

Carbon Control News

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CALIFORNIA GHG SUIT OVER LOGGING PLAN MAY SPUR MODEL MITIGATION

In a legal challenge believed to be the first-of-its-kind in the nation, environmentalists have sued California regulators over the approval of a logging plan based on charges it fails to adequately assess and mitigate greenhouse gas (GHG) emissions under the state's umbrella environmental protection law. The lawsuit aims to overturn the approval of the plan, force the department to redo its environmental review and require mitigation of GHGs to zero emissions.

The California litigation may attract national attention as other states, such as Massachusetts and New York, also are considering climate change impacts of development projects under their stringent environmental review laws. If successful, the California case could potentially lead to model mitigation measures requiring timber companies to scale back logging plans or purchase carbon offsets to mitigate those projects, sources say.

The Center for Biological Diversity (CBD) Aug. 13 sued the California Department of Forestry & Fire Protection (CDF) in Tehama County Superior Court, charging that a "timber harvest plan" approved July 17 by the department violates the California Environmental Quality Act (CEQA) and the Forest Practices Act because it fails to adequately assess and mitigate GHG emissions that will result from the plan. The plan by Sierra Pacific Industries calls for clear-cutting trees covering 431 acres in the Sierra Nevada Mountains. *The lawsuit is available at CarbonControlNews.com.*

CBD argues in part that logging can convert a patch of forest from a net carbon sink to a carbon source, considering "foregone sequestration" of GHG emissions as a result of the trees being cut down, and emissions from soil changes and the machinery and trucks used to carry out the plan.

A CDF spokeswoman declined to comment, citing a department policy concerning pending litigation. A call to Sierra Pacific Industries was not returned.

CDF in previous responses to comments on the plan generally maintained that over a 100-year time frame enough trees would grow back on the company's lands to render the logging plan at issue carbon-neutral, CBD says.

"The law is clear that agencies must look at the GHG emissions of the specific project they approve," said Jan Chatten-Brown of Chatten-Brown & Carstens, the law firm representing CBD, in a written statement. CDF "cannot escape this mandate by simply

claiming the project's impacts will be offset elsewhere, which is in any case, a dubious claim."

The activist attorneys cite a recently passed state law and several state guidance and policy documents pertaining to how GHGs are treated under CEQA to bolster their arguments. These include a March advisory by the state attorney general's office.

CDF violated CEQA by failing to: require that the plan identify, calculate and evaluate the "potential significant site-specific and cumulative global warming and GHG emission impacts of the [plan]; . . . analyze mitigation measures to reduce the significant impact the project would have on climate change; and . . . consider a reasonable range of potentially feasible alternatives, including an alternative that would avoid or reduce the potential for significant GHG emissions," the lawsuit states.

CBD claims that if successful the lawsuit could spur model mitigation measures for logging plans, including requirements that companies either scale back proposals or purchase carbon offsets. CBD says that more than two dozen similar logging plans by Sierra Pacific Industries await approval at CDF.