

29th Annual FVMC – Redding, CA

Cumulative Effects Issues: A Forester Perspective

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CEQA: Quick Review

- 1970 CEQA = EIR
- 1973 THP's \approx Functional Equivalent
- **PURPOSE**
- #1 : Impact Analysis & Public Disclosure (right to know)
- #2 : Mitigation (technically) optional.
- #3 : Agency Review: (Technically) time-limited.
- #4 : 30+ days public comment

THE ROANOKE TIMES
Monday, September 20, 2004



STEPHANIE KLEIN-DAVIS | The Roanoke Times

Mellisa Williamson, 35, a Bullitt Avenue resident, worries about the effect on her unborn child from the sound of jackhammers.

**Real Cumulative Effects: Oops! FWS
10-year status review finds impacts to
NSO by wildfire and Barred Owls was
worse than timber harvest.**



No project...no cumulative effects ?





Where's CEQA on this project...

Is something backwards?



Oh...did we mention litigation?

Good money to be made.

Obscure technical discrepancies payoff well.

Stop projects, with a mere threat.

Venue-shopping encouraged.

Great for fund raising and membership drives.

...makes agencies *risk averse*.

For example...

- *A Tale of Two Conflicting California Courts of Appeal*
- *Cumulative impacts of herbicides: 2 cases of Ebbetts Pass vs. CDF*
- *Two different rulings, yet the public agency chooses to enforce the more restrictive ruling across all areas outside the appellant court district.*

Ebbetts Pass 2004

- 3rd District court. Herbicide discussion in THP was adequate, noting “*Any specific information obtained prior to harvest remains pure speculation,*” when considering future use.

Ebbetts Pass 2006

- 5th District court says...whoa there, we want the forester to
- Speculate about future use.
- Ignore the DPR's role in regulation.
- Ignore the DPR's CEQA-compliant registration and labeling process.

Step #1: Threaten to Sue



Step #2: *Agency* Reacts



Running with scissors in 2008...

What's an agency to do ?

- CalFire has no actual authority over pesticides.
- ...pesticides are regulated by the DPR.
- ... which originally went through a CEQA compliant registration process. So now we're cool, right ?
- Wrong: a THP is also a CEQA document... another bite at the apple because you *might* violate the labels.
- Agency lost one case, don't want to pay litigants, so they play it safe with YOUR dime!
- BINGO! ... cost inflation of added regulatory burden.

Resulting effect on THP review

Example review question yields 10 additional pages. THP's routinely exceed 200 pages.

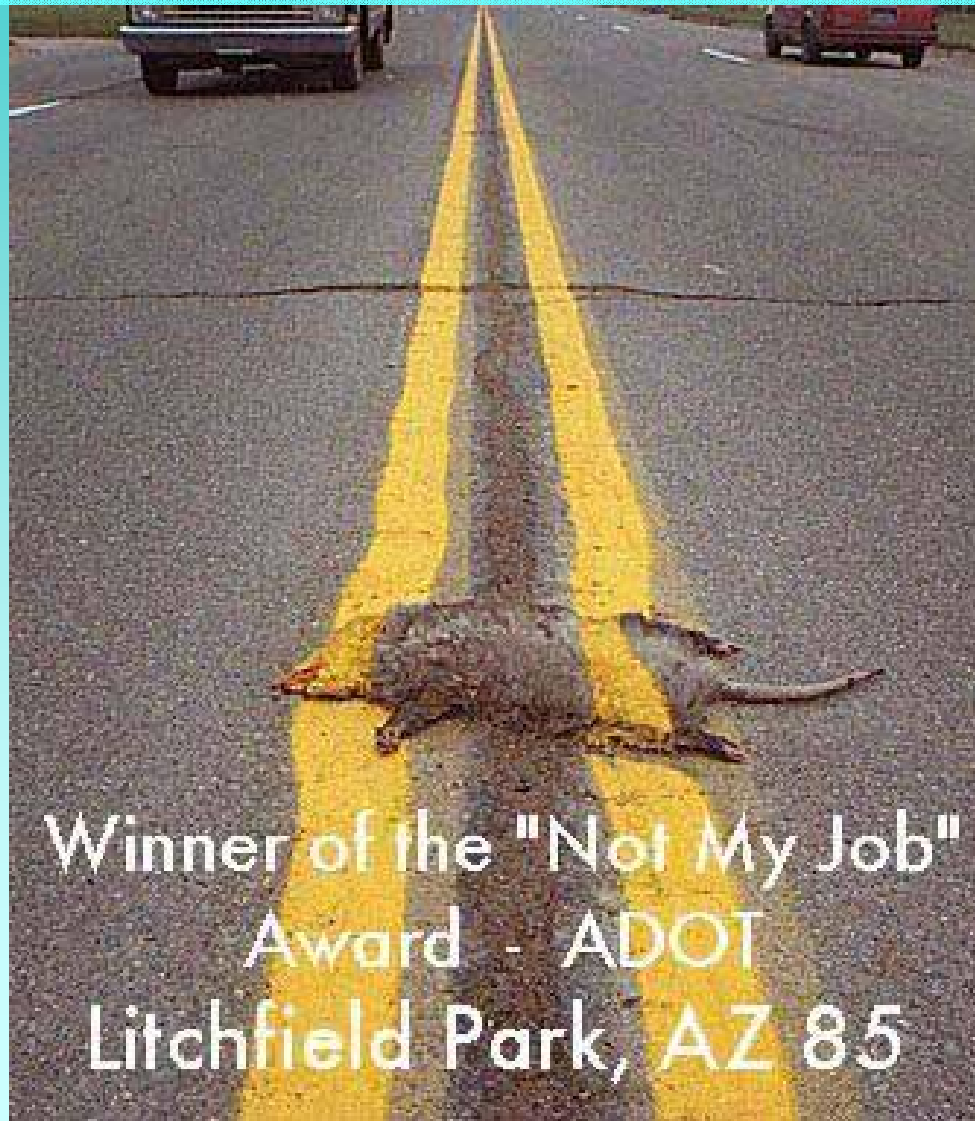
2. Page 10, Item 14 (h), Regeneration Plan, 7): The plan discloses potential "Follow-up cultural needs...to ensure successful regeneration. "Does this potential follow-up treatment include the use of herbicide? If so, please include the following information in Section IV, Cumulative Impacts Assessment, 1) some indication of what herbicides have been used on the plan area in the reasonable past, 2) what herbicide will be used on or associated with the current plan, 3) if there is a likelihood that herbicide will be used in the foreseeable future, 4) the target species, 5) the potential method of application, 6) the potential impacts, and 7) the mitigations to reduce the potential for significant adverse impacts to wildlife and water resources.

No herbicides have been used on the plan area in the reasonable past. All stands proposed for harvest under Sweet THP were previously managed under the Selection and Commercial Thinning silvicultural methods, where application of herbicides was not warranted.

The use of herbicides is determined by the vegetation present on site and by the vegetation that can be expected to become established subsequent to operations. Vegetation species composition and density after operations results from the type and level of disturbance, seed bank(s) present in the soil, and from potential wind born sources in the vicinity. These factors, as well as local weather patterns and soil types, determine the amount, timing, and type of herbicide appropriate for the application. If the competing vegetation complex is determined to be a threat to forest establishment or growth, then an appropriate herbicide and application method will be chosen at that time.

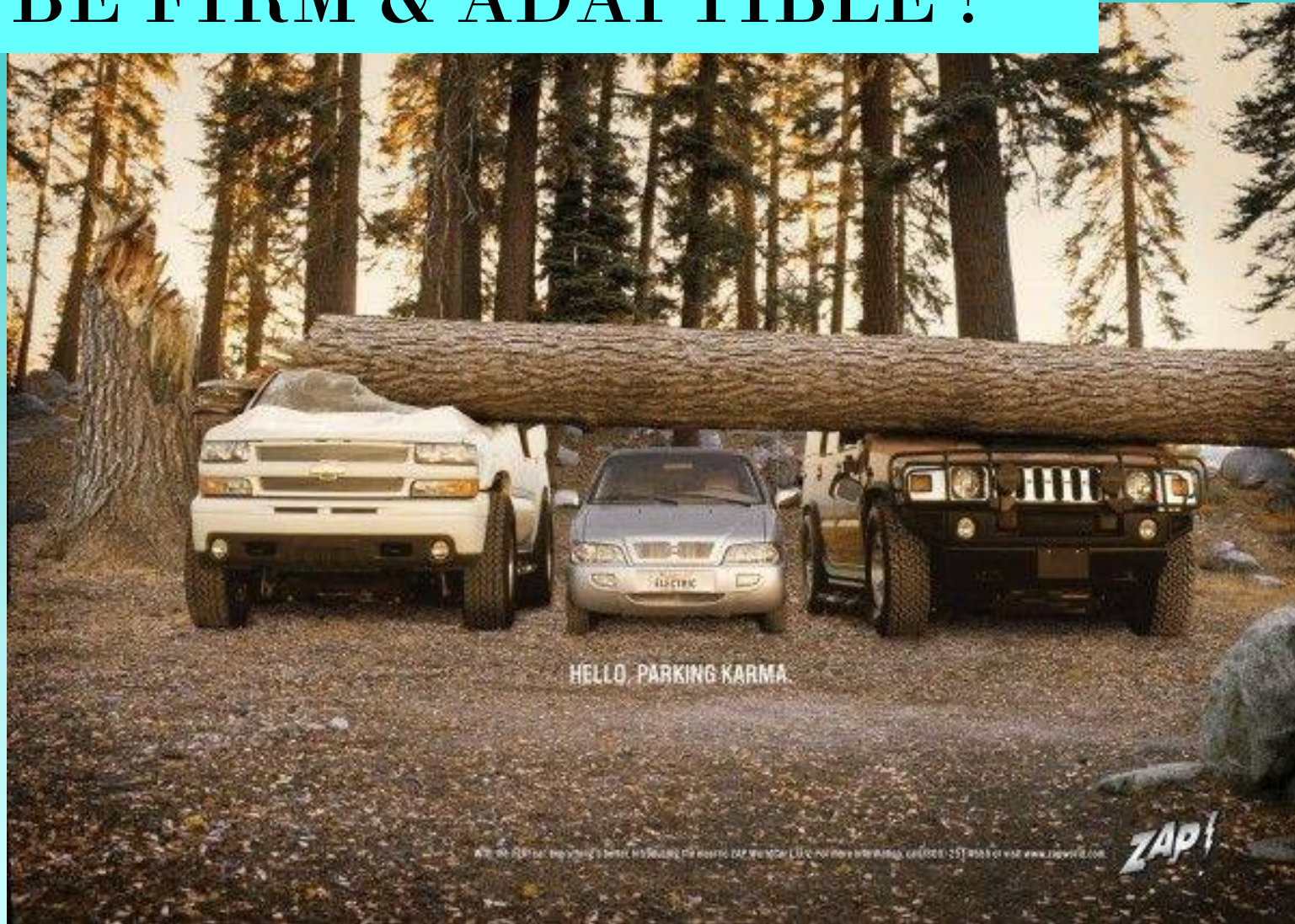
It is likely that herbicide will be necessary to ensure successful survival and growth of new forests. Herbicide use is regulated by the Department of Pesticide Regulation (DPR) and enforced by the County Agricultural Commissioner. Registration of herbicides is a CEQA-equivalent process, and when herbicides are applied according to label instructions, significant adverse impacts to wildlife and water resources cannot be expected to occur.

Agencies all have a job to do, but...



Winner of the "Not My Job"
Award - ADOT
Litchfield Park, AZ 85

BE FIRM & ADAPTIBLE !



The key to conflict resolution is to be assertive, civil and constructive.



The system is **NOT** broken, but it **IS** pretty dysfunctional.



Solutions:

- Limit frivolous use of the courts (tort reform)
...but use them if you must. Try other options first. We may soon see:
- Alternate conflict resolution
- Mandatory binding arbitration
- Peer-review boards (Daubert panels)
- Group hugs

Cumulative Impacts:

So what's the next flavor-of-the-month?

- CO₂ and global warming
- subjective visual impacts
- botanical sensitivity of unlisted species

An aerial photograph of a mountain town, Dunsmuir, circa 1890. The town is nestled in a valley, surrounded by steep, forested mountains. The buildings are small and densely packed, with a prominent church spire visible. The surrounding landscape is rugged and mountainous, with dense evergreen forests covering the slopes. The overall scene depicts a small, established community in a mountainous region.

Thank you!

Questions ?

Dunsmuir, circa 1890