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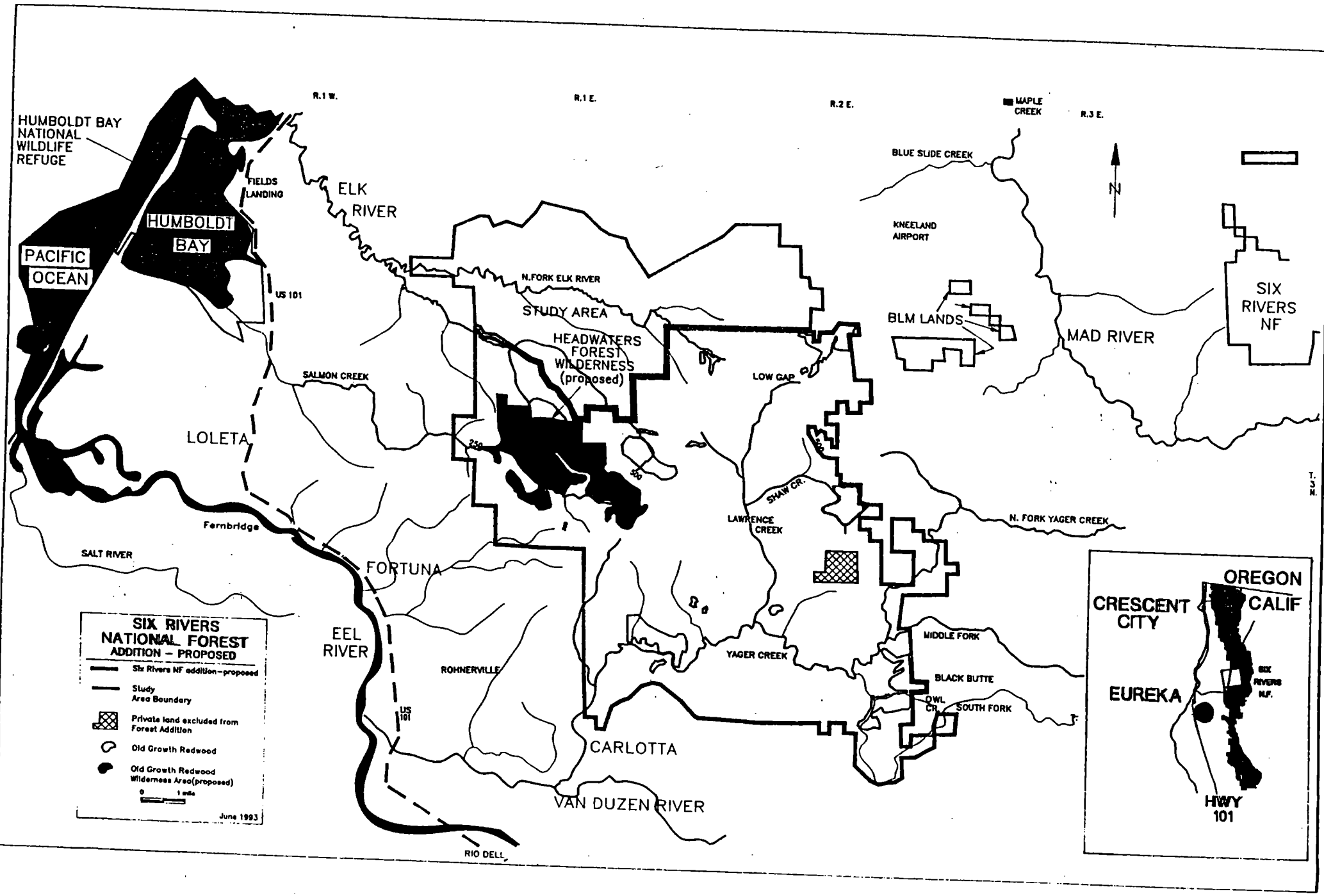
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Congress of the United States
House of Representatives
Washington, DC 20515

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ENVIRONMENT AND NATURAL RESOURCES
FISHERIES MANAGEMENT

August 4, 1993

As Submitted & Printed in the Congressional Record

The Headwaters Forest Act I am introducing today, joined by 80 of my colleagues, is the first step in this Congress to protect permanently the largest privately owned stand of old growth redwood in the world.

These stands, located in my district in Northern California, are threatened by the owner's need to harvest aggressively to pay off high interest bond debt incurred to purchase them. In 1985, MAXXAM Inc. CEO Charles Hurwitz, with help from Michael Milken, engineered the takeover of Pacific Lumber Company which had managed their redwood forests for sustainable yield for over 120 years. At the time of take-over, Pacific's land included about 16,000 acres of virgin old growth redwood.

Today, only about 5,300 acres of these majestic giants remain. They are the anchor for a unique ecosystem that is home to the Northern Spotted Owl, the marbled murrelet, several native stocks of salmon, and other old-growth dependent species. Headwaters Forest old growth is one of the three primary nesting sites of the marbled murrelet, listed as threatened in California in October 1992 under the Endangered Species Act.

In late 1992, in spite of concerns expressed by the Fish and Wildlife Service about potential impact on critical nesting habitat of the marbled murrelet, Pacific Lumber began a weekend harvest of one of the virgin old growth groves. Although that harvest was halted by litigation, such harvests are virtually certain to continue without federal acquisition. An important part of our national heritage rooted in northern coastal California will be lost forever.

The Headwaters Forest Act will authorize acquisition of the remaining old growth redwood groves and the second growth forests which connect them. The Act forbids timber harvest in the old growth areas and requires management to enhance and sustain the old growth ecosystems. Selective sustainable harvest of the second growth forests will be allowed to the extent consistent with maximizing the needs of the old growth. A management plan will be developed detailing rehabilitation and restoration of previously logged areas, giving preference to unemployed former timber workers and fishermen for this work.

No mystery shrouds the continued listing of species dependent on old growth forests: the old growth itself is rapidly falling victim to market pressures. Safeguarding the Headwaters Forest and the species it supports will contribute significantly to political peace between logging and environmental interests in coastal Northern California and will preserve for our nation, our children, and their children a truly non-renewable natural resource.

If these ancient trees are cut, the old growth redwood ecosystem is lost. The

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conditions that fostered their growth no longer exist. Scientists agree that it is unlikely that old growth ecosystems will be recreated even if today's young trees are allowed to grow for hundreds of years. There is much we do not understand, biological resources hidden in these forests we have not yet discovered. The Headwaters Forest Act is an important step in preserving unrealized potential together with the well-recognized value of the old growth redwood ecosystem.

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

COMMITTEES:
WAYS AND MEANS
DISTRICT OF COLUMBIA

STATEMENT OF CONGRESSMAN PETE STARK
ON THE INTRODUCTION OF
THE HEADWATERS FOREST ACT
August 4, 1993

I am happy to join Congressman Hamburg in the introduction of legislation which will protect the Headwaters Forest, including the last, large stand of virgin, old growth redwood. The legislation calls for the acquisition of 44,000 acres for purposes other than paying interest and debt on corporate junk bonds.

The old Pacific Lumber Company is gone. In its place, Maxxam Corporation has abandoned the North Coast area, bleeding redwood dollars away from the community, employees, and pensioners for the benefit of its Houston headquarters and high-interest bond holders. Hundreds of jobs will be lost under Maxxam's current harvest practices. The only increase in employment will be for the political hacks hired to lobby for the destruction of the North Coast.

The legislation introduced by Congressman Hamburg and myself will return the sound management practices conducted by the real Pacific Lumber Company. The aggressive, greedy management of Maxxam has put the forest at risk, jobs at risk, pensions at risk, and threatens the long-term welfare of the North Coast communities.



Summary Headwaters Forest Wilderness Act

Section 1. Short Title

"Headwaters Forest Wilderness Act"

Section 2. Findings and Purpose

The pressure to cut old growth redwood to pay high interest rates on poor quality bonds without regard for ecological or symbolic significance and without following Federal timber harvest guidelines creates the need for federal acquisition.

Acquisition is intended to preserve and enhance old growth redwood forests and habitat for old growth dependent species, particularly the Northern spotted owl, marbled murrelet and salmon stocks.

Section 3. Addition to Six Rivers National Forest

Six Rivers National Forest is expanded to add approximately 44,000 acres which includes the Headwaters Forest, other old growth groves, and the connecting second growth forests.

Acquisition by purchase, land exchange, and donation (including donation from the State of California) is authorized. Preparation and implementation of an acquisition plan is required, giving preference to acquisition of the Headwaters wilderness and other proposed wilderness area.

Section 4. Wilderness Areas

Designation as Wilderness Areas and mapping of the Headwaters Forest and one other grove are authorized.

Section 5. Administration

Development of a management plan is required to preserve and restore old growth ecosystems. Sales of timber from old growth is to be prohibited and restoration projects identified to mitigate effects of previous timber harvesting on watershed and habitat for old growth forest dependent species.

Management is to be consistent with all applicable laws and policies and the management plan. Priority to displaced timber and fisheries workers is required for performance of rehabilitation projects.

Section 6. Payments in lieu of taxes

Annual payments to the county in which the forest addition is located will be made to offset loss of State yield tax revenues resulting from heightened level of protection created in the Act.

Section 7. Forest Study

Authorizes study of additional acreage to determine potential for significant contribution to old growth protections from federal acquisition.

AUGUST 6, 1993

Cutting Costs

For Takeover Baron, Redwood Forests Are Just One More Deal

Hurwitz Wants U.S. to Buy
His Trees for \$600 Million
Or He'll Let Chainsaws In
'Houdini of High Finance'

By CHARLES MCCOY

Staff Reporter of THE WALL STREET JOURNAL
It is a proposal that brings new meaning to the term greenmail.

Financier Charles Hurwitz wants the U.S. government to pay him hundreds of millions of dollars for 4,500 acres of the ancient redwoods, in a remote California grove known as the Headwaters Forest. Otherwise, he says, he will press ahead with his plans to cut the trees down.

It's not just a fantasy. This week, a bill was introduced in Congress to buy as much as 44,000 acres from Mr. Hurwitz, including the Headwaters. Although a price hasn't been spelled out and Mr. Hurwitz scoffs at the legislation, his representatives say he wants about \$600 million for the Headwaters tract alone.

Mr. Hurwitz, who controls Northern California's Pacific Lumber Co. through his 31%-owned conglomerate, Maxxam Inc., has become Public Enemy No. 1 to some environmentalists for his stand on Headwaters and for Pacific Lumber's heavy and possibly illegal logging in other parts of California in recent years.

Junk Bonds

Rep. Dan Hamburg, who introduced the bill to buy the forest, acknowledges that it is "distasteful to many people" to give Mr. Hurwitz a taxpayer-funded windfall for the trees. "But the alternative is to lose an environmental treasure," says the California Democrat.

Maxxam is a creature of the 1980s takeover and junk-bond frenzy, and remains heavily indebted. Environmental opposition has slowed Pacific Lumber's logging, and Maxxam's other main business, aluminum, is swooning because of world-wide price cutting. Mr. Hurwitz could use the sale of the Headwaters to make Maxxam financially healthy.

Don't be surprised if he pulls it off. The 53-year-old Houston businessman has gotten into and out of more controversies than almost any other major financial player of the past decade. He is still being

sued by investors who claim he committed fraud in the takeover of Pacific Lumber. And he is still negotiating a settlement with the Federal Deposit Insurance Corp. over the collapse of United Savings Association of Texas. Mr. Hurwitz controlled 23% of the parent of United Savings, whose demise may cost taxpayers as much as \$1.6 billion.

More recently, Maxxam shareholders have accused him of cutting himself sweet deals at their expense. On four occasions he has been accused by regulators or investors of looting firms he controlled. Some of the actions are pending; others were settled, with Mr. Hurwitz denying any guilt. He not only survives, but seems close to shoring up his troubled empire.



Charles E. Hurwitz

"This guy is the Houdini of high finance," says Craig Gilmore, head of Gilmore & Co., an investment adviser in Carlsbad, Calif.

Defending His Practices

In a rare interview, Mr. Hurwitz defends Pacific Lumber's environmental record and his other corporate practices, and complains that he has been unfairly branded by radical environmentalists and a hostile press. "I'm as much an environmentalist as anybody in the world," he declares. He denies any wrongdoing in the various lawsuits and regulatory matters in which he has been involved. He argues that there are plenty of old redwoods already protected in parks, and that logging in the Headwaters doesn't pose a significant threat to the species.

As for Rep. Hamburg's bill, Mr. Hurwitz is blunt. "It's ridiculous," he says. While Pacific Lumber is willing to part with the Headwaters, selling off 44,000 acres — nearly a fifth of the company's timberlands — isn't in the cards, he says. "The law of the land is not to steamroll owners of private property."

Even to many who know him, Mr. Hurwitz seems a perplexing mix. He is a quiet man, an acknowledged master at sniffing out deals, a generous contributor to Houston charities, and almost austere in his personal habits: no limos, no corporate jets, no gaudy displays of wealth.

He seems consumed by his work. When something strikes his fancy and the first stirrings of a possible deal begin to suggest themselves, he often exclaims: "There's a pony in there." Friends say he is so driven to succeed that he can develop a sort of tunnel vision. "He is capable of intense focus, and sometimes he may not foresee how some of his actions will look to the rest of the world," says Walter Fitzgerald, an admirer and former adviser.

Redwoods are proving to be both Mr. Hurwitz's salvation and his biggest headache. He acquired the country's largest private redwood forests in his raid on tree-rich Pacific Lumber in 1985, two years

Cutting Costs: Takeover Baron Hurwitz Wants U.S. To Pay Him \$600 Million for Ancient Redwoods

Continued From First Page

after taking control of United Savings.

The raid became an exemplar of 1980s-style finance: He blitzed a sleepy, undervalued old company, famous for its environmentally conscious logging practices. Suspicions of insider trading abounded, including allegations involving junk-bond king Michael Milken and trader Ivan Boesky. Maxxam bought control for about \$900 million, mostly in junk bonds Mr. Milken floated. In his first meeting with Pacific Lumber employees, he told them: "There's a story about the golden rule. He who has the gold, rules."

Under Mr. Hurwitz, Pacific Lumber began cutting down redwoods at twice the company's historic pace, to pay down debt. Pacific Lumber has been warring with environmentalists ever since. "Pacific Lumber," says Kathy Bailey, a Sierra Club forestry expert, "is the archenemy."

Rare Bird

The latest battleground is Owl Creek, a few miles southeast of the Headwaters. At 465 acres, Owl Creek is the second largest stand of privately owned ancient redwoods in the U.S., behind only the Headwaters. It is also one of the last known habitats of the marbled murrelet, a rare coastal bird protected under state and federal endangered-species laws.

In June and November of 1992, over weekends and holidays when wildlife regulators weren't working, Pacific Lumber cut down hundreds of redwoods and firs in Owl Creek — despite warnings from regulators that doing so might violate wildlife protection laws, and despite previous agreements that regulators insist committed the company to hold off logging.

Pacific Lumber claims that environmentalists and wildlife agencies are violating its property rights. It cites permits it has received from California's Board of Forestry to log at Owl Creek. "This is an example of government out of control," fumes Thomas Herman, Pacific Lumber's resources manager. Chief Executive and President John Campbell says the company is in the "final stages" of developing a long-term plan for managing the marbled murrelet's habitat to assure that none of its logging ever jeopardizes the bird.

Environmentalists sued Pacific Lumber in San Francisco federal court, and the Fish & Wildlife Service says it is consider-

ing seeking criminal charges. Says James Steele, the top state biologist for Owl Creek: "They basically conducted sneak attacks out there."

Litany of Problems

That kind of charge has haunted Mr. Hurwitz during his entire career. He has been sued by the Securities and Exchange Commission for alleged stock manipulation in a 1971 case (settled by consent decree while denying any guilt); charged by New York state regulators in 1977 with looting an insurance company (settled by paying \$400,000 while denying any wrongdoing); sued by investors for allegedly committing fraud in the takeover of Pacific Lumber (two suits pending); and sued by the Labor Department for allegedly investing Pacific Lumber's pension fund with Executive Life Insurance Co. in return for junk-bond financing of the takeover (pending). Executive Life later collapsed, imperiling payments to retirees. Pacific Lumber is making up the shortfall while Executive Life is being sold.

Most of the litigation began in the 1980s. In the 1990s, Mr. Hurwitz has kept a much lower profile, but again faces lawsuits, this time for allegedly looting Maxxam at shareholders' expense.

A focus of that action is the desert town of Rancho Mirage, Calif. Locals have battled Mr. Hurwitz for a decade over his efforts to build a complex of luxury homes and a hotel, called Mirada. Lot sales and construction have been slow.

The Mirada property was originally owned by Federated Development Co., a company wholly owned by Mr. Hurwitz and his family. Federated borrowed heavily from Maxxam to fund the project. In 1991, the project's poor performance put Federated on the edge of defaulting on \$34.3 million in loans and interest it owed Maxxam. Maxxam's board, which Mr. Hurwitz chairs, forgave the loans — and paid Federated an additional \$8.6 million for the Mirada project. The bottom line: A company that Mr. Hurwitz owned eliminated its Mirada debt, received an infusion of new funds and got rid of a floundering project — all at the expense, a lawsuit alleges, of Maxxam's shareholders.

On another occasion, Mr. Hurwitz took advantage of an unusual option deal, funded by Maxxam affiliates, that enabled him to increase his Maxxam holdings by

a third. He paid only \$10.40 a share for about a million shares of stock that was then trading at about \$35. Critics complained that he should have shared the stock windfall with other holders. Mr. Hurwitz now has 60% voting control through common and preferred shares.

Both episodes led to shareholder suits, pending in Delaware Chancery Court. "The deals stink," says Lester C. Houtz, an attorney for Dallas tycoon and Maxxam holder Harold Simmons. "At Mirada, Hurwitz just stuck Maxxam's other shareholders with a white elephant that was about to step right on him." Mr. Hurwitz says neither suit has any merit, and predicts that the "world-class" Mirada project will pay off big for Maxxam someday. "I don't self-deal . . . and we'd never do anything to the detriment of Maxxam holders," he says. "I am the biggest one."

Despite the shareholder disputes, Mr. Hurwitz keeps attracting new investors, as displayed in the April refinancing of \$510 million of Pacific Lumber junk bonds. The bonds were costing more than 12% a year, and payments totaling about \$482.3 million were due beginning in 1993. Many Wall Streeters figured that Mr. Hurwitz would have to sell assets to meet payments; some thought it might signal the unraveling of his empire.

Mr. Hurwitz proposed spinning off most of Pacific Lumber's land into a new company and offering \$360 million of bonds of that new entity. The sole source of repayment: Proceeds from selling logs to Pacific Lumber — at a pace that implies cutting at well above the company's pretakeover levels. He also offered \$200 million of new Pacific Lumber bonds.

Rarely has an exercise in corporate refinancing stirred up so much resistance. For starters, Pacific Lumber's constant warfare with environmentalists and uncertainty over federal timber policy gave many investors pause. The Sierra Club, the Wilderness Society and others denounced the refinancing and appealed to Congress to block it. Rep. Fortney Stark (D., Calif.) introduced legislation to foil the refinancing by slapping a 75% excise tax on redwoods cut to pay bonds.

Mr. Hurwitz scrambled his lobbyists, including former Jimmy Carter aide Stuart Eizenstat, recently nominated by the Clinton administration to be the U.S. represen-

tative to the European Community, and former California Congressman Doug Bosco. They lobbied against Rep. Stark's bill; it still hasn't gotten out of committee.

Mr. Hurwitz not only completed his refinancing, saving Maxxam at least \$20 million a year in interest, but increased the offering to a total of \$610 million. And Pacific Lumber paid Maxxam at least \$25 million in special cash dividends.

The deal came at a vital time for Mr. Hurwitz because of recent problems at Maxxam, especially diving aluminum prices. Maxxam stock has slipped to \$30 a share from a high of \$50 in late 1991. Mr. Hurwitz's stake, excluding preferred shares, is worth about \$84 million today. With Maxxam's new breathing room, many in Wall Street think the conglomerate may have a break-up value of \$100 a share if the economy recovers, which would put his equity stake alone at about \$280 million.

Mr. Hurwitz commands remarkable fealty on Wall Street. "Take the refinancing: It makes very little economic sense (to bond buyers) because of all the uncertainty around future logging levels," says Peter Thornton, an analyst with Duff & Phelps. "But it flew because Hurwitz has many believers on Wall Street." Adds Mr. Gilmore, the California adviser: "The guy makes some great deals, say what you will about him."

At a New York lunch last year, Mr. Hurwitz was surrounded by admiring Wall Streeters. According to attendees, Mr. Hurwitz took in the plaudits and observed: "Wait till you see what happens with Pacific Lumber — it's going to be worth a whole lot more than you think ... a whole lot."

He may have been thinking of the Headwaters Forest in California.

High in the mountains above Fortuna, 4,500 acres of giant ancient redwoods and Douglas firs tower above a crystal torrent called Salmon Creek.

For nearly five years, Mr. Hurwitz has been threatening to log in the Headwaters unless he is paid big money. Privately, some of his advisers concede they probably couldn't cut there because of the environmental outcry it would provoke. Yet his lobbyists have been trying to work out a deal with the federal government under which Mr. Hurwitz could get roughly \$600 million for the Headwaters. Maxxam paid \$900 million for all of Pacific Lumber, including its 196,000 acres of prime timberlands, of which Headwaters represents only a small fraction.

At today's high prices for top-grade redwood, some timber specialists figure

the trees may indeed be worth \$600 million; others say that figure is grossly inflated.

"It's fallacious to base a price on what Headwaters could command as lumber, since in all likelihood it can never be logged," says John DeWitt, head of Save the Redwoods, which specializes in buying and preserving redwoods. He figures the trees should go for at most \$100 million, based on historic prices for parklands. Mr. DeWitt and other environmentalists, though loath to reward Mr. Hurwitz, argue that not protecting the Headwaters permanently through a buyout leaves it open to the risk that wildlife laws, the political climate or public attitudes might some day change—enabling Mr. Hurwitz to do whatever he wishes in the forest.

Rep. Hamburg's bill, which has 80 co-sponsors, would authorize the gradual purchase of 44,000 acres of Pacific Lumber land, including the Headwaters. Although the legislation doesn't specify how the purchases would be financed, Headwaters, Owl Creek and other remnants of Pacific Lumber old growth would be preserved; the remaining acreage would be managed by the Forest Service.

Mr. Hurwitz says that he recently tramped a short way into the Headwaters, and himself marveled. "Redwoods are beautiful," he observes. "All trees are beautiful." But he still thinks the land should be logged, unless someone buys it up. "These are not the last trees of their kind in the world."

Times-Standard

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Forest measure unveiled

Hamburg bill targets PL old-growth land

By Kevin Keane
Thomson News Service

WASHINGTON — Rep. Dan Hamburg introduced Tuesday his controversial bill to acquire 44,000 acres of land from Pacific Lumber Co., including Headwaters Forest.

PL officials have said repeatedly that they have no intention of willingly selling the 44,000 acres to the federal government.

Hamburg, D-Ukiah, and other Democrats want to make the PL land part of Six Rivers National Forest. And he has some heavy hitters on his side.

Co-sponsoring his bill are

■ **LOGGING:** Bill would end tax break for exporters/A10

chairmen of three House committees with oversight of the legislation: California Rep. George Miller, D-Pleasant Hill, who heads the Natural Resources Committee; Rep. Bruce Vento, D-Minn., chairman of the forest subcommittee; and Rep. Gerry Studds, D-Mass., chairman of the Merchant Marine and Fishers Committee.

House Majority Leader Richard Gephardt, D-Mo., and House Whip David Bonior, D-Mich., also are co-sponsors.

The lawmakers said their desire to acquire the land apparently is based on Texas-based Maxxam Inc.'s purchase of Pacific Lumber Co. in 1985. The purchase was financed with the help of high-risk, or "junk," bonds.

Since Maxxam's takeover, the amount of old-growth redwood on PL's land has dropped from 16,000 acres to 5,300 acres, Hamburg said.

"These stands ... are threatened by the owner's need to harvest aggressively to pay off high-interest bond debt incurred to purchase (PL)," Hamburg said.

Last year, Rep. Fortney "Pete" Stark, D-Oakland, ripped PL's harvesting practices when trying to pass a bill similar to Hamburg's.

Stark's efforts failed and he said he is now supporting Hamburg. He contends hundreds of jobs will be

lost if Maxxam's harvesting practices aren't stopped.

"The old Pacific Lumber Company is gone," Stark said. "In place, Maxxam Corporation abandoned the North Coast and bleeding redwood dollars away from the community, employees and pensioners for the benefit of its Houston headquarters and high-interest bond holders."

The legislation calls for Agriculture Secretary Mike Espino to negotiate with PL to purchase or trade federal property for the land in question.

The top priority is acquiring the 3,000-acre Headwaters Forest southeast of Eureka near Salmon Creek, according to the bill.

The bill also would prohibit PL from harvesting any old-growth timber and would allow selective

■ See BILL/Back of Section

BILL: Aimed at Maxxam

FROM A1

harvesting of second-growth timber.

The legislation also calls for developing a forest management plan that would rehabilitate previously logged areas.

Hamburg said his bill is needed to protect several endangered or threatened species that live in

PL's old-growth forests. They include the northern spotted owl, marbled murrelet and several salmon species.

"The old-growth redwood forest is not a renewable resource," Hamburg said. "If these ancient trees are cut, the old-growth redwood ecosystem is lost."

THE Press DEMOCRAT

At issue: Jobs, dollars and the irreplaceable

By MIKE GENIELLA
Staff Writer

H EADWATERS FOREST — Few outsiders have ever walked through this ancient forest, including two Northern California lawmakers who want Congress to preserve it as a wilderness.

To stand in Headwaters is to sense the forest primeval.

Redwoods, 500 to 700 years old and towering 250 to 300 feet, dwarf old fir trees that compete for the sunlight. A few giants may date back to the time of Christ. Headwaters is a forest that has never felt an ax.

Pacific Lumber Co. owns Headwaters and restricts access as if it were the forestry equivalent of Fort Knox. The biggest trees could be worth \$100,000, their lumber some of the most valuable in the world with a perfect tint of red and an almost imperceptible grain.

The company is willing to preserve the forest at a price — at least \$600 million.

Northern California Reps. Dan Hamburg and Pete Stark, backed by many local, state and national environmental groups, want Headwaters trees locked up and protected. They say the redwoods are irreplaceable, part of a coastal ecosystem of huge trees, owls and seabirds, rugged hills, summer fog, warm days

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and winter rain that is unique on the planet.

In a bill now before Congress they want Pacific Lumber to give up far more forestland than Headwaters, which is the single largest block of uncut redwoods left in private ownership. They also want the U.S. Forest Service to negotiate with Pacific Lumber to buy scattered virgin groves and about 38,000 acres in between to serve as a sanctuary for wildlife.

Overall, limited logging would be allowed on about 85 percent of the land. But the virgin groves would be designated wildernesses, and access would be restricted to backpacking hikers.

Worth the price?

At the heart of the debate is Headwaters itself.

Already, Save the Redwoods League, a conservation group that since 1918 has done more than any to help preserve the best of the old-growth redwoods, is questioning whether the money would be well spent.

"It's a beautiful tract of land, but it's an island in an already fragmented forest," said League President John Dewitt. "It's nothing like the great groves that we've already protected."

Headwaters covers five square miles between mountain ridges less than 10 miles east of Fortuna. When the fog lifts, the ocean can be seen from its highest points.

The forest is called Headwaters because it is the watershed for two streams: Salmon Creek and the south fork of the Elk River. Its hillsides plunge from one high ridge down to a narrow canyon bottom and then rise sharply up again.

Surrounding timberland is criss-crossed with logging roads, but none enter Headwaters. Only a trail exists where biologists have cut through the undergrowth to monitor the habits of wildlife like the marbled murrelet, a small seabird that nests in the high branches of old redwoods.

On Headwater's western edge, a clearcut abruptly ends next to a wall of trees. This is where company loggers in 1987 clear cut about 80 acres of trees. The next planned move into in Headwaters itself was halted by court order.

Since then, political momentum has been building to preserve Headwaters, which has been much discussed but rarely seen.

Pacific Lumber Co. President John Campbell and the company's chief logger accompanied a reporter earlier this month on a brief visit to the forest's southern flank.

Towering redwood trees grow along a high ridge, several hundred feet above a canyon floor. The quiet is disturbed only by the rustling of huckleberry leaves. On dry slopes such as this, huckleberry, hazel and many flowering herbs grow in thick clumps below the tall trees.

The trees are thick with bark and some are fire-scarred, recalling times when periodic wildfires roared up this mountain slope and nature was in control of the forest's fate.

Multi-layered canopy

Some trees reach upwards of 250 feet, overshadowing an array of Douglas fir trees. Together, the trees create a multi-layered canopy, and only dapples of sunlight reach the forest floor.

The serene setting is marred only by painted markings on some tree trunks, ones once selected to be felled by company loggers. They are sharp reminders of the conflict over this ancient land's resources.

The first publicity about Headwaters came in 1987, when Greg King, then an Earth First! activist from Sonoma County, trespassed onto the property and sought out a hidden forest that was then known only to a few outsiders.

King, a freelance writer and photographer, took pictures of an area at the confluence of three creeks where trees more than 15 feet in diameter soar above a carpet of 6-foot high ferns.

His photos were later published in a number of magazines including Newsweek, generating nationwide environmental interest in saving the ancient trees.

Now Hamburg, D-Ukiah, and Stark, D-Oakland, have introduced the most

expansive bill yet in Congress to preserve Headwaters and younger, surrounding redwoods.

Hamburg and Stark have never stepped onto the land they want the government to acquire.

Hamburg said he's flown over Headwaters and the surrounding timberland three times, including once early this spring with new Interior Secretary Bruce Babbitt.

"I think it's a lot more efficient to view it from the air. It's the best way to get a sense of the watersheds that we're talking about," he said.

"No one disputes what's there," said Stark aide Perry Plumart. "What's at issue here is whether you want the trees standing up, or lying down on the ground."

Hamburg and Stark say it's impossible to set a dollar figure on the overall acquisition. Instead, they say they envision using land swaps, state funds and contributions from environmental groups to help keep taxpayer costs down.

Pacific Lumber does talk dollars. Company executives say the trees, if logged, are worth \$600 million or more, the equivalent of \$200,000 an acre.

While the company has not disclosed the actual number of trees and their value, knowledgeable industry leaders say that at today's wholesale lumber prices that assessment is right on target. Anywhere between 10 to 20 big redwoods can grow on an acre, which might give Headwaters about 60,000 trees. If worth an average \$10,000 each, the forest's price tag would reach \$600 million.

Jobs at stake

Campbell says the issue is not only dollars and trees.

He runs the largest company in a county with one of the state's highest unemployment rates, and he argues that people and jobs also are paramount concerns — especially if the company were to lose the full 44,000 acres —

about one-fifth of its holdings.

"To remove that large a block of trees from production jeopardizes the ability of the company to continue as it is, and threatens the economic well-being of hundreds of workers and their communities," said Campbell.

But Hamburg and Stark and their environmental allies say it is the aggressive logging practices that Pacific Lumber has employed since being acquired by Texas financier Charles Hurwitz that threaten the region's economic stability. They say that for more than a century while Pacific Lumber was under family ownership, it managed its property carefully, but that under Hurwitz' ownership it has doubled its cut and intensified logging of the last of its old-growth groves.

Hamburg and Stark argue that Pacific

Lumber's logging pace can't be maintained over the long term, and that as the company depletes its inventory of trees, hundreds of people will be out of work.

"People are going to lose their jobs even if we don't protect these trees. That's the reality," said Hamburg.

Hamburg and Stark also believe Pacific Lumber's estimate of Headwaters' worth is exaggerated because the company's quest to log its remaining virgin groves has come under increased scrutiny from regulators and has been held up repeatedly by successful court challenges from environmentalists.

Both legislators have consulted frequently with the Environmental Protection Information Center, a Garberville-based group that has fought for years in the courts to block Pacific Lumber logging in Headwaters.

EPIC believes Headwaters is important as a genetic reservoir for future redwood forests, and a preserve for wildlife species thought to be dependent on old forests.

"I think the greatest crime man can do is drive other species into extinction," said EPIC organizer Robert Sutherland.

He and Cecilia Lanman are the prime movers behind EPIC, an organization with about 400 members and a \$100,000 budget that has emerged as a powerful force in North Coast timber debates.

Since the 1980s, EPIC has focused its energies on winning precedent-setting victories in the courtrooms and closely monitoring how state regulators follow up on court decisions.

Now it's involved in its biggest fight: helping Hamburg win support to preserve Headwaters as a wilderness, restrict logging on surrounding land and provide \$30 million or more for retraining and forest restoration projects for displaced timber workers.

Sutherland and Lanman say Pacific Lumber and other companies dependent on old redwoods are at risk because it is only a matter of time before they run out of trees.

"It's ludicrous to think you can continue to sustain an industry dependent on old-growth trees when you have only 2 percent of the virgin forests left," said Lanman.

Sutherland said geographically, Headwaters is an important island between Redwood National Park to the north, where thousands of acres of virgin trees are protected, and the King Range to the south.

"We need to connect these preserves in a meaningful way, so wildlife who are dependent on the old trees can survive," said Sutherland.

Campbell and supporters like the Alta California Alliance say Hamburg has fallen prey to "radical environmentalists" like Lanman and Sutherland.

They accuse Hamburg, Lanman and Sutherland of "toying with people's lives and livelihoods."

A high-stakes battle looms over deal for ancient trees

By MIKE GENIELLA
Staff Writer

A Texas billionaire has enlisted some of Washington's most influential Democratic power brokers in a battle over privately held ancient redwoods that environmentalists and two Northern California lawmakers want to preserve forever.

The stakes are immense in what could be the biggest congressional brawl over a California timber issue since Congress 25 years ago spent \$1.8 billion to carve Redwood National Park out of the North Coast's lushest redwood growing region.

Away from the public eye and even before a congressional buyout plan is formally introduced, representatives of financier Charles Hurwitz are discussing the future of his Pacific Lumber Co. timberlands with high-ranking Clinton administration officials.

Most sides agree on the noble purpose — to save stands of old-growth redwoods near Eureka owned by Hurwitz' Houston-based Maxxam Corp. that are virtually untouched by man as they have grown for up to 1,000 years.

The issue is just how many trees will go unlogged — and at what cost.

Legislation by North Coast Rep. Dan Hamburg, D-Ukiah, and backed by environmental groups could take control of 44,000 acres, a quarter of the company's timberland. The bill, already drafted, would be introduced this week.

The company, instead, wants the right to buy only 4,500 acres of the Headwaters forest and surrounding area at a cost of at least \$600 million.

Hurwitz has hired powerful Democrats with close ties to the Clinton administration and Congress. They include Doug Bosco, former North Coast congressman; law firm of Vernon Jordan, chairman of President Clinton's transition team last winter; and Art Eizenstat, former President

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THE Press DEMOCRAT

Forest

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Carter's domestic policy adviser and a Clinton European economic policy adviser.

"We've been working at the very senior levels in the Interior Department, the Agriculture Department and the U.S. Forest Service," Eizenstat said last week. "We're trying to find a creative way to come up with a fair market value to place these virgin forests in public ownership."

"We realize they're a very unique natural resource, but at the same time, the land is zoned for timber harvesting," he said.

Legislation expected to be introduced this week by Hamburg and Rep. Pete Stark, D-Oakland, envisions putting the 44,000 acres of Pacific Lumber land, including the Headwaters forest, under federal ownership.

Biological corridor

The measure, formally called the Headwaters Forest Act, already has been endorsed by 60 other lawmakers.

It would set aside Headwaters and isolated groves of old-growth trees totalling 6,000 acres as wilderness. It also calls for public control of 38,000 surrounding acres to create a "biological corridor" linking the special environment of hills, ocean fog, rain and hot summer sun found along 450 miles of California coastline, the only area on the planet where redwoods grow.

"This plan envisions managing the land by an eco-system or watershed approach, and incorporates the best thinking of the nation's top forestry scientists," said Hamburg.

Pacific Lumber says that giving up any more land than Headwaters would have devastating consequences for its employees and the local economy.

"This measure, if ultimately put into effect, would radically alter the way we do business, and could create a ghost town out of Scotia," said company President John A. Campbell. The company headquarters is in Scotia, the West's last company-owned mill town.

The other side, though, is approaching the issue as the cause of environmental protection in the face of corporate self-interest.

Influential liberal members like Rep. George Miller, D-Martinez, chairman of the House Natural Resources Committee, have sided with Hamburg and Stark.

Hamburg and Stark also are counting on help at the state level.

Gov. Pete Wilson and state Resources Secretary Doug Wheeler remain on record in support of public acquisition of the Headwaters forest. In addition, North Coast state Sen. Mike Thompson, D-St. Helena, is pushing a bill that would put a state bond issue before voters sometime next year and raise \$225 million toward acquisition of unspecified old-growth timberlands.

But members of Save the Redwoods League, which has worked since 1918 to protect the best of the old trees, wonder if the political battle, and the money it may cost taxpayers, is worth the effort to preserve Headwaters. It considers the forestland marginal compared to what's already been set aside in state and federal parks.

"I think there's a great big question mark about the wisdom of letting Pacific Lumber cash in at the public's expense," said League President John Dewitt. "I also think environmentally, \$500 million could be better spent on other acquisitions, or in other areas."

Rein in Hurwitz

Nevertheless, Stark, a noted conservationist, is determined to legislatively rein in the Hurwitz management. For the first time, Stark has the local congressman standing with him.

Stark and Hamburg said the time has come for the public to stand up to Wall Street

THE Press DEMOCRAT

THE PRESS DEMOCRAT, SUNDAY, JULY 25, 1992

Pacific Lumber owner says he's 'committed to the area'

Hurwitz: Timber investment is for the long term

By MIKE GENIELLA
Staff Writer



Hurwitz

Texas financier Charles Hurwitz says he's sticking with Pacific Lumber Co. for the long haul. "We've been here in the good times, and we've been here in the bad times," said

Hurwitz, whose Houston-based Maxxam Inc. bought the aristocrat of North Coast timber companies and its 193,000 acres of forest land seven years ago.

"And we're going to continue to be here. We're committed to the area."

Hurwitz' comments were directed at criticism that Pacific Lumber under his ownership is liquidating North Coast forests for quick cash; putting at risk workers and communities that depend on the company for their livelihood.

Hurwitz, who rarely gives interviews, said Maxxam's nearly \$1 billion corporate takeover of Pacific Lumber in 1986 remains a long-term investment that continues to pay off.

Pacific Lumber only has to log one-half the volume as it has in recent years because refinancing of \$620 million of debt has led to lower interest payments, while operating income is increasing because of

rising lumber prices, according to company executives.

Hurwitz said, "I've never been involved with a better-run company, or a more dedicated management. It has good people and great assets. What more could an investor want?"

Parlays investment

Hurwitz, 51, emerged as one of the most successful corporate takeover artists of the 1980s.

He parlayed an investment in the old Simplicity Pattern Co. into an international conglomerate, with controlling interest in Kaiser Aluminum Co. and Pacific Lumber and several real estate ventures. Pacific Lumber is the world's largest producer of premium grade redwood lumber products, with 1991 sales exceeding \$200 million.

Hurwitz' financial successes have come under scrutiny by federal regulators, however.

A 1987 Congressional investigation linked the Pacific Lumber takeover to dealings involving convicted inside Wall Street traders Michael Milken and Ivan Boesky. In 1989, the Federal Deposit Insurance Corp. filed a still-pending, \$534 million claim against Hurwitz for his role in the collapse of a Texas savings and loan.

And in 1991, the Department of Labor sued Hurwitz over Maxxam's handling of Pacific Lumber's pension fund after the takeover.

Maxxam and Hurwitz have denied all allegations made in the cases.

Growing debate

The media-shy Hurwitz usually has corporate executives like John A. Campbell, Pacific Lumber's

president, speak on his behalf.

But now, Hurwitz and his long-term plans for Pacific Lumber are part of the growing debate over a Congressional proposal for public acquisition of 44,000 acres of Pacific Lumber timberland.

Earlier this month, he joined in a 15-minute conference call from Houston with Campbell and a Press Democrat reporter.

Hurwitz limited his comments to the issue of his commitment to Pacific Lumber and whether its 1,300 company workers can bank on Maxxam Corp. for the long haul.

Why Maxxam's motives are still suspect after nearly eight years of ownership is puzzling, Hurwitz said.

"Our actions speak louder than any words," he said.

Rebuilding Scotia

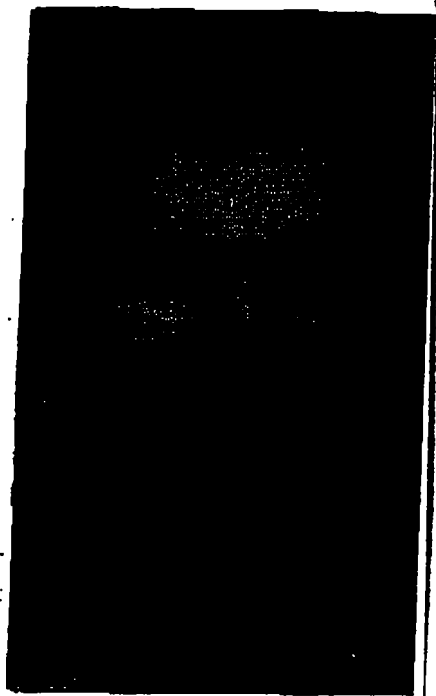
Hurwitz said, "We've spent over \$100 million since we've been involved with the company. We've put more money into the company than was spent by the former management in the past 100 years."

Hurwitz cited the rebuilding of Scotia's town center after an earthquake-spawned fire destroyed it in April, 1992. He talked about Pacific Lumber buying additional land with trees that won't be ready for harvest for another 20 to 30 years.

"I can't imagine any better examples of investing for the long-term," Hurwitz said.

"Our record for the past eight years should speak for itself. We've invested heavily in this company, and we expect to be around to enjoy the returns," he said.

Eureka Tim Skudd
8/10/93 T-3



Charles Hurwitz
Calls bill "ridiculous"

Maxxam may log forest

By Xan Bernay
The Times-Standard

EUREKA — Pacific Lumber Co. owner Charles Hurwitz plans to start logging the Headwaters Forest unless the U.S. government gives him hundreds of millions of dollars, according to an article in The Wall Street Journal.

Hurwitz, the Texas financier who controls PL through its parent company Maxxam Inc., was quoted in the Friday article as saying he would consider selling the Headwaters Forest, about 20 miles southeast of Eureka, for about \$600 million.

He also said there are plenty of old-growth redwoods already preserved in parks.

Hurwitz labeled as "ridiculous" Rep. Dan Hamburg's recently introduced bill that would authorize the government to purchase about 44,000 acres of PL land, including the approximately 3,000-acre Headwaters Forest.

PL officials have repeatedly said that the company would be

HAMBURG FIRST DIES 28-11
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PL officials have repeatedly said that the company would be willing to part with only the Headwaters parcel and about 1,500 additional acres as a buffer zone.

Maxxam Inc. officials were not available for comment Monday, but PL spokesman David Galitz said the company should have a formal response to the article soon.

Meg Ryan O'Donnell of Hamburg's Washington, D.C., office said Hurwitz's comments are "one perfect example of why (Hamburg) feels the issue is so important to pursue."

She also said Hurwitz's comments show a "lack of respect" for the community.

Josh Kaufman, a board member of the Environmental Protection Information Center in Garberville, said Hurwitz incorrectly states that there are still plenty of old-growth redwoods in the world.

"There is 3 1/2 percent of what there once was," he said. "It is a severely fragmented eco-system."

He also said that while he agrees with the goals of Hamburg's bill, the fact that Hurwitz may profit from any land sale is "not an ideal situation."

He also scoffed at Hurwitz's claim in the article that he is an environmentalist.

"I don't know how he could say that," Kaufman said.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

**maxxam
hurwitz**

Divider Title: _____

Ancient Redwoods Fall to a Wall Street Takeover

By ROBERT LINDSEY

Special to The New York Times

SCOTIA, Calif. — Thousands of redwood trees are being felled along California's wild northern coast in an environmental drama that is arousing high emotions and demonstrating how decisions on Wall Street can affect people, communities and natural resources far away.

The emotions have been stirred by the decision of a Houston financier, Charles E. Hurwitz, to double the rate of tree-cutting in the nation's largest privately owned virgin redwood forests. Mr. Hurwitz says the production increase is necessary to repay \$795 million that his company, the Maxxam Group, borrowed in 1985 to buy the Pacific Lumber Company here.

Pacific Lumber, a venerable old California logging company that a 1951 Saturday Evening Post profile called "Paradise With a Waiting List," had a reputation for paternalistic policies toward employees and for harvesting timber at a pace slow enough to preserve its oldest stands of redwoods well into the 21st century.

Now, many residents here contend that trees are being cut so fast that both the region's environmental quality and its economy are in jeopardy. "To pay off this big debt, they're just chewing up the environment," said John Maurer, a former employee who quit to protest the new policies. "And they're taking out the cream, so there won't be anything left for the future."

Company Defends Practices

But spokesmen for the company say the accelerated cutting is in line with common industry practice and is not environmentally unsound. They say production can be sustained indefinitely under current plans.

The Pacific Lumber takeover is one of many financed by selling high-yield, high-risk corporate notes, through Drexel Burnham Lambert, specialists in what some people call "junk bonds."

And, as in many such takeovers, Maxxam sought to pay back what it borrowed by selling or otherwise making use of the purchased company's assets.

Maxxam, through its Pacific Lumber subsidiary, now owns 300 square miles of forest in one of the nation's most undeveloped regions, including vast stands of towering redwoods never before logged. The company is doubling its production by logging for the first time in this "old growth," which yield premium-priced lumber with few knots and more beautiful grains. And instead of cutting some trees, the company is felling all the trees in selected tracts.

Maxxam's harvesting of these trees, many over 1,000 years old, to satisfy



A recently clear-cut area of the Pacific Lumber forest near Eureka, Calif.

debts incurred in a corporate takeover has been under increasing attack from environmentalists and local, state and Federal officials for more than a year. In recent weeks these critics have scored several victories.

Loggers See Another Side

Perhaps most notable is that many company loggers and sawmill workers, who once scorned environmentalists as "tree huggers," have joined protests against the increased harvest. "They're just leveling everything," said Greg Garibay, a 34-year-old Pacific Lumber power plant worker. "They're destroying the future, leaving nothing for the next generation."

Environmental groups won court decisions blocking harvests in several parcels. Two bills were introduced in the California Legislature to prohibit large logging companies from cutting more timber than they grow each year.

Meanwhile, the harvest uproar has focused new attention on the takeover of Pacific Lumber.

Lawyers for the Federal Trade Commission say they are reviewing evidence presented by two United States Representatives who said it showed that Maxxam and Mr. Hurwitz might have violated Federal antitrust law in the acquisition. Congressional investigators also say they have evidence of "irregularities" in Maxxam's termination of Pacific Lumber's pension plan. Spokesmen for Mr. Hurwitz deny any



Scotia is in logging country, amid stands of undeveloped redwoods.

illegalities or improprieties in the acquisition or in the pension plan's termination.

Big Paychecks, Big Worries

They also deny that the harvesting practices are detrimental to the environment or to the future of the local economy. John A. Campbell, a Pacific Lumber executive for several years who is now vice president and operations director here, says consultants have determined that if the company maintains its current policies for 20

years, its timberlands "will still support a substantial timber inventory of old-growth redwoods and Douglas fir." If production is then reduced, he says, there will be enough timber growth to sustain production indefinitely.

Here in Scotia and nearby logging communities, loggers and sawmill crew members are driving new pickup trucks and enjoying the biggest paychecks of their lives, with many working a 60-hour week to meet the new production schedules.

But many also worry the trees are being cut so rapidly that the region's natural resources will be depleted to form what several called "another Appalachia."

"Many people who have worked for Pacific Lumber for years feel hopeless and helpless," said William Bertain, a lawyer here who represents former Pacific Lumber shareholders fighting the increased harvest and the terms of the takeover. "They feel Maxxam is raping the land and dismembering the company."

Clearing of Large Tracts

One worker, who said he did not want his name published because he feared company reprisal, said cathedral-like groves of old redwoods towering more than 300 feet high were being "mutilated." While Pacific Lumber's practice had been to harvest logs by selectively removing some trees and leaving others for re-seeding and later harvest,

the practice is now to clear all trees from areas ranging from 40 acres to more than 500 acres.

"Clear-cutting is bad for the land," the worker said. "We get monsoons here eight months of the year; soil is drained off the land; but people are afraid to speak up how they feel. They're stuck here. They can't afford to move out."

But Mr. Campbell, the company executive, defends clear-cutting as a responsible, common forestry practice.

"Removing the old-growth redwood, which now grow little if at all," he told a recent legislative hearing, "will allow the land on which they stand to regenerate forests of faster-growing new trees; in addition, there will be massive replanting."

Despite such assurances, opponents of corporate takeovers financed through high-yield bonds are using the cutting of centuries-old redwoods as further ammunition.

"This is a very important example of the takeover and dismemberment of a good corporate citizen," said Representative John D. Dingell, Democrat of Michigan, chairman of the Energy and Commerce Subcommittee on Investigations and Oversight. "It is bad for employees and the economic health of the area."

Other Legal Questions

Mr. Dingell, a Michigan Democrat, is attacking the Pacific Lumber deal on another front. In a Jan. 28 letter to the Federal Trade Commission, he and the ranking Republican on the subcommittee, Thomas J. Bliley Jr. of Virginia, said Mr. Hurwitz may have violated a 1976 Federal antitrust law in the acquisition of Pacific Lumber.

They contend that Maxxam, along with an affiliated company, acquired more than \$27 million in stock in Pacific Lumber before notifying the Federal Trade Commission that it was interested in the company as a takeover

spokesmen for the subcommittee. It requires a company to notify the F.T.C. whenever it has acquired more than \$15 million worth of another company's stock.

On another issue, subcommittee staffers said Friday that questions had been raised about Pacific Lumber's pension plan, which had \$90 million in assets when it was terminated after the takeover.

Maxxam kept more than \$50 million and used \$37 million to buy annuities for the 2,861 plan participants.

High-Risk Assets

Those policies were purchased from the Executive Life Insurance Company of Los Angeles, which has provided annuities to employees at several companies taken over with Drexel Burnham Lambert financing. According to investigators, that insurance company was chosen for the annuities contract despite missing a bidding deadline. And four Pacific Lumber executives objected to Executive Life because a large proportion of its assets are in high-risk securities, among them a significant share of the bonds issued for Maxxam's takeover of Pacific Lumber.

Efforts were made to reach Mr. Hurwitz for his response to these allegations, but a spokesman said he was not available. In a telephone interview Howard Bressler, general counsel to Maxxam, said the company had complied "meticulously" with all applicable laws in the merger. He said there was nothing improper about the handling of the pension plan and that the beneficiaries are well protected.

But Mr. Dingell objected that no one represented the employees' interests in the annuity purchase. With the \$50 million the company took out of the pension plan, he said, "the employees are being asked to finance the takeover and get none of the benefits of ownership — and unfortunately, the

THE NEW YORK TIMES NATIONAL NEWS

WEDNESDAY, MARCH 2, 1988

Pensions Inquiry at Pacific Lumber

By MIKE GENIELLA
Staff Writer

A state legislative probe into California's largest life insurance company will be expanded to include questions about the financial stability of a pension plan covering 27,000 Pacific Lumber Co. employees and retirees.

The Assembly Finance and Insurance Committee will begin hearings "within four to five weeks" on how dependent Executive Life Insurance Co. of Los Angeles is on earnings from high-risk junk bonds. The company is responsible for \$7.5 million worth of pension benefits to Pacific Lumber workers.

Committee Chairman Patrick Johnston, D-Stockton, said the \$19 billion insurance giant is coming under increasing scrutiny because of what appears to be its heavy investment reliance on high-risk junk bonds, the type of securities that pay higher interest rates because the bonds carry a greater risk of default.

On Friday the state Department of Insurance ordered Executive Life to change disputed accounting methods for its junk bond holdings. Four years ago Pacific Lumber's employee pension plan was terminated after its takeover by Texas financier Charles Hurwitz. About \$10 million in surplus funds were funneled into Hurwitz's corporate affairs and Executive Life was awarded a contract to furnish pension policies to generations of company workers.

Since then, a congressional inquiry and a federal court lawsuit have continued from page A1
raised concerns about the stability of the pension plan.

When questioned last Friday about the new legislative probe, Executive Life representatives said the concerns are unwarranted, and that pension policies now held by Pacific Lumber workers are on solid financial footing.

Executive Life is a subsidiary of First Executive Corp., the single largest holder of junk bonds that Hurwitz used to finance his \$882 million takeover of Pacific Lum-

million of the Pacific Lumber junk bonds.

A lawsuit filed in a San Francisco federal court last September by a group of unhappy Pacific Lumber employees alleges Hurwitz awarded the pension contract to Executive Life as a "reward" for its parent company's purchase of junk bonds used to finance the buyout. The suit contends Executive Life was not even on the list of qualified insurance companies recommended to Hurwitz by outside consultants.

The employees' lawsuit alleges that Executive Life, its parent company and other affiliates, have "approximately twice the percentage of their assets in high-risk corporate bonds as the life insurance industry as a whole."

The Pacific Lumber employees, now scrambling to raise money to keep the lawsuit alive, want the federal court to force Hurwitz and First Executive to buy a bond guaranteeing the policies or to rebid them to another insurer. California has no guarantee fund for consumers in the event of an insurance company's financial collapse.

Lester Reynolds, a 34-year employee of Pacific Lumber and one of the parties to the federal lawsuit, this past week welcomed news of the expanded state probe because he said the pension fund deal has created a lot of apprehension among workers and retirees.

"I've got five years to go to retirement, and now I don't know what's going to be there when I reach age 62," said Reynolds.

Since the takeover, lumber production at Pacific Lumber's Humboldt County mills have doubled, leading Reynolds to complain,

"We're working our fannies off to pay his (Hurwitz) big interest payments, but we don't know what we've got when it's all over."

In 1987, a congressional committee looking into the Pacific Lumber deal asked the U.S. Department of Labor to study the pension plan termination for possible violations of federal law. But Len Garafolo, the regional director in San Francisco, said last week he could not comment on the inquiry's status.

Allen Chapman, an Executive Life spokesman, said last Friday the continuing concerns of the Pacific Lumber employees' and the legislative committee are unwarranted.

"There are only 25 life insurers in the nation with an AAA rating, and we're one of them," said Campbell. He conceded, however, that the company was "put on a credit watch" recently by insurance rating agencies Standard & Poor's and Moody's.

"All of our plans have substantial security," contended Chapman. "With any plan there's always an element of risk but we're substantially stronger than our peer group, and the Pacific Lumber policy holders are protected by all of the assets of Executive Life Insurance."

Nevertheless, Assemblyman Johnston said the investigation into Executive Life's junk bond dealings, and its role in the Pacific Lumber pension plan changeover, is warranted because right now California offers few protections to insurance policy holders.

"There's no 'guarantee fund' to protect policy holders in the event a life insurance company becomes insolvent," said Johnston.

"Our committee wants to examine investment authority and practices of life insurance companies in California in order to decide whether we need a guarantee fund or stricter regulation and limitations on investment options for these companies," said Johnston.

"Otherwise, innocent people are at risk when they purchase life insurance policies and find out later that risky investment strategies jeopardized the assets of the company and ultimately the value of the annuities purchased by the public," the committee chairman said.

Johnston said he hopes the hearings will lead to laws providing California consumers with greater protection in the event an insurer

like Executive Life ever fails.

The committee probe, said Johnston, was sparked by Attorney General John Van de Kamp's declaration that recent Executive Life's junk bond deals "could point to another sleeping danger for tens of thousands of California consumers."

Johnston, Van de Kamp and the Department of Insurance say they are especially troubled by a series of complex transactions in December 1988 that allowed Executive Life to transform \$700 million worth of junk bonds into higher-grade securities.

Industry watchdogs say one effect of the deal was to allow Executive Life to lower by \$120 million the amount of reserves it must carry to protect policyholders in the event of a junk bond failure.

Critics charge that the shift simply was a "repackaging" of junk bonds into higher-grade securities.

"In my opinion Executive Life manipulated its investment portfolio in a manner inconsistent with the spirit of statutory accounting principles," said Joe Belth, publisher of the Insurance Forum, an industry newsletter.

Senate targets 'junk pension plans'

By MIKE GENIELLA
Staff Writer

Pacific Lumber coverage included in probe

A U.S. Senate subcommittee plans to investigate "junk pension plans," including those set up for 2,700 Pacific Lumber workers and retirees after a controversial 1986 corporate takeover.

The Senate panel also wants to know what's happening with a year-old federal Department of Labor probe into Pacific Lumber's disputed pension dealings, according to the committee's legal counsel, Michele Varnhagen.

The Senate investigation is one of two legislative probes into the North Coast timber giant's purchase of \$37.5 million in new

pension policies for its employees after a nearly \$1 billion buyout four years ago by Texas financier Charles Hurwitz.

Last week California Assembly's Finance and Insurance Committee said it will hold hearings on how dependent on earnings from high-risk junk bonds is Executive Life Insurance Co., California's largest life insurer and the new provider of Pacific Lumber's pension policies.

Assemblyman Patrick Johnston, D-Stockton, said right now there is no state govern-

ment guarantee fund in the event an insurer like Executive Life were to fail.

On Friday U.S. Sen. Howard Metzenbaum, chairman of the Senate Labor Subcommittee, said his panel will explore Executive Life's pension plans for 100,000 or more American workers, including Pacific Lumber's.

Metzenbaum has introduced legislation to severely limit pension plan terminations. Since 1980, he said, American companies have terminated 2,000 pension plans "in order to strip the pensions of some \$20 billion

in so-called excess assets."

Similar to the Pacific Lumber scenario, Metzenbaum said 6,200 workers of Coleman Lantern Co. — after a takeover by financier Ron Perelman — recently had their pension plans terminated and new policies issued to them by Executive Life.

The \$19 billion insurance giant is based in Los Angeles. It is a subsidiary of First Executive Corp., the single largest holder of junk bonds that financier Hurwitz used in Pacific Lumber buyout. First Executive owns \$343 million of the Pacific Lumber junk bonds, the type of securities that pay high interest rates because they carry a great risk of default.

Critics, including worried Pacific Lumber workers who have filed suit in federal court in San Francisco, contend the insurance company's junk bond holdings are about twice the percentage as the life insurance industry as a whole.

Because of rising concerns about Executive Life's junk bond portfolio, national credit rating agencies early this week downgraded the company's ability to pay out benefits including pensions.

Metzenbaum said it's clear it is time for his committee to act.

"I am concerned about the pensions of thousands of workers at Coleman Lantern and dozens of other companies (like Pacific Lumber) which we understand have pension contracts with Executive Life," said Metzenbaum. "We have to be sure that reliance on junk bonds does not throw workers' pensions into the junk heap."

"People work all their lives believing their pensions will be there when they need them only to see them disappear with the stroke of a corporate raider's pen," said Metzenbaum.

Metzenbaum aide Nancy Coffey said the Senate hearings begin by March.

The Senate pension fund inquiry is just the latest in a series of mounting problems for Executive Life and its corporate parent.

In the early 1980s the insurance giant took life insurance by storm, growing fast by offering innovative products and using high-risk, high-yield junk bonds to offer rates competitors couldn't match.

But last week Executive Life announced it was writing off \$515 million charge against fourth-quarter earnings. The company also released figures suggesting its junk bond portfolio's market value has declined by \$1 billion just since Sept. 30, leading analysts to raise the prospect of additional big write-offs for the company.

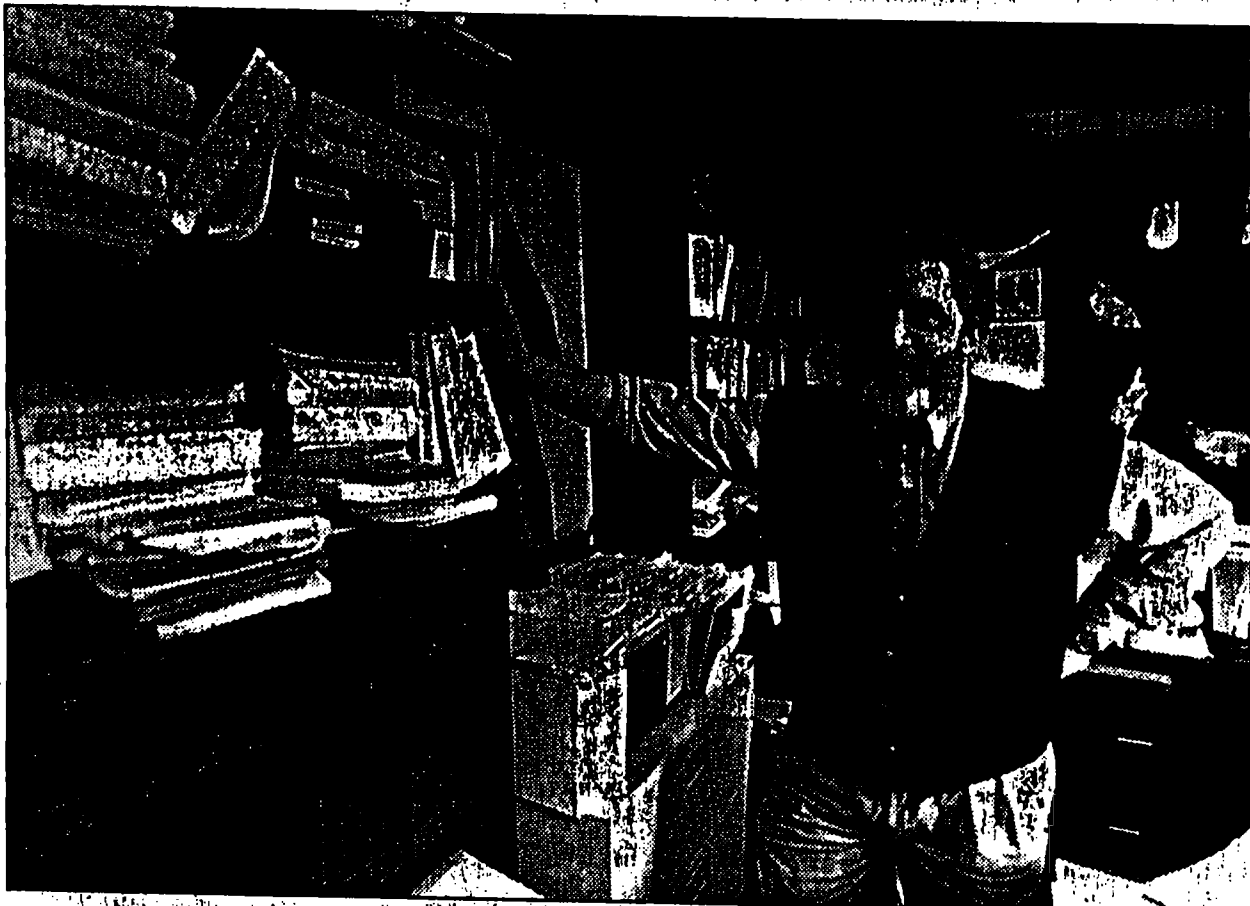
The huge write-off was followed up by the announcement that California Insurance regulators had ordered corporate parent First Executive to reverse an accounting transaction that took \$750 million in risky junk bonds off its balance sheets by packaging them into supposedly safer securities. Regulators said the transaction made the company's balance sheet look sounder than it actually was.

By this week's end First Executive had invited a takeover by ICH Corp., its largest shareholder with more than 20 percent of the outstanding stock.

Business Day

The New York Times

June 4, 1993



William H. Bertain has devoted seven years to undoing the buyout of the Pacific Lumber Company, acquired in 1986 by Charles E. Hurwitz, to return it to the Murphy family, its managers since early in the century.

Cheryl Easter for The New York Times

A Legal Thicket Amid the Redwoods

By JOHN MARKOFF

Special to The New York Times

EUREKA, Calif. — In a cluttered office overflowing with filing boxes and legal briefs, William H. Bertain is standing fast in his quixotic campaign to wrest back control of the Pacific Lumber Company, which was acquired in 1986 by Charles E. Hurwitz, a Houston financier.

A child of the lush redwood forests in this fog-shrouded country, Mr. Bertain has dedicated the last seven years to a legal fight that few believe can be won, returning the company to the Murphy family that had managed it since the turn of the century.

Mr. Hurwitz's Maxxam Inc. bought Pacific Lumber for about \$900 million in a buyout financed largely with junk bonds handled by Drexel Burnham Lambert, and three members of the Murphy family have retained Mr. Bertain to undo the buyout, asserting that shareholders were defrauded. Maxxam also faces a barrage of lawsuits from employees, shareholders and environmentalists seeking to halt the harvesting of old-growth timber.

Battle Against 'Corporados'

Despite demoralizing odds, Mr. Bertain says he carries on the crusade because "outside investors" — whom he calls "corporados" — are threatening to destroy a way of life.

"This was the crown jewel of the North American timber industry," he said. "I was just stunned for four



Michael Mella

Charles E. Hurwitz, the Houston financier who bought the company,

Maxxam Inc., bought Pacific Lumber in 1986 for about \$900 million in a buyout financed largely with junk bonds.

months after the takeover, but then I set out by committing to do everything that was legal and moral to stop this."

Mr. Bertain's campaign has set him at odds with John Campbell, the president of Pacific Lumber and a 24-year veteran of the company, the

world's largest holder of virgin redwood forests. "He's barking up the wrong tree," Mr. Campbell said in a telephone interview. "He's a zealot and he has his emotions and his ego involved."

Pacific Lumber is not practicing cut-and-run forestry, the Australian born lumberman insists. Countering critics who charge that Mr. Hurwitz had to increase the company's cutting rate to pay nearly \$800 million of debt incurred when it was taken over, Mr. Campbell says the company has shown that it intends to be a positive long-term economic force here in Humboldt County, on the Northern California coast nearly 300 miles north of San Francisco.

Seven years after Mr. Hurwitz's takeover, the dispute shows no signs of ending soon. Indeed, Pacific Lumber has increasingly found itself at the center of economic and environmental conflicts boiling over in the Pacific Northwest. In April, both sides of the Pacific Lumber hostilities were prominently represented at President Clinton's meeting in Portland, Ore., on forest use.

In this logging town of 27,000, the controversy has turned neighbor against neighbor and left the community bitterly divided over whether its future lies in timber or in diversifying into recreation and tourism.

And Pacific Lumber's unwillingness to compromise on environmental issues has made new enemies in this town, which once saw itself a

Continued on Page D2

A Legal Thicket Planted Amid the Redwoods

Continued From First Business Page

aving a one-crop economy.

"For a long time, the timber industry has controlled this area," said Bill Jurick, a Eureka developer. They've had far too much influence."

For many residents of this community, the Pacific Lumber takeover is come to epitomize the social and environmental costs of the junk bond era of the 1980's. But beyond being listed as a corporate raider, Mr. Hurwitz has never been charged with violating any laws, and in the short run at least, his company has increased employment in the region.

Mr. Bertain's supporters include members of labor unions, community

leaders and environmentalists. Nevertheless, it has not been a comfortable time for the bearded and outspoken lawyer, the youngest of 10 children who grew up in nearby Scotia, the company town for Pacific Lumber, where his family had run a small laundry since 1920.

Today Mr. Bertain — who spends most of his time and much of his own money engaged in the legal battle with Mr. Hurwitz — is more than a half-million dollars in debt. At times he has been unable to meet his house payments, and his health has deteriorated.

The dispute may soon move to a national stage. Legislation is expected to be introduced in Congress this month to clear the way for the Government to acquire more than 30,000 acres of Pacific Lumber's old-growth

timber in an area known as the Headwaters. While company officials say that the fair market value is likely to exceed \$400 million, Congressional staff members and environmentalists argue that because environmental restrictions prohibit logging there, the actual value may be much less.

Environmentalists have used Pacific Lumber's logging practices as the rallying point in their battle to save the remaining stands of California's old-growth redwood forests.

Response to Truck Traffic

This is in-your-face forestry, said Joshua Kaufman, a Humboldt County paleontologist who helped form an environmental coalition after he saw Pacific Lumber trucks rolling up and down the rural road on which he lives. The group has brought

several suits against the logging company and hopes to force it to sell its remaining old-growth lands for a new national park.

Mr. Bertain maintains that returning Pacific Lumber to its original owners would be a perfect compromise between the environmentalists and the logging industry. Under its previous owners, the company cut about 2 percent of the trees on its land annually — no more than the forest's annual growth rate.

In his lawsuits against the Pacific Lumber takeover, Mr. Bertain has asserted that Mr. Hurwitz conspired with other investors to defraud the company's shareholders when he acquired the company after a heated takeover battle. To date, those suits have generally been rejected by Federal courts, but more than a dozen shareholder, employee and environmental suits remain to be settled.

Few people give the small-town lawyer much chance of returning the company to its former owners. But Mr. Bertain is optimistic that he will prevail in his \$1 billion-plus claim against the dealings of Drexel Burnham Lambert and its fallen junk bond specialist, Michael R. Milken.

Words Unspoken

Mr. Bertain and Mr. Hurwitz have testified at the same Congressional hearing, but they have never spoken to each other. Mr. Hurwitz, a Texan who rarely speaks to the press, refused to comment on Mr. Bertain's activities.

Unfazed by the various lawsuits against his holdings, Mr. Hurwitz has forged ahead, moving to reduce the debt load of Pacific Lumber. He recently refinanced Pacific Lumber's \$510 million debt and split the company into three concerns, leading many industry executives to say — and even some environmentalists to concede — that the Houston financier had pulled off a business coup.

"They got a phenomenal decrease in the cost of capital," said Craig Gilmore, a financial analyst at Gilmore & Company in Carlsbad, Calif.

In a daring stroke, Mr. Hurwitz shifted Pacific Lumber's timber assets to two new companies, Scotia Pacific and Salmon Creek, cutting back on the company's short-term debt, financed by junk bonds, and replacing it with bonds backed by 179,000 acres of redwood and Douglas fir timberland.

Many Lawsuits

Nonetheless, Mr. Hurwitz still faces imposing legal challenges: Pacific Lumber and Maxxam are named in lawsuits in both Humboldt County and New York City by former Pacific Lumber shareholders seeking damages of more than \$1 billion.

The logging company faces at least 10 lawsuits brought by environmentalists who charge that its accelerated logging endangers species like the spotted owl and the marbled murrelet and damages forest watersheds where salmon and trout spawn.

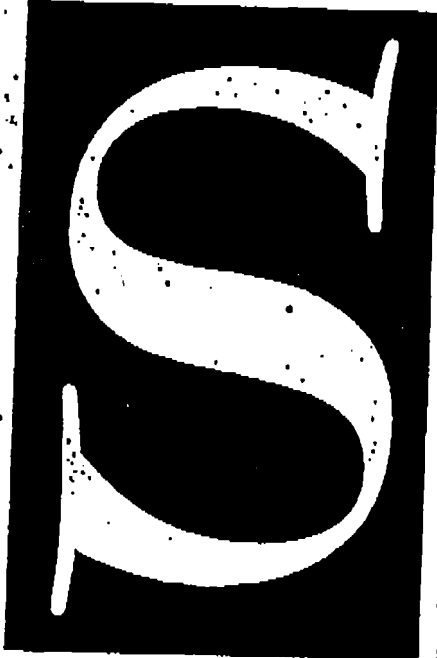
In 1991, the United States Department of Labor filed a civil suit against Pacific Lumber in response to the company's 1988 termination of its pension plan, which it replaced with annuities from Executive Life, an insurance company that Mr. Hurwitz controlled, whose parent later went bankrupt.

In May 1992, the Federal Deposit Insurance Corporation indicated that it was moving toward suing United Financial Group, stemming from the 1988 collapse of the United Savings Association. Mr. Hurwitz once owned 24 percent of the failed savings and loan, which purchased \$1.4 billion worth of Drexel's junk bonds in exchange for Mr. Milken's providing Mr. Hurwitz with \$1.8 billion in financing so he could acquire Pacific Lumber and Kaiser Aluminum.

Through it all, the 46-year-old lawyer has shown no signs of caving in.

"He's a bulldog of a human being," said David Harris, an author and researcher who is working on a book about the corporate takeover. "Nobody else would be where he is today, but he's still after these guys."

REDWOOD RAIDER



Meet Charles Hurwitz.

Family man. Philanthropist.

And hatchet man to one of the last private stands of ancient trees in America

SCARY IS THE WORD. It's the word his enemies, of whom there are many, use to tell you about Charles Hurwitz, the biggest takeover artist in Texas and the least well-

known. Certainly he looks scary in pictures: a tall, cold figure in jet-black pinstripes, black hair slicked down like a banker's, eyes flat and unblinking, a mouth that seems frozen in a straight hard line. He doesn't seem the kind of man who cares much for people.

Which is just as well, perhaps, because people don't care much for him. Oh, Bob Lanier calls him a friend, and so does John Connally. But two thousand miles from his Galleria-area office, in the deep green timberlands of northern California, Hurwitz's name is a dirty word.

It was more than six years ago that Hurwitz acquired California's most venerable lumber company for almost \$900 million — half of that in junk bonds — in a bruising takeover fight. To service his whopping debt, Hurwitz began mowing down Pacific Lumber's trees at more than double the company's historic rate. The shock was that these weren't skinny pines. These were precious coastal redwoods, many of them hundreds, even thousands of years old — and nearly the last of these towering trees in private hands.

The plan worked, but Hurwitz hadn't counted on the outcry. He didn't think that members of the radical environmental group Earth

First! would chain themselves to Pacific Lumber's trees to protest the cutting. Or that the timber industry would be as angry at him as the environmentalists. He didn't count on having grass-roots lawyers throw more than a dozen lawsuits at him, or having California senators and congressmen close ranks against him. He didn't imagine that this war of litigation and politics and public relations would finally be focused on a 3,000-acre tract of virgin old-growth redwoods called the Headwaters in the darkest depths of his lands.

Hurwitz was a small fish in 1985. He's a much, much bigger fish now. Maxxam, his Houston-based clump of acquired companies and holding shells, has come from nowhere to the upper-mid range of the Fortune 500, within spitting distance of that better-known exemplar of junk-bond-fueled takeovers, Ron Perelman's Raylon. Three years ago it took a giant leap forward with the acquisition of KaiserTech, the huge aluminum company — another junk-bond fest that makes Maxxam one of the most leveraged companies in America, but on paper an \$8.5 billion empire. Hurwitz owns 32.4 percent of Maxxam's common stock — unusual in a public company — and 96.4 percent of its preferred stock. This makes him, at age 51, far richer and more powerful than, say, T. Boone Pickens. Not powerful enough, though, to shake free the dogs that keep nipping at his heels.

So far the critics have lost almost every round. But as the

By Michael Shnayerson



In September 1990, the Union of Independent Artists sponsored a demonstration outside Maxxam headquarters.

scrutiny continues, a clearer picture emerges of a man whose climb, even if legal, serves as a parable of all that went wrong with American business in the 1980s. Greenmail, S&Ls, junk bonds, hostile takeovers, asset-stripping, the seizing of pension funds — they're all there in the Hurwitz story, in one long, ugly course abetted by the junk bond king himself, Mike Milken, with a supporting cast that includes such fallen giants as Boyd Jefferies, Dennis Levine and Ivan Boesky. If Hurwitz remains less notorious than they, that is no proof of his greater integrity and willingness to work within the law — only of his skill at walking just inside it.

That, and his ability to keep his head low. For Hurwitz is no Don Dixon or David Paul — dirt-dumb greedhogs who milked their S&Ls to buy yachts and private planes, to put world-class paintings on their living-room walls and gold shower heads in their Johns. Hurwitz did none of that. Other than having a preference for well-tailored suits, he is almost ascetic in his tastes. "He IS greedy," said a former colleague, "but not for material things; it's a deeper greed, a greed of the soul."

Nor is he one-dimensional. For all the critics who find him brutally aggressive and heartless, just as many friends and colleagues described him, incredibly, as shy. That, and polite, and caring — the sort of chief executive who remembers to ask after an employee's sick child. "He's the only chief executive I've ever seen who kisses his grown sons in public," burred his former right-hand man (and former University of Houston chancellor), Barry Munitz. He also lends his name, and his time, to charities: Last October, he and wife Barbara, along with John and Nellie Connally, co-chaired the 50th-anniversary celebration of the M.D. Anderson Cancer Center.

There are two traits, however, that everyone concedes to Charles Hurwitz. One is a restlessly brilliant, analytical mind.

The other is a very, very dry Texas wit.

The wit was not immediately evident the day I met Hurwitz at his office early last year. A secretary opened the door and he stood behind her, taller than expected, a broad-shouldered, unsmiling man in his trademark dark pinstripe suit. What I did see was his obvious discomfort at meeting me: Inevitably described as "reclusive," Hurwitz has denied almost all interview requests throughout his career.

Reluctantly, Hurwitz led the way back to a corner office that looked almost unoccupied: a plain black drawerless desk; a standard-issue conference table; a few chairs for each. Of course there was a phone, and a quotron screen. But no sofa, nothing on the plain white walls, no hint of personal passions. Maxxam had

everything that can happen," Hurwitz said. He paused. "But I underestimated that." He spoke in short, clipped sentences with a smooth, flat Texas drawl, then simply stopped and stared impassively at his questioner. The perfect negotiator, giving nothing away. And yet that itself began to reveal a side of the man: proudly stubborn, convinced he was right, unwilling to compromise in any way for the sake of public relations.

Certainly you couldn't have had worse public relations than Hurwitz did after the takeover. The man had started it himself, in his first meeting with the loggers of Scotia, Calif., when he told them they might as well quit grumbling, because this was the way of the world. "You know what they say about the golden rule," he'd stood before them and declared. "He who has the gold rules." Like a clumsy movie monster, Hurwitz was amazed by the panic he caused. "I got letters," he told me. "People saying, 'please don't move our company from Scotia.' What was I going to do, move 200,000 acres of trees? People wrote to ask me not to fire people. How was I going to keep harvesting timber if I fired people?"

The fears were understandable: Scotia was special. It was one of the last of northern California's logging towns — towns that once numbered 200 — where second- and third-generation loggers could be found walking together to work. Salaries were high, benefits were good, and rents were low for the neat, white, company-owned houses that lined the curving streets around Mill A and Mill B.

I had gone there to see if the place had changed, and found it still beautiful, a surreally all-American town more like a movie set than the real thing, surrounded by forested hills. In fact, since the takeover, the company's work force had increased by a third, to 1250 men and women. Paychecks had increased, swollen by overtime, and new pickup trucks had appeared on the streets.

The changes were up in the hills: clear cuts ranging from 40 to more than 500 acres, vast brown barren stretches visible from the air. During the worst of it, loggers reported — with shock, and with sorrow — being forced to take their chain saws to whole cathedral groves of virgin old-growth redwoods, as well as single out "residual" old-growths left standing from cuts years ago. The old-growths are far more valuable than second-growths; not only are their trunks considerably wider, but their wood is tightly grained and knot-free. A single tree can fetch \$60,000.

Did Hurwitz think there was any reason not to cut down virgin old-growth redwoods?

Pause. Stare. "I don't know that there's a lot of difference between old-growth trees and old people," he said. "Old-growth

stop growing themselves and take up the space that new-growths need to grow properly. They don't let in the sun."

This in fact is one side of the broader debate about old-growth redwoods. Loggers point out that old-growths are decaying and should thus be taken down. Environmentalists say the trees remain vital habitat for certain birds and animals, and that even if they fall, their decaying trunks nourish the forest. What I wanted to know was more basic: Didn't it bother Hurwitz to cut a virgin old-growth redwood, one that might be as old as the Magna Carta?

Flat stare. "No." Pause. "It's a business. We regenerate our business. We plant trees."

John Campbell, the beefy president of Pacific Lumber, had spent his lunch hour one day at the Scotia coffee shop trying to untangle for me the myriad distortions with which the press had maligned his management of the company and the good name of his boss. "I think I can say without qualification that the redwood is probably the most protected species of tree in America," Campbell told me.

He explained that 95 percent of all redwoods today are contained within national or state parks, and that of its own holdings, Pacific Lumber over the years has sold at low cost to the state some 20,000 acres of prime redwoods. Why shouldn't it harvest the few hard-to-reach stands it has left? He neglected to mention that the 95 percent is a tiny fraction of the redwoods which once graced the California coast; the rest were logged long ago.

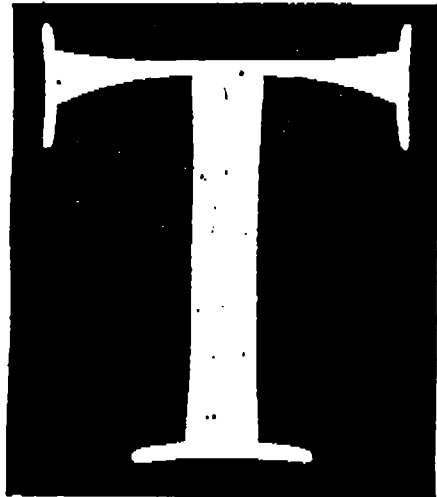
It was true, as Campbell observed, that the "old" Pacific Lumber

you could cut no more than 140 acres, though even that required a lot of justification. With a "modified selection," there's no limitation on acreage. All you have to leave is about six trees per acre."

Campbell had drawn a little line of trees on his napkin to illustrate his plan of doubling the cut — selectively — for upward of 20 years, then reverting to "sustained yield." He and Hurwitz both like to invoke the independent surveys, or "cruises," that found much more timber on Pacific Lumber's land than the "old" company figured. But even by Campbell's own reckoning, the increased cut will wipe out the last of the old-growth redwood. And many, like Gene Kennedy, a retired Pacific Lumber foreman, believe the "cruise" estimate is way off.

"At the rate they're cutting now, the old-growth, both the virgin and residual, will last about 10 more years," Kennedy told me. "After about 15 more years they'll have gone through all the second-growth, and that will be that. The only trees they'll have are maybe those they're planting now — trees that will be all of 25 years old."

Cut your old-growth, believes William Bertain, a Scotia-born lawyer who has made Pacific Lumber a personal crusade, and you wipe out 80 percent of the jobs at the mill, because old-growth is more labor-intensive. Bertain, who prides himself on being a Republican and not a tree-hugger, is the one who's lobbed most of the lawsuits at Hurwitz and Pacific Lumber, alleging, among other things, that Hurwitz bought the company at an unfairly low price and thus cheated the shareholders. "In my opinion," he declared,



To service his whopping debt, Hurwitz began mowing down Pacific Lumber's trees at more than double the company's historic rate. The shock was that these weren't skinny pines. These were precious coastal redwoods, many of them hundreds, even thousands of years old

had been in the business of cutting trees too, and eventually would have cut most of its virgin old-growth redwood. But since 1940 it had done no clear-cutting, and had taken down no more trees than it grew — "sustained yield" was the credo, which made it virtually the only logging company in America endorsed by the Sierra Club. Campbell and Hurwitz say the "old" company had decided to resume clear-cutting before the takeover, but there's no evidence of that, even though Campbell promised to deliver it to a congressional subcommittee.

Over apple pie and coffee, Campbell emphasized that the company recently had voluntarily stopped clear-cutting — voluntarily, that is, after an awful lot of public outcry. But the "selective" cutting now done may not be much improvement. "They use a different word," explained John Hummel, a California-based U.S. Fish and Game biologist who has appraised Pacific Lumber harvest plans. "But their harvest rate is very, very close to clearcutting. A 'modified selection' actually allows more latitude to take out large trees over a larger area. With a clear cut,

"the Pacific Lumber takeover was one of the largest thefts of the 20th century."

I asked Hurwitz if he had been hurt by the animosity of the protesters, by their portrayal of him as an evil man.

Hurwitz looked at me without expression. "Would you be hurt?" he asked laconically.

Yes, I said. I thought I would.

Shrug. "I don't think hurt's the right word. Misunderstood perhaps." He looked away. "But ... I don't think that way so much ... on a personal level. I direct my energies to other things."

Outside Hurwitz's office, the sky turned slowly dark. Just as slowly, Hurwitz began to relax. His answers became less guarded, though no less resolute. Finally, with a little prodding, he made a call home and turned to report that yes, he was free to show me his home and go to dinner. He went off to clear another appointment, and in the moment I was alone I perused the room for some hint of the private man. All I saw was a color print in a plexiglass frame sitting by the window. In the print, a small fish

was eating a much larger fish. I was noting it when Hurwitz reappeared. He grinned. "Which fish do you think I am?" he asked.

As we left, I asked if he wasn't planning to do something about his office decor.

"Not much," he said, "but we're putting in a beautiful conference room next door. Guess what the design scheme is?"

I said I couldn't guess.

"Old-growth redwood," he said. "With aluminum trim."

Was that the wit? Or rank insensitivity? I couldn't really tell.

Hurwitz led the way out of the basement garage at the wheel of a small Mercedes convertible. He scoffed when I asked why he had no limousine. He said he had all the limousines he needed. "They're just yellow, with little lights on top," he said. "I have a whole fleet of jets, too, always ready and waiting. They're just called 'Continental.' " In which, apparently, Hurwitz travels coach. (Ironically, at presstime, he was reported to be kicking beleaguered Continental Airline's tires, though his office declined to comment on a possible investment.)

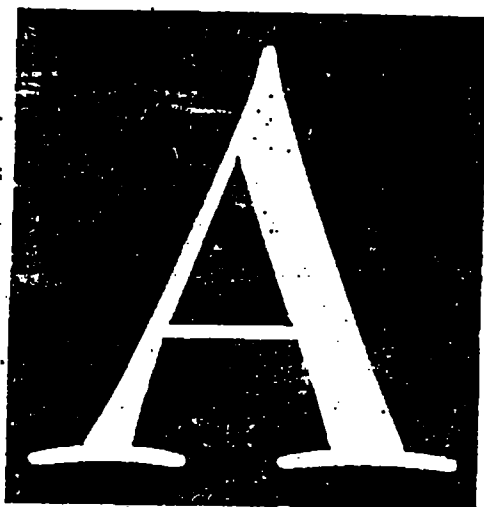
As I followed him through the twilight, I thought of what his best childhood friend had told me about young Charlie Hurwitz of Kilgore. "Charles was never an aggressive person," said Latane Speer, still of Kilgore. "He was very kind and sweet and nice to everybody. Mischievous, too. There was never this 'I'm going to

and painted "Seniors '58" on fences and storefronts all over town. Kilgore's one policeman had no problem locating the culprits. "Oh, everyone knew it'd be us," says Speer. "We had to spend a whole Saturday erasing the fence at the drive-in, which belonged to the richest man in town."

Hurwitz, one of the richest men in a much larger town now, lives not in River Oaks but in an apartment high up in the Houstonian. I had assumed, after the office, that it would be modest too, another sign of frugality, but Hurwitz took umbrage at that. "It's not like some ... studio apartment."

Indeed it wasn't. The elevator opened directly into a coolly contemporary home of grays and blacks and whites. In from the foyer was an upraised bar, all polished woods and recessed lighting. The living room had an Italian-style gray sofa and chairs, and a big black coffee table. There was a beautiful study off to one side, its wood paneling burnished to a soft red glow. I had a sudden thought as to what that wood might be. Redwood? Hurwitz nodded solemnly. Virgin old-growth? "Two thousand years old," he said. But I was catching on: That was a joke.

In a moment Barbara Hurwitz appeared, a handsome woman with a firm handshake who regularly turns up on Houston's best-dressed lists. It was her name that appeared next to a \$25,000 donation on the list of large contributors to Lanier's mayoral campaign. Barbara is said by all to be bright — a former school-



n FDIC claim against Milken alleges succinctly: "At the direction of the Milken group, USAT purchased approximately \$1.4 billion of Drexel underwritten junk bonds. In exchange, the Milken group financed a number of business schemes for Charles Hurwitz"

grow up and become this rich man.' I don't know when that happened, exactly. I do know he's a bit more distant. I could always read him, then." She paused. "I can't read him anymore."

Kilgore, 200 miles northeast of Houston, is still an oil town, its derricks blasting away all day long in the flat scrub brush fields, shaking the walls of the houses. In a community of roughnecks, the Hurwitzes stood out: Charles' father, Hyman, owned the men's clothing store and eventually branched out with other stores in neighboring towns; he also built two shopping centers. Charles' father, said Speer, was one of the nicest men you could ever know. Polite, outgoing. Religious, too: He had been raised an orthodox Jew, and saw to it that Kilgore always had a rabbi. "My father taught us integrity, honesty, loyalty, and so did my mother," recalled Charles' sister Ellen. "Charles revered them both."

Charles was an average student at best, and showed no great gifts other than a love of basketball, but then no one did: It was the '50s in a Last Picture Show sort of town, and all that mattered was having fun. Thanks to his family's relative affluence, Charles drove a new Chevrolet in high school, which helped compensate for buck teeth and a bad complexion. The Halloween of his senior year, he and Latane snuck out late in her parents' station wagon

teacher — and unpretentious, but what interested me more was that she was, in fact, Charles' college sweetheart at the University of Oklahoma. "I was a friend of Charles' cousin, who was going out with one of Charles' friends," she explained. "He asked if I wanted to go out with Charles. On our first date I found him ... shy. But very appealing."

Hurwitz started as a stockbroker for Bache & Co. in 1962, first in New York, then in San Antonio. Somehow, perhaps from listening to his father sell suits, he learned he was a born salesman. He would get on the phone and make cold calls to wealthy strangers, oozing confidence as he pitched mutual funds. Frank Duperier, a fellow broker in San Antonio's Milam building, would come downstairs on his lunch hours just to listen. "You were totally mesmerized by him," Duperier told a *Houston Chronicle* reporter. "Charlie had so much natural ability that he could call on Bob Hope, King Faud or Ronald Reagan ... He had total command of himself."

Two years after marrying Barbara, Hurwitz persuaded a former U.S. army general named Hovey to join him and his brother-in-law in a gambit to sell mutual funds. Thanks to Hovey's contacts, many of their clients were retired military men. It was the first but

team up with a much older, better-established figure and be pulled along in the wake. He had that blend of smarts, smoothness and deference that made him an older man's younger man.

"Did you talk to Hovey?" Hurwitz asked me.

I admitted I hadn't.

"Just as well," Hurwitz said after a pause. "He died 10 years ago."

It was another, far more powerful older man who came into Hurwitz's life and made all the difference. George Kozmetsky had made a fortune co-founding Teledyne, the mammoth electronics company and defense contractor, and then chose to serve as dean of the University of Texas business school. "I wrote him a letter saying I'd like to meet with him," Hurwitz recalled. "His secretary wrote back saying Mr. Kozmetsky was very busy and could see me in a year. Well, I kept after him, and when I did meet with him, a 30-minute meeting turned into eight hours. At the end of that, he agreed to invest some money with me."

With Kozmetsky and a circle of other distinguished backers, including a former head of the Strategic Air Command and a Nobel Prize-winning physicist, Hurwitz at 27 collected \$54 million to launch the Hedge Fund of America, the second largest public offering ever on Wall Street. In the bull market of the mid-1960s, the fund initially did well, but then nose-dived as big public companies like Sears and American Express began competing for institutional money. "We sold it to Oppenheimer and did fine," Hurwitz told me, somewhat testily. But his own brother-in-law, Morris Penner, told one reporter, "Everyone got killed."

Hurwitz still felt his game was stock-picking, and the biggest way to go about it was to buy a company that had a pool of cash he could invest — like an insurance company. Still backed by Kozmetsky, Hurwitz chose a privately-owned one in New York and took it public as the Summit Group. As far as the Securities and Exchange Commission was concerned, Hurwitz did that a little too fast. Accused of filing false and misleading information, he signed a consent settlement, but declared to interviewers later that he had only signed because he was caught in the middle of financing, and in fact had done nothing wrong. Before he was through with Summit, having joined it to various holding companies, he ran afoul of the law again. This time, New York's acting superintendent of insurance found that Hurwitz had illegally "upstreamed" \$834,000 from the about-to-be-liquidated New York company to one of its parents. Hurwitz was forced to pay back a substantial amount.

Here was the first of the games Hurwitz would keep playing until he had his empire: the holding-company game. The strategy — legal, but open to abuse — is to put one company on top of another, and, instead of having each tier send its taxes to Washington, upstream the money and make one consolidated payment.

Hurwitz put most of his eggs in one of the holding companies, a New York investment trust called Federated Development Co. What Federated had was land — a lot of raw land in the west and southwest, most of it taken over through foreclosures. Hurwitz chose to focus on a 900-acre property in the mountains above



Protesting Maxxam's timber policies in September '90.

throw from Palm Springs. He wanted to build fancy homes there, put up a hotel. He thought the people of Rancho Mirage would be delighted. He was wrong.

"He's a tough mother," Rancho Mirage's mayor, Jeffrey Bleaman, said with more than a trace of bitterness. "My observation, based on what he did, is that he'll go to any — lawful — length to attain what he wants. And the use of intimidation and brute strength is certainly not out of his range."

In a battle that lasted more than a decade — ending only in the late 1980s — Hurwitz first sued the Rancho Mirage City Council when it balked at zoning his land for the sort of development he wished. A hotel and houses, the council felt, would mar the mountains' pristine beauty and ruin habitat for the rare big-horned sheep that roamed there. When Hurwitz prevailed in this first round, the value of his land zoomed overnight from about \$1 million to perhaps \$100 million. But that, as Bleaman discovered, wasn't enough

to satisfy him. Quietly, Hurwitz had bought an adjacent 1,000 acres and had drawn up plans to build, among other things, a golf course on it. The council, as Bleaman wryly recalled, "went ape" when that came to light.

So did the whole town. Frank Sinatra wrote his own newspaper ad denouncing the developer. Hurwitz lined up Gerald Ford and ex-Ambassador to Belgium Leonard Firestone on his side. He sued the council again — but this time he sued the members individually, threatening them with multimillion-dollar personal damages.

When a citizens' group assembled enough signatures for an anti-Hurwitz referendum, Hurwitz formed a citizens' group of his own. "They probably had \$250,000 compared to our \$5,000," said Councilwoman Anita Richman. In the end it was a standoff. Hurwitz got his hotel, a Ritz-Carlton, and a number of homes built on the original 900 acres. He was forced to declare the other 1000 acres a bighorn sheep conservatory, and agree never to develop in the mountains again.

Intimidation, personal lawsuits — they were good practice for the higher-stakes game called greenmail that Hurwitz began to play, along with other distinguished American capitalists, in the early Reagan years. He needed more cash to do that, and he found it in Simplicity Patterns, the women's clothing-pattern business which, as Hurwitz put it, "was a bit like buying a buggy whip company — but there was nothing wrong with that if you were the last one left." Of course, Hurwitz hardly hoped to make his fortune as a distributor of women's clothing patterns; he tinkered with the business a while, but then spun it off. What he wanted was the company's debt-free cash flow, a pool he enlarged with money from the employees' pension fund. Now he had a shell company whose only purpose was to go butting up against other companies. Like a pirate ship.

Half a dozen times or more, Hurwitz bought stock in some public company, filed a Schedule 13-D form declaring he had bought the stock for "investment purposes only," then, in several cases, let the company buy him off at a greenmail premium because its management felt sure he was planning a hostile

takeover. "People were scared; I don't know why," Hurwitz told me in his best aw-shucks Texas drawl. "I don't believe in greenmail; I've never asked for a premium. But managements tend to be scared; I guess, and those companies were all highly undervalued, and we would love to have had a higher stake, so ..."

IN 1984, HURWITZ MADE AN "INVESTMENT" IN HAWAII-based real estate giant Castle & Cooke, and three months later was paid \$8 million, basically to go away. "His game was greenmail, clearly, in those days, anyway," C&C chairman Ian Wilson told a *Los Angeles Times* reporter. But the run on C&C had another twist: It was made not through Simplicity, not through Federated, but through a Texas S&L.

In the first flush of S&L deregulation, Hurwitz had seen immediately how profitable this newest game might be. At the time, S&Ls all over Texas and the rest of the country were throwing off the low-interest shackles of home mortgage loans and diving with reckless abandon into any half-baked real estate scheme put before their noses. Hurwitz bought a 23 percent interest in the United Financial Group, the holding company that owned United Savings Association of Texas, an S&L with branches all over the state. Almost overnight, USAT stopped making home mortgage loans and joined the real estate frenzy.

And the truly elegant part about its "investment" in Castle & Cooke was that the run Ian Wilson felt sure was greenmail was being financed by federally insured funds.

But there was a price, as an FDIC claim against Milken alleges quite succinctly: "At the direction of the Milken group, USAT purchased approximately \$1.4 billion of Drexel underwritten junk bonds. In exchange, the Milken group financed a number of business schemes for Charles Hurwitz, the primary owner of United Financial Group." The FDIC claim goes on to state that Milken raised about \$1.8 billion for Hurwitz — a pretty clean trade.

Hurwitz, of course, does not take kindly to this view of history. A Drexel daisy chain? "That's ridiculous," he scoffed when I asked. "You've got to understand who Drexel was dealing with. People like Carl Icahn and Ron Perelman. No one told them to do anything they didn't want to do. And no one ever called us and suggested we buy someone else's paper."

Munitz, Hurwitz's No. 2 man at the time, went to some lengths to explain to me that Hurwitz himself was quite removed from USAT. It was Munitz who chaired the bank's holding company, and it was another fellow, the bank's chief executive officer, who was the "key decision-maker," as Munitz generously put it. That drew an amiable laugh from Bob Lanier, who is one of Hurwitz's closest social friends in Houston. "Come on, you know how those things work," Lanier told me. "It was Charles who called the shots."

Munitz also avowed that no director of the bank ever engaged in any "self-dealing" — either in the sense of indulging in personal luxuries or in making loans to Hurwitz-related real estate projects.



uring the worst of it, loggers reported — with shock and with sorrow — being forced to take their chain saws to whole cathedral groves of virgin old-growth redwoods. Old-growths are far more valuable than second-growths ... a single tree can fetch \$60,000

But that was just kid stuff. The game, the big game that Hurwitz could play with his Texas S&L, was Michael Milken's junk bond game.

The principle was simple: If Milken raised junk bond money for you this week, you bought the next week's junk bonds he raised for someone else. That was the tit-for-tat that gave him an ever-widening circle of ready buyers; it was what gave the junk bond market its appearance of vitality. Of course, in order to buy next week's junk it helped to have a cash cow: An insurance company. Or better yet, an S&L.

In the spring of 1985, Drexel raised \$150 million in a blind pool for Simplicity — now named Maxxam. A few months later, another \$35 million was raised for MCO Holdings, the former McCulloch Oil Company which Hurwitz had acquired, then stripped of its assets, just as he had with Simplicity. In September, when Hurwitz made his run at Pacific Lumber, he would actually get away with calling that \$185 million his equity — the equity on which the rest of his debt, the \$450 million in Drexel junk bonds and the \$300 million in bank financing, would be built. Presto!

But all that time, while the bank was drowning in the red ink of bad real estate loans, Munitz and the other directors of USAT and USAT were drawing half-million-dollar salaries. Indeed, as the bank approached bottom in mid-1988 — it would be taken over soon after by the government and sold off as part of the infamous Southwest Plan — Munitz and his fellow directors signed new two-year contracts that carried those salaries through to the end of 1991, together with \$1.8 million, collectively, in "signing bonuses."

More important, the bank's new owners, by the terms of the Southwest Plan, were allowed to toss back to the government any of the Drexel-raised junk bonds they felt were losers — to be covered by taxpayer money. But don't blame Hurwitz. "Of all the things you write, do not write that Charles did this, or that with the S&L," Munitz admonished me. "The S&L was not a Hurwitz problem."

Certainly in that watershed year of 1985, as USAT began buying Drexel junk bonds and Drexel began issuing junk for Maxxam's takeover pool, Charles Hurwitz's mind was elsewhere. He had become obsessed with acquiring Pacific Lumber.

The question that lingers in half a dozen lawsuits is: Just how obsessive was he? Obsessive enough to bend the law to get his way? Or just, as one Wall Street analyst put it, smart enough, and cynical enough, to walk the law's fine edge?

Thanks to a private "cruise" of Pacific Lumber's timber lands, Hurwitz knew the company was very undervalued. Indeed, its stock, trading that summer before the takeover at \$28 or so, might afterward be worth as much as \$70. He knew he had to move fast so that arbitrageurs couldn't bid up the stock; hence the Drexel "highly confident" letter, Milken's standard warning to an adversary that it could raise huge sums overnight. But as soon as he bought more than \$15 million of Pacific Lumber stock, he'd have to make a public declaration of intent in accordance with the Hart-Scott-Rodino Act, and the arbs would be tipped off. Another problem was that Pacific Lumber had a ceiling of its own; if Hurwitz bought more than 5 percent of the company, 80 percent of the shareholders would have to approve his tender offer. If he kept his stake under 5 percent, only a 50 percent majority would be needed for takeover. But how to stay under 5 percent and still tilt the odds in his favor?

Coincidentally enough, Hurwitz cronies that summer began quietly buying up blocks of Pacific Lumber (Palco) stock. More important, Hurwitz had a chat with Boyd Jefferies, the now-convicted California stockbroker, and suggested that Maxxam or MCO Holdings might be interested in buying Palco stock at a later date. The day after Hurwitz approached the \$15 million ceiling, Jefferies began buying from large institutional funds all around the country. On Sept. 27, the last trade date before the tender offer was announced, Jefferies sold his \$15-million stake to Hurwitz — at \$29.10 per share, nearly \$4 per share below the \$33 a share that Pacific Lumber was trading at that day.

In 1987, the subcommittee on oversight and investigations, headed by Congressman John Dingell (D-Mich.), had the hardest time, in its subsequent investigation of the takeover, understanding why Jefferies would sell his stock for less than it was worth. Unless, of course, he had had a previous agreement with Hurwitz, in which case both men would have been engaged in an illegal stock-parking scheme. But nothing has come of the committee's efforts. "We even asked the Federal Trade Commission for an answer as to whether there was violation of Hart-Scott-Rodino," Michael Barrett, Dingell's chief counsel, said glumly. "But there's never been a prosecution of Hart-Scott-Rodino. There's no will on the part of the commission."

Quite possibly, Hurwitz may have been the victim of another scheme unfolding even as he bought Jefferies' stock. Days after the first tender offer of \$36 a share, Ivan Boesky bought a big block of Palco stock. Hurwitz and his lawyers have said Boesky was tipped by Drexel's Dennis Levine, who dropped in on an early strategy meeting at Maxxam concerning the takeover. Levine may have been angling for a private kickback from Boesky; but Drexel was also playing a larger side game, getting Boesky to bid up the stock not only for a piece of that profit but so that Hurwitz's commission to Drexel on the deal would be that much larger — in the end, an extraordinary \$46 million. Though the details remain unclear, Boesky has admitted passing on his profits from Pacific Lumber trading as part of a larger \$5.3 million lump sum to Drexel some months after the takeover. Why surrender all the profits? Because it was part of an ongoing quid pro quo relationship. Call it honor among thieves.

As it happens, seven of the 98 charges slapped against Milken at his trial in March 1989 relate to the Pacific Lumber deal. The



Harvesting redwoods in the Headwaters.

prosecution chose to focus on certain clues to gain a conviction, but the questions remain. Did Milken orchestrate a stock-parking scheme with Hurwitz's cooperation, or instead act to cheat his own client? Did he use Boesky as a "black knight" to help scare the Pacific Lumber board into Hurwitz's hands? And did he help guide Hurwitz's strategy of suing the board members, then offering them golden parachutes to turn friendly three weeks later? Unfortunately, what Milken did say may never be publicly known: The only information prosecutors will release is that which becomes the basis for indictments.

For the workers of Pacific Lumber, who know the numbers and details of the takeover deal as well as their own birth dates, the worst of it has nothing to do with stock parking or Michael Milken or the bargain Hurwitz may have gotten when the takeover went through

at \$40 a share. It has to do with their pensions — pensions Hurwitz used to help pay down his debts, and replaced with bargain-basement annuities from the now-bankrupt First Executive Life.

The old Pacific Lumber company had let its pension fund build up, both because it cared about having its pensions keep pace with inflation, and perhaps, as Pacific Lumber's president John Campbell alleges, because it made for a good tax break. Within a year of the takeover, Hurwitz plundered the fund — another great '80s game, and perhaps the most heartless. Of its \$90 million, he took the \$60 million that wasn't vested, and left the remaining \$30 million to be used for the most minimal annuities the law required.

Several insurance companies bid for the business, but Maxxam's directors seemed dissatisfied with Pacific Lumber's choices. Instead, a Maxxam director submitted a bid for another company: First Executive Life. First Executive Life, as it happened, was Michael Milken's favorite junk bond customer. Its chairman, Fred Carr, was an integral player in the Drexel daisy chain. More to the point, First Executive had bought nearly half of the Pacific Lumber junk bonds in the takeover deal not long before. Over the objections of Pacific Lumber's board, Maxxam gave Fred Carr its business. The first shock for the Pacific Lumber workers who got the annuities was learning that neither the federal government nor California's state government would back the annuities if First Executive went broke. The second was learning, last April, that First Executive Life had gone broke, thanks to its radical strategy of investing fully 51 percent of its low-cost policy funds in high-interest junk bonds.

For those now unable to cash in their policies, the bad news translates into a 30-cent shortfall on every dollar of their annuities, and while Pacific Lumber's management has so far made up that shortfall for its employees, the insurance company's fate remains uncertain.

Hurwitz maintains, of course, that First Executive was a good investment at the time, and that no quid pro quo existed between it and Pacific Lumber, or Maxxam. But he goes further. He says, to the astonishment of Wall Street analysts and investigators, that he didn't even know First Executive had purchased \$160 million of Pacific Lumber's \$450 million in junk bonds for the takeover — didn't learn of it until after the annuities were bought!

How could any chairman not know who'd bought so many of the junk bonds that financed the biggest deal of his career to that point? "You have to understand the way Drexel worked," he told me. "They sold the bonds themselves and just told us when they were done. What seems extraordinary to me is that anyone could link the two! If it were tit for tat, it wasn't a very good tradeoff, was it? I mean, they buy \$160 million of junk bonds, and a year later we buy \$37 million of insurance

Continued on page 87

redwood raider*Continued from page 49*

annuities? It doesn't equate in either dollars or time. It's ridiculous."

Some workers may be mollified by that, but not the U.S. Department of Labor. In June of 1991, it announced the filing of suits against Maxxam and Executive Life for alleged chicanery in the awarding of First Executive annuities to Pacific Lumber employees. The suits, which include Hurwitz in their list of defendants, allege that Maxxam's directors ignored negative findings from a recognized insurance expert retained by Pacific Lumber itself, and thus violated the Employee Retirement Income Security Act, or ERISA, by not serving the best interests of its employees. A Maxxam spokesman, Bob Irelan, declared the lawsuit to be "totally without merit." Added Irelan: "We can only conclude that it was filed in response to political pressure, not on the basis of facts."

On Wall Street, where such stances are merely good business, Hurwitz has come to command real respect. Investment bankers point to the Kaiser deal as his master stroke, the dare that may have made the difference between drowning in Pacific Lumber junk bond debt and emerging from the Drexel daisy chain as a titan of the '90s. They tell the story of how Allan Clore, Kaiser's chairman, had been so hard-hit by the Crash of 1987 that he was forced to sell his chunk of the company — and no one wanted to buy. "I marched around with this block to very sophisticated buyers, and no one wanted to bid higher than Charles," recalled Paine Webber's Beth Lambert. "They were all scared the world was going to hell in a handbasket. By May, everyone wanted to pay \$4 or \$5 more per share than he'd ended up paying."

By then it was too late. When the rest of the company was put up for sale that spring, Hurwitz had the leverage to acquire it. Now, among other things, he has a new pool of cash flow to help pay down the Pacific Lumber bond obligations that loomed, after a grace period, like heavy lead weights.

Politically, Pacific Lumber remains a volatile issue, with Hurwitz and the state of California locked in a standoff. The state's department of forestry, which used to rubberstamp any harvest plan the timber companies submitted, has finally been prodded into acting with a sense of social responsibility. In 1990, it actually turned down Pacific Lumber's plan for a selective cut of the Headwaters because not enough study had been done of possible habitat damage. Meanwhile, talks are going on between Hurwitz and local politicians about a possible sale of the Headwaters to the state.

Hurwitz hasn't made any public

concessions, but he's met behind closed doors with California lawmakers. He's also sent an ambassador: old friend John Connally.

After Connally's much-publicized \$61 million bankruptcy in 1987, the ex-governor chose Hurwitz's offer of a consultancy over some half a hundred others. He signed on to work part time for three years, at \$250,000 a year, and has brought his political connections to every aspect of Hurwitz's empire. In Scotia, he's talked to loggers and civic groups, gone into the forest, studied the business. "No one wants to rape that forest up there, no one's going to," he told me one afternoon in his Maxxam office. But when asked if the last old-growth redwoods of the Headwaters shouldn't be set aside, Connally's famous brow furrowed. Perhaps, he allowed, if they could be sold for market value. At the same time, the whole controversy struck him as a bit silly.



hen asked if the last old-growth redwoods of the Headwaters shouldn't be set aside, Connally's famous brow furrowed. Perhaps, he allowed, if they could be sold for market price. "They're there, but nobody gets to see them, so what the hell good are they?"

"They're there," he said of the trees. "But nobody gets to see them, so what the hell good are they?"

I asked Hurwitz, too, what he'd really like to see happen to the Headwaters. "We'd like to harvest it!" he said. "We paid for it, we pay taxes on it, it's zoned for timber production. Why shouldn't we harvest it?"

He had told me this in his office, but now he and his wife and I were finishing dinner at the Manor House, the cozy French restaurant that serves as the Houstonian's cafeteria. We had talked about white dove hunting in Mexico — Hurwitz likes to go with his old friend Sid Weiss, and as Weiss had told me, "It's not like Texas, where you wait for one bird. Down there you get hundreds, thousands of birds overhead in a single morning, and the only reason you

stop at 30 or 40 is because they've got a limit." We had talked about the swarm of lawsuits launched, and ultimately lost, by Bill Bertain, the grass-roots lawyer who's been such a nuisance. "That Bertain, he's bizarre!" Hurwitz had exclaimed. "What's his problem?"

When had Charles Hurwitz changed from a mischievous Tom Sawyer into this coldly proud, wryly charming man who sat across from me — a man who could cut down America's most beautiful trees and deplete the pension funds of helpless employees? What had happened to the values his parents instilled in him in a small oil town in east Texas?

I didn't know; I just knew that Charles Hurwitz had stopped being aware of what other people's values were. I remembered what a former colleague of Hurwitz's had told me, a man who worked closely with him every day for several years. "The reason Charles couldn't predict the Pacific

Lumber problem," the ex-colleague had said, "was that it involved emotions, and other people. He had every legal right, but he didn't have the decent respect for the opinions of mankind." Thomas Jefferson had said that, the ex-colleague reminded me, in the Declaration of Independence.

"I believe Texas is going to lead the U.S. out of the recession," Hurwitz was saying over coffee. "We got hit first and diversified. This will be a slow-growth time, but real estate's so undervalued. And then there's alternative sources of energy — you can finance 100 percent of them. There're all sorts of opportunities if you know where to look."

Opportunities, I repeated softly. How right he was. More games, and more opportunities. The '80s were over. But for Charles Hurwitz, the '90s had just begun. ■

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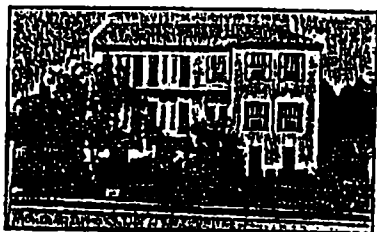
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Clear Lake/Bay Area



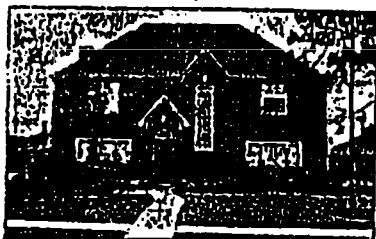
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A LOOK BEHIND THE SCENES

THEY SAY THE JOB OF AN EDITOR IS TO BE AN INNOVATOR, NOT A curator, because a magazine is a process, not an artifact. And so while I am tempted, as *Houston Metropolitan's* new editor, to simply steward the strong city magazine that I've inherited, my mission is to push at the edges of what is already in place.

This month, the staff is doing just that, rallied by our new managing editor, Maria Moss, a lifetime Houstonian who comes to us from the Houston bureau of *The New York Times*. Another new voice in the magazine is Michael Shnayerson, my colleague at *Condé Nast Traveler* and a longtime contributing editor with *Vanity Fair*, whom I persuaded to finalize a profile that he had in progress about one of Houston's richest and slickest power-brokers, Charles Hurwitz.

Shnayerson's interest in Hurwitz began more than a year ago when he came across a small item in *The New York Times* about a Houston businessman who owned one of the largest tracts of virgin California redwoods and was cutting them down with blinding speed. The thought of acres of northern California old-growth, many of which had stood for hundreds of years, being destroyed by a cool operator in another state was enough to start Shnayerson on a journey to understand the business dealings, and the mind, of this Texan whom environmentalists had dubbed "Chainsaw Charlie."

His interest was rewarded when Hurwitz, who has traditionally shunned the press, agreed to open the doors of his corporate and personal sanctuaries to Shnayerson. What emerged from that exchange, when coupled with weeks of research that took Shnayerson from his home in New York to Texas and California, is the first in-depth portrait of Hurwitz. The picture is one of a family man and philanthropist who is described by friends as "polite and caring" yet, writes Shnayerson, "is a man whose climb, even if legal, serves as a parable of all that went wrong with American business in the '80s. Greenmail, S&Ls, junk bonds, hostile takeovers, asset stripping, the seizing of pension funds — they're all there in the Hurwitz story."

Along with Hurwitz, there's another Houstonian featured this month: Mildred McWhorter. A compassionate and tenacious guardian angel, she has staked out the grittiest parts of Houston as her domain, running four mission centers for the poor that one of her fans calls "a little bit of heaven in a whole lot of hell."

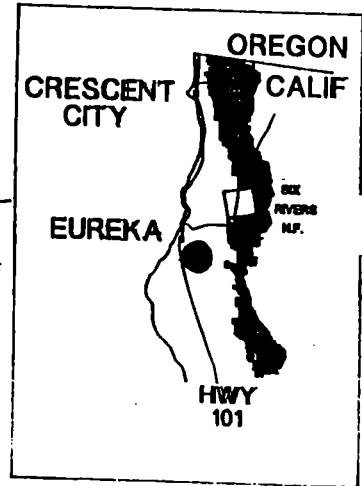
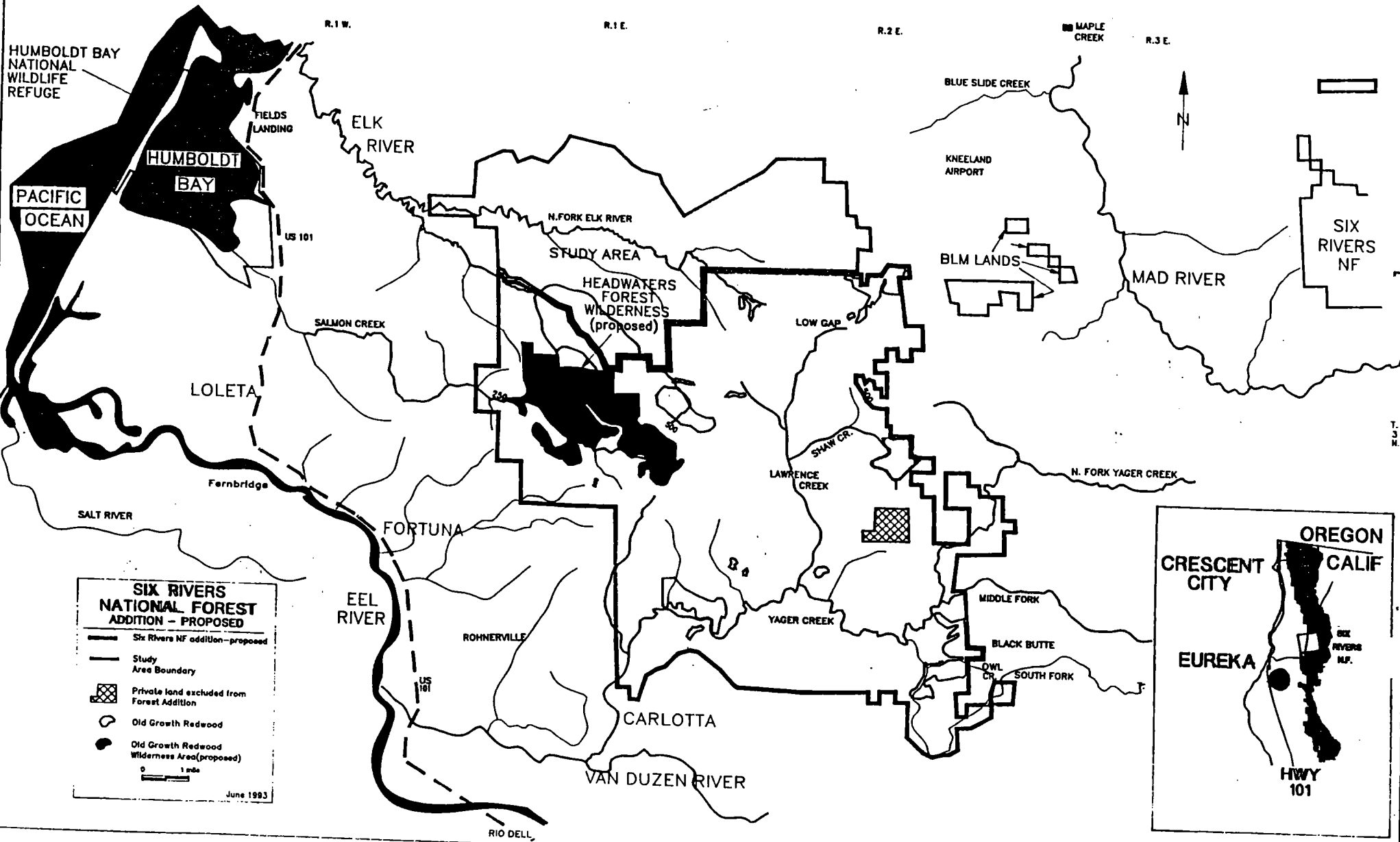
If our feature on "Heroes and Zeros" had a category for saints, McWhorter would top the list. As it is, our senior editor Linda Barth has covered a lot of ground in this year's H&Z roundup. With support from the entire editorial staff, Barth selected the juiciest and most telling events of the year and then deftly pulled them into a fast-paced romp through the year that was.

Not content to leave our entrance into 1992 with a look in our rearview mirror that spans just one year, we take you back, in our new regular feature on the last page of the magazine, to a time and place in our city that is gone but should never be forgotten. Happy New Year, Houston.



Crisis Kelly

EDITOR



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owl creek

Divider Title: _____

TO: Dan 3 pages

JU 30, 1992 8:37AM #575 P.02



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Fish and Wildlife Enhancement
Sacramento Field Office
2800 Collage Way, Room E-1803
Sacramento, California 95825-1846



In Reply Refer To:
1-1-92-TA-81

November 29, 1992

Mr. Mark P. Harris
Attorney At Law
791 Eighth Street
Suite D
Arcata, California 95521

Subject: The Pacific Lumber Company's Owl Creek Timber Harvest Plan
(THP# 1-90-237 HUM)

Dear Mr. Harris:

This letter responds to your November 28, 1992, request for information regarding the subject Timber Harvest Plan (THP) in Humboldt County, California. Of concern are the effects of the proposed harvest on the marbled murrelet (*Brachyramphus marmoratus*), which on October 1, 1992, was federally listed as threatened under the Endangered Species Act of 1973, as amended (Act).

The involvement of the Service with this THP to date has been as follows:

The Service received a copy of the THP on September 30, 1992, during a meeting with Mr. Jim Steele of the California Department of Fish and Game (CDFG) in Sacramento. The THP was further discussed with representatives of CDFG during a meeting on October 9, 1992.

On October 14, 1992, Mr. Michael Horton of this office examined the proposed harvest area with Messrs. Ray Miller, Sal Chinnici, Steve Kerns, and Steve Speich of The Pacific Lumber Co. (PL), and Ken Moore of CDFG. On that date, PL provided Mr. Horton background documentation regarding the THP.

On October 15, 1992, Mr. Horton met with Messrs. John Campbell, Ray Miller and Steve Kerns of PL. Mr. Horton expressed the Service's concerns that the proposed harvest would likely result in take of marbled murrelets and thereby be in violation of section 9 of the Act. On that date, PL provided Mr. Horton additional background documentation regarding the THP.

FROM: US FWS SACTO

TO:

30, 1992 8:38AM #575 P.03

On November 4, 1992, the Service wrote to CDFG to describe our evaluation of the differences between the permitting processes under section 10 of the Act and section 2081 of the California Endangered Species Act. In this letter, the Service stated that projects under which take had been permitted pursuant to state law may still be in violation of the Act, since the take would not have received Federal authorization. A copy of this letter was sent to the California Board of Forestry. This letter is relevant to the subject THP because CDFG and PL were reportedly discussing a possible 2081 permit for this project.

On November 10, 1992, the Service wrote to CDFG requesting all available background information on the subject THP. A copy of this letter was sent to PL. To date, no information has been received from CDFG. Several documents were received in our office from PL on Friday, November 27. Most of our staff was out of the office on that date, and we have not had time to review this information.

On November 24, 1992, Mr. Phil Detrich of this office discussed the matter with Mr. Tom Herman of PL in a telephone conversation. By FAX, Mr. Detrich sent Mr. Herman a draft letter that the Service was considering sending to PL, expressing concern that the harvest might result in take, and encouraging PL to prepare a conservation plan and apply for a section 10 permit. The letter also recommended that PL consult with the Service prior to conducting harvest on the subject THP, so as not to jeopardize any future permit application. Mr. Herman agreed to discuss the harvest with the Service prior to commencing harvest; therefore, Mr. Detrich did not send the letter in final form. During this conversation, Mr. Herman also stated that PL was preparing a response to the Service's November 10, 1992, request for further information. As stated earlier, this material arrived in our Sacramento office on November 27 and has not yet been analyzed.

No subsequent discussions or consultations have taken place between the Service and PL. On November 28, we were notified by CDFG that harvest was proceeding.

The primary information currently available to the Service is as follows: 1) Surveys of the subject timber sale area conducted by PL during the summer of 1992 indicate that this area is occupied by marbled murrelets during the breeding season; 2) During the site exam, the Service and CDFG biologists concluded that the harvest area contains suitable nesting habitat. Therefore, the Service concludes that the proposed harvest area is likely utilized for nesting by murrelets. This conclusion has been discussed during telephone conversations with Dr. C.J. Ralph, who supports that opinion.

① The proposed harvest will result in the loss of a substantial portion of the nesting opportunities for murrelets returning to the harvest area. Returning murrelets will be subjected to increased competition for the remaining nest sites, and some individuals likely will fail to find nest sites. In addition,

② the remaining stand will be much more open and fragmented, a condition that will increase the likelihood of predation upon the remaining nesting murrelets, their eggs, and their young. This possibility is supported by Mr. Moore's observations during a June 25, 1992, inspection of a previously-harvested portion of the plan area. Mr. Moore noted that, unlike the unharvested area, the harvested area showed a high degree of activity by common ravens (*Corvus corax*) and Steller's jays (*Cyanocitta stelleri*), known predators of murrelet nests.

The proposed harvest may also result in micro-climatic changes within the stand, an effect that researchers have identified as a possible detriment to murrelets (Dr. C.J. Ralph pers. comm.). As harvest opens up the stand, the stand interior may experience increased temperatures and wind exposure during the breeding season. Differences in wind exposure among the harvested and unharvested portions of the stand were noted by Mr. Moore during his June 25 inspection. PL biologists have hypothesized that exposure to high winds may make certain portions of their property unsuitable for marbled murrelet nesting.

The Service had hoped to review all relevant information and arguments of agency and company biologists prior to making a determination on the likelihood of take. With the information analyzed to date, the Service must conclude that implementation of the subject timber harvest is likely to cause take of marbled murrelets. This take will likely occur in the form of harassment; i.e., a likelihood of injury due to 1) loss of nest sites, 2) increased vulnerability to predation, and 3) micro-climatic changes.

The Service thus concludes that implementation of this timber harvest may place PL and the permitting State agency (the California Board of Forestry) in violation of section 9 of the Act. Currently, the Service is reviewing all available material in order to make a fully-informed decision.

If you have questions regarding this letter, please contact me at (916) 978-4613.

Sincerely,


Wayne S. White
Field Supervisor

cc: Regional Director (AFWE), FWS, Portland, OR
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Times-Standard

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Garberville environmentalist group to appeal dismissal of PL lawsuit

November 28, 1992

"The federal Endangered Species Act can assure that no critical habitat is destroyed, while the state wants to make sure that (timber companies) are not killing murrelets."

— Mark Harris

Environmental Protection Information Center lawyer

By Karen Jeffries
The Times-Standard

EUREKA — The Environmental Protection Information Center will appeal the recent dismissal of its lawsuit over a Pacific Lumber Co. timber harvest plan near Carlotta.

EPIC attorney Mark Harris said Friday that the appeal will be filed early next week, possibly Monday or Tuesday, in the 1st District Court of Appeals in San Francisco.

Harris said Garberville-based EPIC also will file documents requesting that PL be prohibited from building roads or logging in the Owl Creek area until a decision is made on the appeal.

At the very least, Harris said, EPIC wants to know exactly why visiting Judge Leighton Hatch dismissed the lawsuit Nov. 18 without a written explanation.

The dismissal was praised by PL officials, who said logging the 237 acres of old-growth redwood and Douglas fir in the area is necessary to keep employees working and satisfy customer needs.

PL officials were unavailable for comment Friday because of the Thanksgiving holiday.

Harris also said he and EPIC members are discussing the situation with the U.S. Fish and Wildlife Service. EPIC wants the agency to

pressure PL into conducting more surveys — possibly over one or two years — on the site for marbled murrelet seabirds and their need for habitat.

Biologists with the federal agency recently entered into negotiations between PL and the state Department of Fish and Game over protection of the murrelet in the Owl Creek area. The small coastal seabird is on the federal list of threatened species and is also listed as endangered in California.

Harris said there is a difference between protection measures for listed species in the federal and state endangered species acts, and the federal act contains stronger provisions.

"The federal Endangered Species Act can assure that no critical habitat is destroyed, while the state wants to make sure that (timber companies) are not killing murrelets," Harris said.

No agreement has yet been reached between PL and Fish and Game or Fish and Wildlife on murrelet protection in the Owl Creek area.

PL is currently not logging or building roads in the area but has not ruled out starting operations without an agreement in place.

In other action regarding Owl

Creek, a member of the environmental group Earth First member said last week the group will conduct "non-violent civil disobedience in the woods" if PL begins logging the area.

"It's the second largest old-growth forest in the world in private hands," an Earth First spokeswoman said. "It's a part of the climate (control) in this area. It's a really big deal."

She said Earth Firsters have been taking people into the Owl Creek area to show them the forest so they understand better what's at stake.

The Owl Creek timber harvest plan has been through various legal challenges since 1991, and through bureaucratic battles since 1990.

The state Board of Forestry finally approved a revised plan earlier this year. PL began logging 20 acres in June, but three days later was forced to halt operations under threat of a stop work order from the California Department of Forestry.

Owl Creek logging challenged

Activist lawyers seek injunction

By MIKE GENIELLA
Staff Writer

Environmental attorneys said this weekend they were seeking a court injunction to stop Pacific Lumber Co. logging crews from cutting trees in a virgin forest along Owl Creek in southern Humboldt County.

Pacific Lumber President John Campbell said Saturday he sent loggers into the woods Friday morning after reaching an agreement with the California Department of Forestry earlier in the week.

"We've been very patient while waiting for all the things to fall in to place, and we believe they have," said Campbell about the company's years-long quest to log about 135 acres of virgin redwood and Douglas fir.

'Renegade logging'

But lawyer Mark Harris of Arcata on Saturday blasted Pacific Lumber for "renegade logging," and said representatives of state and federal agencies concerned about wildlife species dependent on virgin forests have not given the company the permission it needs.

State and federal offices were closed over the weekend, and representatives could not be reached for comment on the renewed dispute between Pacific Lumber and its critics.

The company on Monday an-

nounced it might soon resume logging after a visiting Sacramento judge tossed out the latest legal challenge mounted by environmentalists.

Campbell on Saturday said the virgin trees are being selectively cut and that more than 100 acres of virgin forest will remain untouched for now.

Top prices for trees

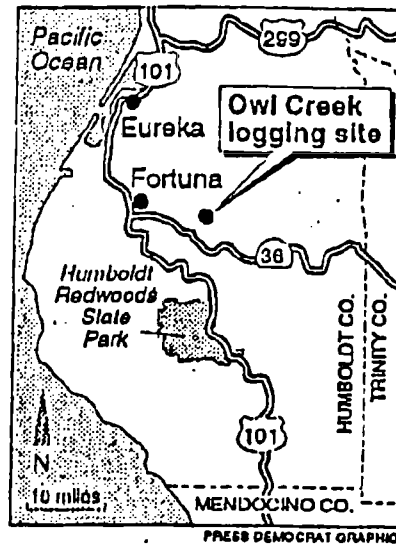
Logging at Owl Creek comes at a time when prices for quality redwood and fir are approaching record levels. One old tree easily can be worth \$10,000 or more.

Campbell has said the logs are essential to the continued operation of Pacific Lumber's old-growth mill at Scotts. As many as 10 trees an hour apparently are being felled, but if the logging is halted, hundreds of jobs will be at stake, Campbell has warned.

Environmentalists, however, said Saturday they believe the logging in the virgin groves violates new federal requirements aimed at protecting the marbled murrelet, a small seabird recently listed as a threatened wildlife species by the U.S. Fish and Wildlife Service.

Chuck Powell of the Environmental Protection Information Center accused the company of once again trying to circumvent state and federal regulations affecting the state's remaining old-growth forests. Powell said Owl Creek is the second-largest stand of virgin trees left in private ownership.

Powell and other environmentalists say the unexpected weekend



logging is akin to June, when state foresters had to force a halt to logging at the same site after Pacific Lumber unexpectedly began to cut trees while the company and regulators were debating demands for further wildlife studies.

Attorney Harris said Saturday he was drafting papers to put before a local Superior Court judge no later than today in hopes of winning a temporary restraining order.

"We want the logging stopped until we know what's going on with the state and federal regulators," Harris said.

Campbell insisted Saturday the company had a green light after signing agreements earlier this week with the California Department of Forestry to end years of wrangling over the disputed Owl Creek logging operation.

Press Democrat
Sunday, Nov. 29th, 1992

NOTE * AS OF MONDAY CUTTING IS
HAPPENING - 10-12 TREES PER HOUR

Times-Standard

Offices: 930 Sixth St., Eureka, California 95502

Telephone: Humboldt County, 442-1711; Del Norte County, 465-4434

PL begins harvesting old growth

November 30, 1992

Owl Creek halt sought by lawyer

By Karen Jeffries
The Times-Standard

SCOTIA — The Pacific Lumber Co. was logging virgin old-growth trees in the Owl Creek area this morning while a local attorney pushed for an emergency temporary restraining order barring the cutting.

PL spokeswoman Mary Bullwinkel confirmed this morning that the company was cutting trees in the 237-acre tract in the Carlotta area.

"We have a signed agreement from the California Department of Forestry and Fire Protection, which is the lead agency in this situation," Bullwinkel said.

Meanwhile, an attorney for the Environmental Protection Information Center in Garberville was expected this morning to ask Superior Court Judge William F. Ferroggiaro to issue a restraining order against PL.

Mark Harris, the attorney for the Environmental Protection Information Center, said Sunday that he believed Ferroggiaro would issue the order.

A number of environmentalists mobilized over the weekend at a campsite near Bridgeville. An Earth First spokeswoman said this morning that the group planned to protest at the logging site.

The 237-acre Owl Creek timber harvest plan was approved earlier this year by the state Board of Forestry after two years of bureaucratic and legal battles. But PL had been in negotiations with the state Department of Fish and Game and, more recently, with the U.S. Fish and Wildlife Service, over added provisions for protection of the marbled murrelet.

The bird is federally listed as threatened and also as endangered in California.

According to recent discussions between PL and officials with Fish and Wildlife, PL was not supposed to log in the Owl Creek area without an agreement over protection measures for the murrelet, Harris said.

"This is renegade logging," he said. "Fish and Wildlife specifically told Pacific Lumber as late as Wednesday not to go in there and if they did it could result in an illegal take under the act."

A "take" means that a threatened or endangered species has been displaced, harmed or killed. Under the federal act, a take also can consist of destroying habitat.

Fish and Game biologist Ken Moore said this morning that it was unknown whether PL is violat-

ing any laws by logging the area. He said two wardens visited the site over the weekend.

He said he was unaware of an agreement between PL and CDF, but that he knows there is no agreement between PL and either Fish and Game or Fish and Wildlife.

PL was forced to stop logging in the area in June after CDF threatened to issue a stop-work order. Both CDF and Fish and Game disputed the validity of an 80-day survey done by PL for murrelets and another was conducted, which showed "significant murrelet presence" in the area, according to one Fish and Game biologist.

PL and Fish and Game have since been negotiating over the issue, and last week Fish and Wildlife officials joined in.

Times-Standard

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Court order halts PL's Owl Creek logging

By Karen Jeffries
The Times-Standard

SCOTIA — A state appeals court has ordered Pacific Lumber Co. to stop logging old-growth trees near Carlotta.

The state's 1st District Court of Appeal in San Francisco granted the request Tuesday morning for an emergency stay that was requested by an attorney for the Environmental Protection Information Center in Garberville.

EPIC requested the stay as part of an appeal to the Nov. 18 dismissal of its lawsuit against PL over the 237-acre timber harvest plan for Owl Creek. The site contains old-growth redwood and Douglas fir and is considered habitat for the marbled murrelet.

The sea bird is considered threatened by federal officials and endangered by California authorities.

The ban on logging will remain in effect at least until Monday, when PL attorneys are expected to file papers opposing the EPIC appeal and requesting that the court order be dissolved.

PL President John Campbell said Tuesday that the ruling was frustrating.

"It is obvious we are caught in a bureaucratic quagmire and we feel our private property and perhaps civil rights are now being violated," Campbell said in a news release.

"It now appears that even with an approved timber harvest plan, an owner may not make use of his or her private property," he added.

EPIC members were happy with the decision.

"We're obviously very pleased that this came at this time, but it's a pity that the (state and federal) agencies allowed this to take place, because there were violat-

ions of the law," EPIC member Laurie Saracheck said.

As yet no date has been set to hear EPIC's appeal and PL's request for a dismissal of the stay, which was issued after PL had logged for several days in the area.

EPIC has vowed to continue its fight over Owl Creek and announced Tuesday it will file another lawsuit on the issue this week.

"EPIC will be filing a lawsuit in U.S. District Court ... against both the Fish and Wildlife Service and PL for the wholesale violations of the Endangered Species Act, which PL engaged in and Fish and Wildlife knowingly permitted to continue over the Thanksgiving holiday (weekend)," attorney Mark Harris said.

PL had been in negotiations with officials with the U.S. Fish and Wildlife Service and the state Department of Fish and Game over protection of murrelet nesting habitat on the site.

No agreement had been signed, however, and there still is a dispute over whether one is required.

PL officials maintain they acted properly and did not break any laws, especially the federal or state endangered species acts. That issue is at the core of the Owl Creek dispute.

PL officials said the company began logging Friday based on an agreement reached Nov. 25 with the California Department of Forestry. The pact included a temporary set-aside of nearly 100 acres for murrelet habitat and a provision not to re-enter that area until PL has in place a comprehensive management plan for the seabird over PL's entire ownership.

But Ross Johnson, CDF's chief of forest practice regulations, disagreed that his agency gave the green light for logging in the area.

"The connotation that we gave them the go-ahead is really not true," he said. "We did not specifically say, 'OK, you can go to work.'"

Johnson said CDF did agree to provisions outlined in the latest version of the plan. But he said he thought the two sides understood the document would not be implemented until PL signed an order with Fish and Game allowing logging while also protecting murrelet habitat.

But PL spokeswoman Mary Bullwinkel, said the company's resource manager, Tom Herman, spoke to Johnson on Nov. 23 and was told the plan "had everything we needed to go to work."

Fish and Game biologist Ken Moore said the agency had "several assurances" that PL would not begin logging without the agreement.

"We had assurances from John Campbell on down there would be none of this midnight logging until it was approved," he said.

Herman said PL doesn't believe it needs a special permit from Fish and Game to log.

"Throughout negotiations it has been our position we do not need the ... permit because mitigation measures in the timber harvest plan were designed to prevent the risk of a take of a marbled murrelet," Herman said.

Under the state endangered species act, a "take" is defined as displacing, harassing, harming or killing a listed species. Under the federal act a "take" also can include destruction of critical habitat.

Officials with Fish and Game and Fish and Wildlife still haven't determined whether violations occurred at Owl Creek.

THE Press DEMOCRAT

Santa Rosa, California, Wednesday, December 2, 1992

Court halts Owl Creek Logging

By MIKE GENIELLA
Staff Writer

A state appeals court on Tuesday silenced Pacific Lumber Co. chain saws in a North Coast forest that's become a new battleground in the fight over California's remaining old-growth timber stands.

Within minutes of the decision issued by the 1st District Court of Appeal in San Francisco, timber company executives ordered a halt to the fifth day of cutting in about 137 acres of redwood and Douglas fir trees along Owl Creek in Humboldt County.

The trees along Owl Creek are considered one of only three nesting areas left in California for the marbled murrelet, a robin-size seabird now under both state and federal protection. On Oct. 1, the U.S. government added the murrelet to its list of threatened species.

Pacific Lumber officials said Tuesday that environmentalists used concerns about old-growth dependent wildlife species as a tool to halt logging in a virgin timber stand, even with a state-approved timber harvest plan that set aside about 100 acres of virgin trees as murrelet habitat.

"It is obvious we are caught in a

Logging

Continued from Page A1

bureaucratic quagmire, and we feel our private property and perhaps civil rights are now being violated," said Pacific Lumber President John Campbell.

Jared Carter, a Pacific Lumber attorney, said he believes the true issue in the dispute is not the murrelet, but environmentalists' quest to preserve remaining old-growth forests.

Carter said more than 100,000 acres of virgin California forests are protected in state and federal forests, and that if "2,000 murrelets can't find a place to nest on 100,000 acres of publicly owned forests, it seems to me we have a problem that's a lot bigger than saving this 237 acres."

Attorneys for environmentalists were jubilant, and vowed to press their fight in federal court.

"We're very pleased that the court acted but disappointed that it took so long to stop the harvest, and so many old trees were lost to the improper machinations of Pacific Lumber," said Fort Bragg attorney Rod Jones, who filed the appeal on Monday.

Jones and co-attorney Mark Harris blasted state and federal regulators for their role in allowing Pacific Lumber to begin logging over the objections of the U.S. Fish and Wildlife Service, which is responsible for enforcing the nation's Endangered Species Act.

"Both the state Department of Fish and Game and the U.S. Fish and Wildlife Service sat on their hands while the grove was being destroyed by corporate barbarians

in direct violation of the Endangered Species Act," said Jones.

Harris said a second lawsuit, and if need be another petition for a temporary logging ban, will be filed this week in federal court on behalf of the Environmental Protection Information Center.

The lawsuit will say that the timber company and regulators violated the Endangered Species Act. It will cite U.S. Fish and Wildlife service findings that the state-approved Pacific Lumber plan "will result in the loss of a substantial portion of the nesting opportunities for murrelets," Harris said.

State forestry officials, who hammered out a final agreement last week with Pacific Lumber, defended their action. They said that an important part of the deal with the timber company was its agreement to not do any further logging along Owl Creek until state and federal officials had approved a comprehensive murrelet management plan for all of the 200,000 acres of forests the company owns.

But federal regulators balked at the deal, and complained that Pacific Lumber unexpectedly started to log while U.S. Fish and Wildlife representatives were still conducting a review of the Owl Creek logging operation.

Kevin Ellis, a special agent with the federal agency's law enforcement division, said Tuesday the disputed logging operation is being investigated for possible violations of federal law. "We're collecting the facts, and then we'll be taking our findings to agency attorneys," said Ellis.

Pacific Lumber attorneys have until Monday to make a bid to overturn the appellate court's stay.

San Francisco Chronicle

THE LARGEST DAILY CIRCULATION IN NORTHERN CALIFORNIA

A20 San Francisco Chronicle ★★★★★ WB BAY AREA/CALIFORNIA

WEDNESDAY, DECEMBER 2, 1992

Judge Halts Timber Harvesting

Appeals court justice moves to protect habitat of endangered bird

By Maitland Zane
Chronicle Staff Writer

A state appeals court judge in San Francisco stepped in yesterday to protect a North Coast habitat of an endangered bird, the marbled murrelet.

Justice Zerne P. Haning ordered Pacific Lumber Co. to stop timber harvesting at Owl Creek in Humboldt County, including any felling of trees or construction of roads, "until further order of this court."

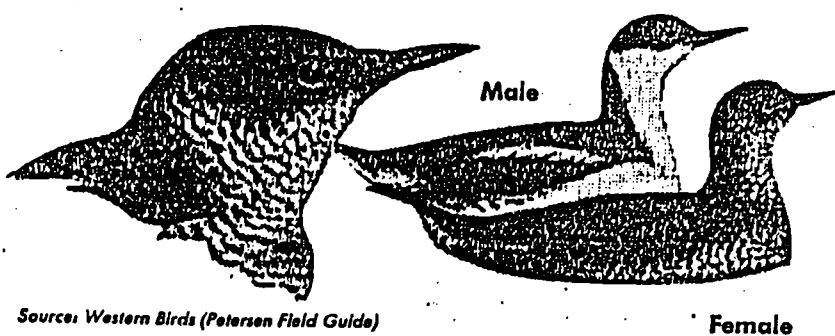
The ruling came just in time, said environmental lawyer Mark Harris. "In two more days the issue would have been moot," he said.

The Arcata attorney said Pacific Lumber sent in crews over the Thanksgiving weekend to begin cutting 237 acres of Douglas firs and redwoods about 15 miles southeast of Eureka. "They were cutting like crazy," Harris said.

The robin-sized marbled murrelet spends most of its life at sea but is known to nest only in old-growth coastal forests. Once California had about 60,000 of the birds, but Harris said the population has dropped in recent years to between 1,200 and 1,500, with the birds concentrated in three North Coast sites.

The marbled murrelet was listed recently by the state as an endangered species and by the federal government as a threatened seabird. Spotted owls are another endangered species nesting

MARBLED MURRELET



Source: Western Birds (Petersen Field Guide)

Female

CHRONICLE GRAPHIC

nearby, Harris said.

Four protesters from the radical Earth First! group were arrested Monday for trespassing in the Owl Creek grove. The protest was touched off by the refusal of a Humboldt County judge to enjoin Pacific Lumber from selectively logging at Owl Creek.

Harris flew to San Francisco to seek a temporary restraining order from the federal court to halt what he called "renegade lumbering," but Justice Haning's order made this course unnecessary.

Rodney Jones, a Fort Bragg lawyer also associated with the Environmental Protection Information Center, said, "I'm really glad that the Court of Appeal acted as quickly as it did, but I'm disappointed that so much of the Owl Creek grove was destroyed by the corporate barbarians at Pacific Lumber."

"I'm further disappointed that both the state Fish and Game Department and the U.S. Fish and Wildlife Service essentially sat on their hands while the destruction was occurring, and where there appeared to be a very clear violation of both the state and federal endangered species laws."

Pacific Lumber Co. President John A. Campbell called Justice Haning's order unfortunate. "It is obvious we are caught in a bureaucratic quagmire, and we feel our private property and perhaps civil rights are now being violated," Campbell said in a written statement.

In his one-page order, Haning, the acting presiding justice of the first appellate district, gave Pacific Lumber and regulatory agencies until December 7 to file any opposition to the stay.

'I'm really glad that the Court of Appeal acted as quickly as it did'

— ATTORNEY RODNEY JONES

Logging blocked in rare bird's habitat

Pacific Lumber told by court not to cut where murrelet lives

By Seth Rosenfeld
OF THE EXAMINER STAFF

Environmentalists fighting to protect an endangered sea bird called the marbled murrelet won a temporary reprieve in court, but they said Pacific Lumber may already have done severe damage to ancient north coast forests where the bird breeds.

The giant lumber company denied the charges Tuesday and vowed to challenge the court stay, which the First District Court of Appeal in San Francisco issued earlier in the day. The stay immediately blocked Pacific from continuing to cut trees on its private land along Owl Creek in Humboldt County south of Eureka.

"We feel our private property and perhaps our civil rights are now being violated," said Pacific President John Campbell.

Cecelia Lanman, of the small Garberville-based Environmental Information Center (EPIC), said that while the stay halted logging, as of Tuesday morning, Pacific may have felled enough trees to damage the area's ecosystem. Pacific began logging Friday and cuts about 10 trees an hour, she said.

The stay came in a suit filed by EPIC that accuses the California Board of Forestry of improperly approving Pacific's timber harvest plan.

The legal battle concerns a chubby, gray-marbled, robin-sized bird that nests in cool, dark redwood canopies during the warmer months and lives on the Pacific Ocean during winter.

The murrelet was placed on the state's endangered list in 1991 and in October 1992 was listed as threatened on the federal list, thereby getting more protection, said Mark Harris, an EPIC lawyer.

The Owl Creek area is home to one of three remaining murrelet colonies, he said, and under legislation proposed by Rep. Pete Stark, D-Hayward, would be purchased for a federal preserve.

With the stay in hand, EPIC temporarily held off filing another suit in federal court. But Harris said it would soon file that action, which alleges that Pacific has engaged in "wholesale violations" of the U.S. Endangered Species Act and that federal agencies failed to stop the firm.

In state court, Harris filed what he called "damning" evidence — a letter from the U.S. Fish and Wildlife Service.

Dated Nov. 29 — two days after Pacific Lumber began logging — the letter states "this timber harvest may place PL and the permitting State agency (the California Board of Forestry) in violation" of the act.

The letter says Pacific's harvest along Owl Creek could deplete the bird's nests, increase its exposure to predators like ravens and jays and cause adverse climate changes including higher temperatures and winds.

The letter also says surveys had shown that murrelets inhabit the Owl Creek area during the summer breeding season.

"The proposed harvest will result in the loss of a substantial portion of the nesting opportunities for murrelets returning to the harvest area," it says.

The service is still reviewing the matter, said Abdallah Al-Islam of the service's Sacramento office.

Mary Bullwinkel, Pacific's spokeswoman, denied the firm was violating the law and said its biologists had surveyed the 237-acre area and found no nests or other evidence that murrelets would be in residence during the harvest.

She said the bird had been seen flying over Owl Creek, but she said she didn't believe "we're damaging murrelet habitat."

The Sacramento Bee

DECEMBER 2, 1992

Logging blocked near rare bird

By John D. Cox
Bee Staff Writer

Environmentalists won a court order Tuesday halting what they called a "Thanksgiving massacre" of old-growth redwoods in a North Coast grove designated as nesting area for the rare marbled murrelet.

The 1st District Court of Appeal in San Francisco issued a stay temporarily prohibiting logging operations by Pacific Lumber Co. in an ancient Humboldt County grove known as Owi Creek, an environmental battleground since 1988.

The marbled murrelet, a small seabird that nests in decaying old growth redwood forests, is listed as "endangered" under the state Environmental Species Act and "threatened" under the more stringent federal act.

Pacific Lumber began logging the 237-acre grove Friday without a permit from the state Department of Fish and Game and without approval

Continued from page A1

by the U.S. Fish and Wildlife Service.

Gov. Pete Wilson's office apparently played a role in winning approval last week of state forestry regulators, although wildlife bureaucrats appeared to have been caught flatfooted during the long holiday weekend.

"Them going to work this soon was kind of a surprise to us," said Ross Johnson, chief of forest practice regulation for the state Department of Forestry and Fire Protection. "We thought all along that they were going to make sure that Fish and Wildlife signed off on the thing."

At the state Department of Fish and Game, environmental services supervisor James Steele said the agency had a "word-of-mouth-type" agreement with Pacific Lumber officials "that they wouldn't harvest until we had all of this business behind us. We were aware that this harvesting was going to go on."

At the U.S. Fish and Wildlife Service, supervising biologist Phillip Detrich said biologists "and law enforcement agents are reviewing all available information to determine whether there has in fact been a violation of the U.S. Endangered Species Act."

Attorneys for the Garberville-based Environmental Protection Information Center moved more quickly, obtaining the court order Tuesday and vowing to file a federal lawsuit against Pacific Lumber and the federal wildlife agency "for wholesale violations of federal Endangered Species Act."

EPIC attorney Rod Jones said both the state and federal wildlife agencies "sat on their hands while the grove was being destroyed by corporate barbarians in direct violation of the Endangered Species Act."

At Pacific Lumber in Scotia, a subsidiary of the Houston-based MAXXAM conglomerate, spokes-

woman Mary Bullwinkel said it was the company's position that it did not need a Fish and Game "take" permit because its latest harvest plan "was designed to preclude the risk of any take of marbled murrelet."

Pacific Lumber President John Campbell issued a statement expressing frustration with the court order.

"It is obvious we are caught in a bureaucratic quagmire, and we feel our private property and perhaps civil rights are now being violated," he said.

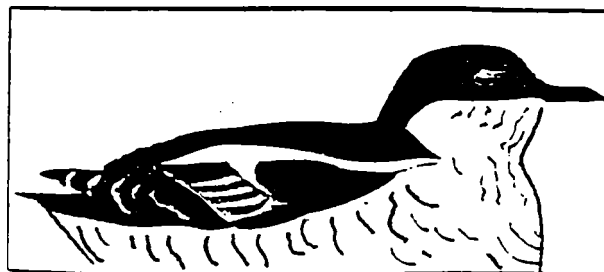
Pacific Lumber was a supporter of Wilson's abortive efforts to obtain legislative approval of logging reforms this year, and it was apparent Tuesday in a letter obtained by The Bee that the Governor's Office had played some role in Pacific Lumber's negotiations with state regulatory agencies.

In a letter dated Nov. 25 from Campbell to Kevin Sloat, Wilson's deputy legislative secretary, Pacific Lumber's president said he wanted Sloat to know "how much I appreciate the constructive help that you have provided."

Bullwinkel said the company's log supply is "real tight" but no layoffs or mill shutdowns were anticipated as a result of the court order.

But Campbell wrote to Sloat: "The logs from this plan are important to not only (Pacific Lumber) from an economic point of view, but also to (Pacific Lumber's) employees and our customers because we would not have been able to keep our mills operating this winter and early spring without the logs that this plan will provide."

"There have been a lot of people involved in a highly complicated regulatory matter," said state Resources Agency spokesman Andrew McLeod. "I don't think it is in any way extraordinary that Campbell sent this letter to someone in the Governor's Office."



Bee Kris Holmann

The marbled murrelet is a protected species.

THE Press DEMOCRAT

Santa Rosa, California, Tuesday, December 8, 1992

Chasing paper trail in cutting by Pacific Lumber

By MIKE GENIELLA
Staff Writer

Support at the highest levels of state government encouraged Pacific Lumber Co. to begin logging an ancient North Coast forest and run the risk of violating the nation's Endangered Species Act, internal government documents show.

A series of memos and letters also disclose that when Pacific Lumber crews began cutting \$28 million worth of standing timber during the Thanksgiving weekend, the company already had been warned of mounting U.S. Fish and Wildlife Service concern over the nesting habitat of a rare seabird called the marbled murrelet.

A state appellate court ordered a halt to the logging five days after it began on 237 acres along Owl Creek in Humboldt County, one of three known murrelet nesting habitats in California.

The documents are a series of state, federal and Pacific Lumber memos and letters over the company's request to log.

The correspondence shows that Pacific Lumber officials turned to high-level state administrators after state and federal wildlife staffers refused to issue permits the company sought.

Company executives reached an agreement with some of the state officials' own bosses and won approval from Gov. Pete Wilson's office, according to the documents.

"They knew any agreement they allegedly had with the state violated federal law but because of the high stakes and high level of state government officials involved, they thought they somehow would be immune," said environmental attorney Mark Harris. He won the court-imposed temporary logging ban after arguing that Pacific Lumber went ahead without getting approval from state and federal wildlife agencies.

Pacific Lumber President John Campbell defended the company's logging. "We were conducting our operations in accordance with our approved harvest plan and with an agreement reached with the California Department of Forestry and Fire Protection," he said in a

statement. "We most certainly did not mislead anyone as to what our plans were or how we would carry them forward."

The U.S. Fish and Wildlife Service is investigating the tree-cutting. Pacific Lumber, if it is charged and found guilty of violating the federal endangered species act, could face up to \$50,000 in civil fines and possible criminal action. The marbled murrelet is listed as endangered under the state Environmental Species Act, and as threatened under a more stringent federal act.

Campbell and Pacific Lumber attorney Jared Carter describe the fish and wildlife service, which raised concerns after the murrelet was declared threatened on Oct. 1, as a Johnny-come-lately to months of negotiations between state regulators and Pacific Lumber.

Pacific Lumber said a pact promising no harm to the murrelets was agreed to by high-ranking officials like Boyd Gibbons, director of the state Department of Fish and Game, Richard Wilson, director of the state Department of Forestry, and Terry Gorton, chair-

endangered - st
Threatened - fed

Johnny come lately?

Southern Humboldt / Northern Mendocino

Court Approves PL Motion To Remove Downed Trees

The First District Court of Appeal in San Francisco approved The Pacific Lumber Company's motion to remove trees that have fallen in the Owl Creek area.

The court said on March 15 that The Pacific Lumber Company must remove the downed trees between now and the end of March or wait until after the end of July.

When those trees will be removed depends upon the weather, according to Mary Bullwinkel, PALCO's assistant manager of public affairs.

The court decision also stipulated that the timber company was not allowed to construct additional roads or landings to remove the timber.

Bullwinkel said she did not know how many roads and landings currently exist at the Owl Creek site. She said approximately 1.2 million board feet of timber was fallen, and, of that, about 80 percent is Douglas fir.

"The court decision allows removal of a valuable resource which provides much needed employment for North Coast workers," John Campbell is quoted in the company's press release. Campbell is the president of The Pacific Lumber Company.

PALCO harvested the trees over Thanksgiving weekend last year.

The Environmental Protection Information Center of Garberville filed for a writ of supersedeas against the harvest, Nov. 30, 1992, and a temporary stay was issued December 1, 1992. In filing for the writ, EPIC said harvest activities in Owl Creek were in violation of provisions of both the California State Fish and Game Department and the U.S. Fish and Wildlife Service due to the presence of the marbled murrelet. The mur-

relet, a seabird that nests inland, is a federally threatened species, as well as being listed as endangered in California.

The First District State of California Court of Appeal issued the writ of supersedeas and, according to an earlier EPIC press release, it is "similar to a preliminary injunction and is a permanent stay on logging activities, pending a hearing and the completion of the appeal."

Fort Bragg activist and EPIC attorney Rodney Jones commented on the court's decision in an opinion piece submitted to the Santa Rosa Press Democrat.

"This decision was wrong and most unfortunate," he wrote. "It perpetuates a judicial practice of ignoring unlawful forestry practices by major industrial timber corporations and essentially rewarding these companies for their flagrant forest rule violations."

Jones also expressed doubt in the company's ability and/or interest in removing the timber according to forest rules.

"The appellate court again approved a fox to guard the henhouse, instructing PL that it is on its honor to abide by forest rules when it claims those trees, Jones wrote. "It ignored statistical evidence submitted by EPIC that showed repeated rule violations over the past two years by PL, often on the same harvest plan. No independent third party was appointed to oversee removal and certainly, in the era of staff shortages (real or imagined), no one from C.D.F. will be on ground to insure that no other trees are cut and no additional roads are built."

Jones said in a telephone interview Thursday that he had not heard of any plans to have volunteer observers on-site when PL begins removing the trees.

By Jessie A. Faulkner

Legally signing-up Rover will be a little more costly this year with an increase in Humboldt County dog licensing fees.

Charges for a regular license rose from \$5 to \$10, with licenses for spayed or neutered dogs going from \$4 to \$5, according to Humboldt County Assistant Agriculture Commissioner James Spallino.

Spallino said the higher costs for licensing were the first increase the County has implemented in at least five years.

"The fees we charge are really nothing compared to some areas," he said, pointing to other areas where licensing fees run between \$25 and \$30.

Dog licensing fees go toward supporting such services as picking up stray animals, investigating animal bites, and paying for veterinarian care for animals with no known owner, the commissioner said.

"It does not go near to paying for all that," Spallino said. He estimated that those fees cover one-third of the department's operating costs, with the rest of the support coming from the County's general fund.

It isn't the amount of the licensing fees that has some Southern Humboldt residents' backs up, it's the lack of service in the area.

Jean Ridgway, president of Coast Mountains SPCA, said her attempts to get assistance from animal control have been repeatedly unsuccessful.

"They tell you to call the sheriff," she said. "You call the sheriff and they tell you to call animal control."

She said she had made calls to get help with dogs chasing her goats and killing her chickens, with little success.

"Animal control just doesn't show up," Ridgway said. Ridgway said she had received some help from a sheriff's deputy, but said that was because he was a neighbor.

Spallino conceded that Southern Hum-boldt does not get the animal control service it deserves. A similar situation exists for other outlying areas such as Willow Creek



United States Department of the Interior

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FISH AND WILDLIFE SERVICE
Fish and Wildlife Enhancement
Sacramento Field Office
2800 Cottage Way, Room E-1803
Sacramento, California 95825-1846

FEB 22 1993

In Reply Refer To:
1-1-93-TA-81

FEB 23 1993

February 17, 1993

Mr. Richard Wilson, Director
California Department of Forestry
and Fire Protection
1416 Ninth St.
Sacramento, California 95814

Subject: Timber Harvest Plan 1-90-237-HUM, Pacific Lumber Company

Dear Mr. Wilson:

I am writing to inform you of Fish and Wildlife Service (Service) activities and conclusions regarding the so-called Owl Creek Timber Harvest Plan (THP) prepared by the Pacific Lumber Company (PL). During the past year, various parties have expressed concern regarding the possible presence of the marbled murrelet (*Brachyramphus marmoratus*) in the THP area.

In a notice dated March 13, 1992, the California Board of Forestry specified that "No timber operation may occur until an adequate survey has been conducted for the marbled murrelet...The survey must consist of a minimum of three morning visits during the period May through July utilizing accepted protocol." Accepted protocol at that time was the 1991 protocol issued by the Pacific Seabird Group. PL conducted surveys in April, May, and June, and then carried out several days of harvesting beginning on June 19, 1992. More surveys were then conducted in July, 1992. Negotiations between PL and the California Department of Fish and Game (CDFG) continued during the following months.

On October 1, 1992, the Service listed the marbled murrelet as threatened under the U.S. Endangered Species Act of 1973, as amended (Act). On November 4, 1992, the Service wrote to the Director of the CDFG to explain that projects approved under state laws might not satisfy the requirements of the Act. The letter specifically referred to the fact that actions covered by a CDFG "2081 agreement" might still require a section 10 permit under the Act. The letter stated our willingness to coordinate with state agencies on these matters. A copy of that letter was sent to the Chairman of the California Board of Forestry. On October 14, a Service biologist, Mr. Michael Horton, visited the THP area with Mr. Ken Moore of the CDFG, and expressed to PL representatives the Service's concern that further harvest might result in take as defined by the Act.

On November 27, 1992, the Service received information from PL stating that they had concluded that the THP area was not occupied by marbled murrelets. On the same date, PL resumed harvesting and proceeded until stopped by an order of the California Appellate Court on December 2, 1992. The Service then initiated an investigation to determine whether the Act had been violated. This investigation is still proceeding.

In a letter dated December 29, 1992, the Service informed PL that, in our opinion, the conclusion that the THP area was not occupied by murrelets was premature and unjustified. The Service based this conclusion on the following factors:

1. Only one season of intensive survey was conducted in the Owl Creek area (i.e., in 1992), and that survey was conducted according to the obsolete 1991 protocol. The Pacific Seabird Group's revised protocol, issued in May, 1992, states "There is evidence that one year of surveys is inadequate to determine absence, presence, or occupancy" of stands by marbled murrelets.
2. Behavior of marbled murrelets observed in the THP area during April, 1992, conformed with the definition of "occupied behavior" per the 1992 protocol. PL argued that the low level of behavior observed in the THP area was not actually indicative of occupancy, but this argument was not supported with comparative data from other sites. Authorities on the species continue to support the protocol definitions as the best available interpretation of marbled murrelet behaviors. Meanwhile, observers in other areas of the redwood region report that some sites occupied by murrelets demonstrate low early- and mid-season detection rates followed by high detection rates in July.
3. The 1992 survey was compromised by several days of timber harvest beginning on June 19, 1992, before completion of the survey period. Rates of detection in the THP area were significantly different following the harvest. In fact, there were no detections of marbled murrelets in the THP area following the June harvest, although detections continued in nearby areas. This indicates that the harvest may have altered murrelet behavior in the THP area to such an extent as to render the post-harvest survey results, and PL's interpretation thereof, invalid.

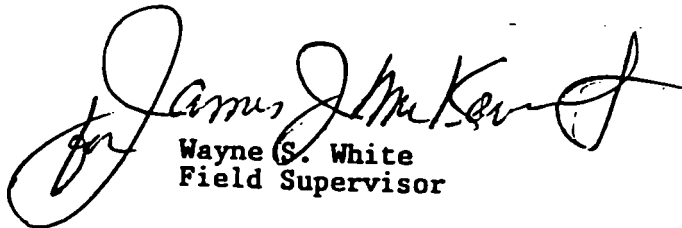
Recently the Service supplied copies of PL's survey information to several authorities on marbled murrelets, and asked their opinion as to whether the data indicated that the stand was occupied and whether the June harvest had confounded the July survey results. The researchers all confirmed that "occupied behavior" (as defined by the May, 1992, survey protocol) had been observed in the area proposed for harvest, and that the June harvest had likely confounded the results of the July surveys.

On two subsequent occasions, the Service verbally informed PL representatives that the survey results made available to the Service do not support their conclusion that the THP area is not occupied by marbled murrelets. These discussions took place in Congressman Dan Hamburg's office on January 15, 1993, and again at a meeting attended by Mr. Ross Johnson and Mr. Marty Berbach of your staff on February 5, 1993.

To date the Service has received no assurance that PL will complete adequate surveys prior to resuming harvest. We have received no request from PL for a conference to determine appropriate measures for protection of the species pursuant to section 1036.1 of the California Forest Practice Rules. The stated position of PL is that this is an approved THP. We have received no communications regarding the position of your agency on this THP. Therefore, we request that you inform us as to the relevance of section 1036.1 of the California Forest Practice Rules in this matter, and inform us as to whether your approval of this THP will remain in effect if the order of the court is lifted.

Mr. Phil Detrich remains my staff contact in this matter. If you have questions, Mr. Detrich may be reached at (916) 978-5408, no. 2. Thank you for your cooperation.

Sincerely,



Wayne S. White
Field Supervisor

cc:

Regional Director, ARD/ES, ARD/LE, U.S. Fish and Wildlife Service, Portland,
Oregon

Congressman Dan Hamburg, 114 Cannon House Office Bldg., Washington, D.C.
20515

Mr. Boyd Gibbons, Director, California Department of Fish and Game, 1416 Ninth
St., Sacramento, California 95814

Mr. John Campbell, President, Pacific Lumber Company, P.O. Box 37, Scotia,
California 95565

S. Humb. Life & Times
4/27/93

April 27, 1993

Southern Humboldt

EPIC Names Sec. Of Interior In Marbled Murrelet Lawsuit

By Jessie A. Faulkner

The Environmental Protection Information Center of Garberville filed a federal suit April 16 on behalf of the marbled murrelet, a seabird listed as endangered in California and on the federal threatened species list.

The suit names Interior Secretary Bruce Babbitt, The Pacific Lumber Company, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, the California Board of Forestry, and the California Department of Forestry and Fire Protection, according to an EPIC news release.

The suit, arising from the Pacific Lumber Company's logging of the Owl Creek area last November, alleges that "all evidence shows that the agencies allowed PL to flagrantly violate the Federal Endangered Species Act through logging and destruction of crucial marbled murrelet nesting habitat in the ancient redwood Owl Creek grove."

According to the EPIC announcement, "This is the first federal lawsuit regarding logging of endangered species habitat on private land in California. Results of this suit will be significant to the future enforcement and implementation of the law, and to the future survival of many threatened and endangered species, whether it be murrelets, gnat catchers, or salmon."

One of the objectives, EPIC attorney Mark Harris said, is to require governmental agencies to take action.

"We would like to see the U.S. Fish and Wildlife Service find Pacific Lumber in violation of the Endangered Species Act, and proceed accordingly," he said.

The problem, Harris explained, is that none of the involved agencies found The Pacific Lumber Company in violation of the federal Endangered Species Act during the Thanksgiving cut in the Owl Creek area or during the removal of fallen timber from the same area last month.

All of the agencies are saying it wasn't their fault, Harris said.

"The only regulation we've had is from EPIC," he said.

Harris said he had received a letter from a U.S. Fish and Wildlife biologist in November stating that the Owl Creek harvest had

been "a take" in relation to the marbled murrelet.

"Politics and timber industry influences are replacing sound biology as the cornerstone of the ESA," Harris is quoted in EPIC April 16 press release. "Agency biologists are being intimidated and silenced while the issue of species protection is being trampled by interagency fingerpointing over which agency is in charge and which is liable."

"What we hope to come out of it is better implementation and enforcement of the Endangered Species Act in the future," Laris Sarachek of EPIC said.

Over the 1992 Thanksgiving week, Pacific Lumber Company began harvest of the company-owned 237-acre parcel of old growth redwoods near Carlotta. A First District State of California Court of Appeals temporary stay was issued December 1, followed by a writ of supersedeas February 24, stopping The Pacific Lumber Company from logging marbled murrelet habitat in Owl Creek.

On March 15, the first District Court Appeal in San Francisco approved The Pacific Lumber Company's motion to remove trees that were fallen in the Owl Creek area. The court stipulated that the trees had to be removed by the end of March or after July.

Both the Thanksgiving weekend harvest and the removal of the trees last month were in violation of the Federal Endangered Species Act, according to Sarachek.

"They're mandated to implement and enforce the Endangered Species Act," Sarachek said, yet none of the agencies have taken action to do that.

"Clearly, we're going to get a favorable ruling," Harris said.

Mary Bullwinkel, assistant manager of public affairs for The Pacific Lumber Company, said the company was surprised at the lawsuit.

"Our basic feeling," she said, "was that during the forest conference, the president asked for a 60-day hiatus on forest-related lawsuits."

"We wonder why one small organization is ignoring the wishes of the president," Bullwinkel said.

Environmentalists Demand Agencies Stay in Bird Case

Endangered species laws' enforcement on private land presented as part of the fight of the murrelet.

Dennis Pfaff
Journal Staff Writer

The future of enforcing endangered species laws on private land is at stake in a case now before the U.S. District Court, environmentalists told a federal judge yesterday.

Before a skeptical Judge Fern Smith, attorneys representing the Environmental Protection Information Center tried to convince both federal and state defendants to drop the organization's lawsuit seeking to prevent logging on northwestern lands that are home to the rare marbled murrelet.

The robin-sized bird was declared endangered by the federal government in 1991 and has endangered status under

California law. Part of its dwindling habitat includes forest owned by the Pacific Lumber Co.

In *Murrelet v. Babbitt*, 93-14001FMS, the organization wants both state and federal regulatory agencies, including the U.S. Fish and Wildlife Service and the state Department of Fish and Game, to prevent any logging on a 237-acre tract the environmental group says is important to the bird's survival.

But attorneys for both the state and federal governments have sought to have their agencies dismissed from the case. Smith indicated she was inclined to dismiss at least the state defendants, based on constitutional restrictions against suing state agencies in federal court.

"The state argument under the 11th amendment is very strong," Smith said. She said she could see "no valid way to keep the state in the action."

Federal agencies should be dismissed from the case because their decision not to prosecute the landowner is not review-

able, said Christiana Perry, a Justice Department trial attorney.

Smith did not specifically address the federal argument.

Mark Harris, one of two lawyers representing the environmental group, said it is vital to keep the state in the case. The organization accuses both state and federal agencies of not doing enough to prevent allegedly illegal forays into the privately owned forest.

"For the court to accept the argument there is sovereign immunity for the entire state, no matter what they do, would set the Endangered Species Act on its head," Harris said. He said the state Board of Forestry is directly responsible for the "take" of murrelets on the land.

Despite Smith's apparent reluctance to keep the state in the case, she said she believes the environmental group has shown it has standing to bring the action — a blow to Pacific Lumber, which argued the environmentalists had not shown enough justification.

Environmentalists Can Champion Bird's Cause

By Dennis Pfaff
Daily Journal Staff Writer

The marbled murrelet — and a group of humans championing the bird's survival — has standing to sue for protection in federal court, but not by attacking state and federal agencies, a judge has ruled.

U.S. District Judge Fern Smith's ruling in *Murrelet v. Babbitt*, 93-1400, entered Wednesday, represents a partial victory for the Environmental Protection Information Center, a small Northern California environmental group. The organization is seeking to block logging by the Pacific Lumber Co. in a 237-acre tract of ancient forest the group considers vital to the bird.

Pacific Lumber was one of the original defendants in the action, but the environmental organization wanted to keep state and federal regulatory agencies as defendants as well.

In arguments last week, attorneys for the group said both governments had not done enough to help the murrelet.

But in her ruling, Smith said actions against the state are barred by the 11th Amendment, which prevents the state from being sued in federal court. Federal agencies were dismissed because they acted within their discretion.

Although attorneys for EPIC had said keeping the government agencies in the action was important to the case, one of the lawyers Thursday said Smith's ruling was not a surprise. Rod Jones, a sole practitioner representing the organization, said no decision had been made whether to appeal.

"What [the ruling] does is take their feet off the fire and open the door to continuing abuses in the future," Jones said.

Pacific Lumber had said EPIC had not shown enough justification to gain standing in the case and that previous rulings have held that endangered species actions must involve the actual area affected. But Smith, disagreeing, cited the fact that local residents study and enjoy the bird, which has been declared threatened by the federal government.

"The acreage at issue is the private property of [Pacific Lumber]; however, EPIC's injury stems not from the potential lack of access to [Pacific Lumber's] land, but rather from its lack of access to the marbled murrelet that would be a result of the harvesting of the trees that constitute the marbled murrelet's nesting area," she wrote.

Attorneys who argued the case for the lumber company and on behalf of the state could not be reached for comment.

9-3-93



The Humboldt Bear

AND FORTUNA ADVANCE

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THURSDAY, MAY 27, 1993

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Court Refuses Stay; PALCO Cannot Log

by Glenn Franco Simmons
Editor

On a split vote, the California Supreme Court narrowly refused to lift a stay on PL's harvest of timber in Owl Creek east of Fortuna.

On a 4-3 vote Thursday, May 20, the court rejected The Pacific Lumber Co.'s request that it be allowed to log as outlined in its

Owl Creek timber harvest plan.

Environmentalists have put a hold on that plan through legal action that challenges the THP in court. The case is now at an appeals court level and both sides are waiting for a hearing to be scheduled.

Environmentalists contend the marbled murrelet, a seabird, nests in the old-growth trees in

the Owl Creek area and that its survival depends upon the set-aside of areas such as Owl Creek.

Supreme Court's Ruling

The Supreme Court's ruling was a simple one: "Petition for review is denied."

"The significance is in the split vote," PALCO spokeswoman Mary Bullwinkel told The Humboldt Beacon Tuesday from her Scotia

office. "Even Chief Justice Malcolm Lucas was on the dissenting side.

"PALCO asked the Supreme Court that it be allowed to log while the case was pending before the appeals court."

Case's Merits

She said "the merits of the case" are at issue.

See PALCO, page 2

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PALCO ... from page 1

"A hearing will now be scheduled before the appeals court on the merits of the case," Bullwinkel said.

Final arguments on the Owl Creek THP are expected to be completed by the end of May, she said.

What are the merits?

"We are contending it's a legal timber harvest plan," she said. "It has been approved twice by the (state) Board of Forestry."

Bullwinkel said PALCO has worked with numerous agencies — including the California Department of Forestry and Fire Protection and the California Department of Fish and Game — on its Owl Creek THP.

"We believe we should be able to go to work on this plan," she said. "This is the third year we have been arguing over this thing."

Owl Creek THP

With respect to Bullwinkel's contention that it is one of the most-reviewed timber harvest plans in history, PALCO also feels that its offer of preserving 101 acres of the 237-acre area in question illustrates good faith on its part.

Bullwinkel said the THP listed 237 acres, of which 136 would be logged and 101 acres set aside for wildlife protection.

Most of the trees are old-growth redwood and Douglas fir, she said.

E.P.I.C.'s Lawsuit

The Garberville-based Environmental Protection and Information Center believes the murrelet may be detrimentally affected by any logging in the Owl Creek area.

The marbled murrelet, also known as the foglark, is listed as

an endangered species by the state of California and as a threatened species by the federal government.

Because of its concern for the murrelet, E.P.I.C. has filed lawsuits on both the state and federal levels that seek to prohibit future logging in the Owl Creek area.

E.P.I.C.'s suits contend that government agencies are not doing enough to protect the marbled murrelets from damage by PALCO's logging.

PALCO began harvesting timber in the Owl Creek area June and November in weekend operations.

Environmentalists have contended the logging was illegal.

PALCO contends it did nothing wrong.

(Beacon County Bureau reporter Julie Verran contributed to this story.)

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North Coast

Times-Standard

Saturday, May 22, 1993



Cheryl Easter/The Times-Standard

fisheries biologist pulls a branch away from the pipe leading into Corner Creek on PL property in Carlotta on Friday. Through the

pipe, about 10,000 salmon smolts were released as part of PL's program of increasing the North Coast's salmon population.

Salmon release goes swimmingly

85,000 chinook are planted into area streams on PL property

Karen Jeffries
Times-Standard

CARLOTTA — Three months old might seem a bit young to be on their own, but the 10,000 chinook salmon released Friday into Corner Creek were doing just fine. The batch of young chinook salmon, called smolts, was part of an overall release Friday of 85,000 chinook into streams on Pacific Lumber Co.'s property. Batches of 10,000 smolts each were released near the South Fork of Yager Creek and four of

Yager Creek's tributaries.

Taking about a year, the young salmon will journey about 50 miles to the Pacific Ocean. But the fish must first travel through the Van Duzen and Eel rivers.

The smolts were hatched at PL's Yager Hatchery and spent about the last two weeks in a rearing pond next to Corner Creek, where they should return to spawn in three or four years.

"All we're doing here is recreating Mother Nature," said Greg Moody, PL's fisheries biologist. "Each watershed has its

own chemical characteristics and the salmon are very sensitive to the characteristics of the water and the turbidity of the water, so they know which watershed to come into when they return."

Moody said the survival rate for hatchery-raised chinook is about 1 percent to 3 percent. That's about the same, if not a little better, than the rate for wild fish. Hatchery smolts also tend to be larger than those hatched in the wild, he said.

Chinook salmon have not been found in the Yager Creek area for the past few years, Moody said. But fish were found this season after extensive streamside restoration work was done.

The project, which began in 1990, is a joint effort of PL, the

state Department of Fish and Game and the California Conservation Corps. PL annually budgets \$50,000 in cash and materials to match Fish and Game's investment.

Just above the site where the smolts were released into Corner Creek is a restored habitat perfect for spawning, Moody said. Deeper pools were created, more gravel was added to hide eggs and some big rocks and downed logs along the side were "sewn" together with steel cable so they won't fall into the stream and block it.

The same work has been done on several other streams on PL's property, Moody said, which he hopes will mean even more fish in future years.

open-meeting law, the council opted for allowing public discussion at last week's meeting.

uncertain issue, I feel it is better to place this item on the agenda and provide FPEA representa-

were councilmen John Prevost, Dick Rodrigue and Mel Berti.

Reforestation Commitment Taken Seriously By The Pacific Lumber Co.

It was 70 years ago when The Pacific Lumber Co. first demonstrated its commitment to growing forests for future generations.

Recognizing the importance of reforestation, the company started a tree nursery just south of Scotia. PALCO cleared about 100 acres of land by removing the redwood stumps at a substantial cost per acre.

The First Born

The first redwoods were placed in 84 four-foot by eight-foot seed beds. The seed beds had been carefully prepared with a thin layer of sand as top soil. Burlap strips were used to cover the newly sown seeds to assist germination.

In 15-20 days, the sprouts would break through the surface and a wooden lattice frame was then placed over the beds for protection from the sun and birds.

When seedlings reached a height of four inches, a sharp pruning knife drawn by a team of horses sliced off the roots four inches under the ground. This process produced a short, bushy root system that was ideal for reforesting previously harvested land.

Redwood, Douglas fir and Sitka spruce seedlings were grown in the seed beds.

In 1931, during The Great Depression, the nursery was abandoned. The land was then converted to pasture for grazing cattle.

The 100-acre area was reconverted to forest land in 1982.

About 50,000 trees, mainly redwood, but some eucalyptus and

spruce, were planted there. The redwoods are more than 20 feet in height and are growing at an additional two to three feet annually.

Modern-Day Reforestation

Since that time, PALCO has purchased seedlings for its reforestation efforts.

Each year, the company plants about 500,000 redwood and Douglas fir seedlings. The tree species replanted are the same type harvested from the area.

In many areas, biodegradable plastic Vexar tubes are used to cover the seedlings to protect them from rodents and browsing deer.

Vexar tubes made of fertilizer material were used in the Rainbow Ridge area to promote greater seedling survival.

For several years, PALCO has specially treated root systems of Douglas fir seedlings with Terra-Sorb Dip. The solution allows a root system to retain moisture for greater seedling survival.

In 1992-93:

- 487,610 total seedlings were planted.
- 280,310 were redwood.
- 206,850 were Douglas fir.
- 450 were Christmas trees.
- 2,446 total acres were reforested.
- an average of 199 seedlings were planted per acre.

• 127,860 Vexars were placed. Reforestation got a late start in 1992-93 due to inclement weather. Replanting began about a month later than usual, in mid-January, and was completed by the end of March.

Planting crews worked for 52 days. The average number of

trees planted per day was more than 9,000.

Seedlings were placed in the Rainbow, Freshwater, Tompkins Hill, Yager and Stafford areas.

Reforestation of the Rainbow area, blackened by a lightning-caused fire in 1990, was completed this year. More than 133,000 bright-green Douglas fir seedlings were planted in this burned area.

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