Dated: _____

JAIME RENÉ ROMÁN
Administrative Law Judge

Office of Administrative Hearing