

No. 08-27

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**The Bank of New York Mellon Trust Company, N.A. (f/d/a The Bank of  
New York Trust Company, N.A.), as Indenture Trustee, *et al.***

**Appellant-Petitioner,**

**v.**

**Marathon Structured Finance Fund L.P., Mendocino Redwood Company  
LLC, and The Official Committee of Unsecured Creditors,**

**Appellees-Respondents.**

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**Direct Appeal from the United States Bankruptcy Court for the Southern  
District of Texas, Corpus Christi Division  
USBC No. 07-20027**

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**CALIFORNIA STATE AGENCIES' APPENDIX TO OPPOSITION  
TO EMERGENCY MOTION FOR STAY AND INJUNCTION  
FILED BY INDENTURE TRUSTEE**

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Attorneys for Appellees-Respondents the California Resources Agency, California Department of Fish and Game, the California Department of Forestry and Fire Protection, the California Regional Water Quality Control Board, North Coast Region, the California State Water Resources Control Board, and the California Wildlife Conservation Board

The California Resources Agency, the California Department of Forestry and Fire Protection, the California Department of Fish and Game, the California Wildlife Conservation Board, the California Regional Water Quality Control Board, North Coast Region, and the State Water Resources Control Board (collectively, the “California State Agencies”) hereby files this appendix in support of its Opposition to the Indenture Trustee’s emergency motion for a stay of the confirmation order pending appeal:

<b>Exhibit</b>	<b>Title</b>
1	State of California’s Position by Governor Arnold Schwarzenegger for Proposed Plans of Reorganization, Bankruptcy Court Docket No. 2201.
2	State of California’s Position by Governor Arnold Schwarzenegger in Support of MRC/Marathon Plan of Reorganization, Bankruptcy Court Docket No. 2601.
3	Trial Transcript May 1, 2008, pages 83-85.
4	Stay Hearing Transcript July 11, 2008, beginning page 309, lines 4-23.
5	MMX 130 (Notice of Violation of Forest Practice Act).
6	Trial Transcript May 1, 2008, beginning page 95, line 13 to page 96, line 10.
7	Stay Hearing Transcript July 10, 2008, beginning page 179, line 14 to page 183, line 8.

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8	Stay Hearing Transcript July 11, 2008, beginning page 181, line 24 to page 183, line 18.
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Dated: July 22, 2008

Respectfully submitted,

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Attorneys for Appellees-Respondents the California Resources Agency, California Department of Fish and Game, the California Department of Forestry and Fire Protection, the California Regional Water Quality Control Board, North Coast Region, the California State Water Resources Control Board, and the California Wildlife Conservation Board

# **EXHIBIT 1**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>IN RE:</b>	§	<b>JOINTLY ADMINISTERED</b>
	§	
<b>SCOTIA DEVELOPMENT LLC, ET</b>	§	<b>Case No. 07-20027-C-11</b>
<b>AL,</b>	§	
	§	<b>Chapter 11</b>
<b>Debtors.</b>	§	

**STATE OF CALIFORNIA'S POSITION BY GOVERNOR ARNOLD  
SCHWARZENEGGER FOR PROPOSED PLANS OF REORGANIZATION**

The State of California, by Governor Arnold Schwarzenegger, hereby submits to all prospective plan proponents and the Bankruptcy Court its Statement of Position, a copy of which is attached hereto. This Statement is for the information of the parties and the Court. The Statement is not a statement of support for or opposition to any particular plan whether filed or not at this time. This Statement is not a solicitation for votes on any plan.

Dated: January 29, 2008

Respectfully submitted,

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Attorneys for the California Resources Agency



GOVERNOR ARNOLD SCHWARZENEGGER

**California's Statement of Position**

To All Plan Proponents and the Court:

I am submitting this Statement of Position for any plans of reorganization that will be filed in the Pacific Lumber Company bankruptcy cases.

My administration, through the California Resources Agency, the California Environmental Protection Agency and their boards and departments, has been active in the Pacific Lumber Company bankruptcy case to protect the investment that California made in the historic 1999 Headwaters Forest Agreement and to protect the environment and all of our state's natural resources. As California's Governor, I have an interest in the future of the debtors' lands and related assets located in Humboldt County, California. These lands and assets represent a unique public trust for the people of California. Pacific Lumber Company made assurances in 1999 for the future management of its lands that, as part of the Headwaters Agreement, included the expenditure of nearly \$500 million of federal and state public funds. The United States and the people of California have a strong interest in a successful reorganization of a Pacific Lumber Company that will result in sound management practices for the future of these lands.


Given the previous investment of significant public funds and the commitments made by Pacific Lumber Company and its corporate parent Maxxam, I respectfully submit our strong position that any reorganization of Pacific Lumber Company preserves the state and federal governments' interest in Pacific Lumber's timberlands and adheres to the following principles:

1. Manage the timberlands in accordance with state and federal laws, including but not limited to the existing regulatory permits and authorizations such as the Headwaters Forest Agreement and the Habitat Conservation Plan and all other state permits, AB 1986, the Agreement Relating to Enforcement of AB 1986 and the conditions, covenants and restrictions recorded in accordance with AB 1986.
2. Manage the timberlands in a manner that complies with all required regulatory permits and other authorizations in coordination with state and federal regulatory agencies.
3. Preserve the timberlands by maintaining a level of commercial harvest that will ensure sustainable, high-quality timber production over the long term while preserving and enhancing watershed and wildlife protection.
4. Minimize adverse impacts to the local economy and preserve as many local employment opportunities as possible.
5. Maximize the greenhouse gas reduction benefits that could be generated in timberland management.

All Plan Proponents and the Court  
Page two

As the parties draft their proposals and the Court weighs the various competing plans to consider how to ensure that the reorganized Pacific Lumber Company is positioned for long-term success, we appreciate the consideration of our position. This is an issue of paramount importance to all Californians. On their behalf, I remain committed to ensuring that our interests are protected and the public trust secured.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger". The signature is written in a cursive, flowing style with a prominent loop at the end.

Arnold Schwarzenegger

**CERTIFICATE OF SERVICE**

I, Karen L. Widder, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. I am an employee of Felderstein Fitzgerald Willoughby & Pascuzzi LLP and my business address is 400 Capitol Mall, Suite 1450, Sacramento, CA 95814-4434.

On January 29, 2008, I served the foregoing:

**STATE OF CALIFORNIA'S POSITION BY GOVERNOR ARNOLD  
SCHWARZENEGGER FOR PROPOSED PLANS OF REORGANIZATION**

(By Electronic Mail) I caused to be transmitted the above described document(s) via electronic mail to the electronic addresses as indicated on the attached list.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 29, 2008, at Sacramento, California.

/s/ Karen L. Widder  
Karen L. Widder, Legal Assistant



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# **EXHIBIT 2**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**IN RE:** § **JOINTLY ADMINISTERED**  
§  
**SCOTIA DEVELOPMENT LLC, ET** § **Case No. 07-20027-C-11**  
**AL,** §  
§ **Chapter 11**  
§  
**Debtors.** §

**STATE OF CALIFORNIA’S POSITION BY GOVERNOR ARNOLD  
SCHWARZENEGGER IN SUPPORT OF MRC/MARATHON PLAN OF  
REORGANIZATION**

The State of California, by Governor Arnold Schwarzenegger, hereby submits its Statement of Support for the First Amended Joint Plan of Reorganization Proposed by Mendocino Redwood Company, LLC and Marathon Structured Finance Fund L.P., a copy of which is attached hereto.

Dated: April 4, 2008

Respectfully submitted,

/s/ Paul J. Pascuzzi  
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Attorneys for the California Resources Agency



GOVERNOR ARNOLD SCHWARZENEGGER

**California's Statement of Support for First Amended Joint Plan of Reorganization  
Proposed by Mendocino Redwood Company, LLC and Marathon Structured Finance  
Fund L.P.**

To All Parties in Interest and the Court:

As Governor of the State of California, I am submitting this Statement of Support for the First Amended Joint Plan of Reorganization proposed by Mendocino Redwood Company, LLC and Marathon Structured Finance Fund L.P. ("MRC/Marathon Plan") based on the five principles set forth in my Statement of Position dated January 29, 2008.

California's majestic redwood forests are among its most precious natural assets. Historian Kevin Starr once said that the redwood tree could "almost stand alone as a symbol of California found and lost, lost and found."

My administration, through the California Resources Agency, the California Environmental Protection Agency and their boards and departments, has been active in the Pacific Lumber Company bankruptcy case. We have an unwavering obligation to protect the environment and the state's valuable natural resources. For the people of California and as a matter of public trust, we have a significant commitment to safeguard the nearly \$500 million investment that California and the federal government made in connection with the historic 1996 Headwaters Forest Agreement. The United States and the people of California have a vested interest in a successful reorganization of a Pacific Lumber Company that will result in sound management practices for the future of these lands.

In my original Statement of Position, I indicated our strong position that any reorganization of Pacific Lumber Company preserves the state and federal governments' interest in Pacific Lumber's timberlands and adheres to the following principles:

1. Manage the timberlands in accordance with state and federal laws, including but not limited to the existing regulatory permits and authorizations such as the Headwaters Forest Agreement and the Habitat Conservation Plan and all other state permits, AB 1986 (Chapter 615 of statutes of 1998), the Agreement Relating to Enforcement of AB 1986 and the conditions, covenants and restrictions recorded in accordance with AB 1986.
2. Manage the timberlands in a manner that complies with all required regulatory permits and other authorizations in coordination with state and federal regulatory agencies.
3. Preserve the timberlands by maintaining a level of commercial harvest that will ensure sustainable, high-quality timber production over the long term while preserving and enhancing watershed and wildlife protection.

All Parties in Interest and the Court

Page two

4. Minimize adverse impacts to the local economy and preserve as many local employment opportunities as possible.
5. Maximize the greenhouse gas reduction benefits that could be generated in timberland management.

After meeting with each of the plan proponents, we appreciate that each plan proponent has attempted to address the principles above. We believe that the MRC/Marathon Plan best preserves the state and federal governments' interests in Pacific Lumber's timberlands, and that it also best satisfies all five principles set forth in my January statement.

The MRC/Marathon Plan best satisfies the first and second principles – compliance with federal and state laws, permits and agreements – because it makes concrete pledges to abide by all environmental laws, existing permits and agreements. In addition, the MRC/Marathon Plan would uphold and maintain the Pacific Lumber Company Habitat Conservation Plan (“HCP”) and other environmental obligations. Moreover, it demonstrates unequivocal commitment to environmental protection by promising to obtain Forest Stewardship Counsel certification. Furthermore, the MRC/Marathon Plan would best satisfy the extensive regulations for forests in California. Because of their history, the Pacific Lumber timberlands are highly regulated, and the MRC track record of success in Mendocino County provides confidence that MRC will comply with the extensive regulations and satisfy the many agencies and regulators involved in those lands.

The MRC/Marathon Plan best satisfies the third principle – maintaining sustainable, high-quality timber production while enhancing watershed and wildlife protection – because the plan would keep the timberlands as working timberlands under one owner that has a proven, favorable track record for sustainable timberland management. The MRC/Marathon Plan is based on appropriate projected timber harvest levels that meet the critical goal of long term sustainable forest management. The projected commercial harvest levels in the MRC/Marathon Plan have the best chance of ensuring sustainable, high-quality timber production over the long term. Watershed and wildlife protection is enhanced by MRC/Marathon's commitment to uphold and maintain the HCP and other environmental obligations and the commitment to obtain Forest Stewardship Counsel certification.

The MRC/Marathon Plan best satisfies the fourth principle – minimizing adverse impacts on the local economy and jobs – because the plan would proceed under the stewardship of a viable, proven timber company that will keep the local mill operating on a long term basis, and maintain most of the local timber-related jobs and pensions in the long term. Critically, the MRC/Marathon Plan is the only plan that commits to make a significant financial investment to upgrade and make the mill more efficient and competitive. As such, the MRC/Marathon Plan has strong local support as evidenced by the Mendocino County Board of Supervisors resolution supporting the plan and the overwhelming support of unsecured creditors.

To All Parties in Interest and the Court  
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In addition, the MRC/Marathon Plan best satisfies the fifth principle – maximizing greenhouse gas reduction benefits – because the plan would engage in long-term, sustainable timberland management that would reduce projected harvest levels to ensure long-term sustainability, which will retain the timberlands as working timberlands and assure their environmentally sound management. The MRC/Marathon group has represented that it will implement the same exemplary forestry management practices on the Debtors' timberlands that MRC has successfully implemented on its timberlands in Mendocino County. This is critical to successful implementation of California's landmark climate change law and commitment to capping and reducing carbon emissions. One of the best ways for California to achieve its climate change goals is to successfully maintain the forests as viable commercial enterprises. A business plan that is built on a rate of harvest that is below the growth rate of the forest not only maintains a large stock of stored carbon, it sequesters additional carbon to benefit all of us as we seek ways to reduce the carbon footprint of California. The MRC/Marathon Plan is built around maintaining the existing forest as commercial forestlands over the long term, adding to the carbon stored in the forest each and every year by harvesting less than growth. The commitment to sustainable forestry management embodied in the MRC/Marathon Plan enhances the value of the asset over the long term.

Our recommendation addresses the five important public interest principles from my earlier statement. I understand that the Bankruptcy Court must decide whether the MRC/Marathon Plan meets the other confirmation requirements of the Bankruptcy Code. For example, in considering the question of asset value, we urge the Court to consider the value of long-term, sustainable management practices. The MRC/Marathon Plan offers the best opportunity by far to advance and protect both the economic and environmental value of these assets over the long term. While it may be possible for an operator to harvest at elevated rates from a given forest for a short period of time, unsustainable forestry practices will devalue the large stock of remaining trees, degrade water quality in streams and tributaries and impair vital habitat for salmon and endangered species – all of which result in detrimental economic impact. Sustainable forestry, harvesting trees at a rate that can be maintained or grown over many decades in a way that keeps or improves the ecological values of the forest, is essential to maximize the long-term value of the forest.

We believe that the MRC/Marathon Plan, subject to the resolution of any remaining bankruptcy-specific issues raised by the California State Agencies, appears to offer the best chance for a reorganized company that is positioned for long-term success, while at the same time enhancing the environment and protecting the local economy. We urge the Court to confirm that plan. We appreciate the Court's consideration of our position, as this is an issue of paramount importance to all Californians.

Sincerely,



Arnold Schwarzenegger



**CERTIFICATE OF SERVICE**

I, Karen L. Widder, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. I am an employee of Felderstein Fitzgerald Willoughby & Pascuzzi LLP and my business address is 400 Capitol Mall, Suite 1450, Sacramento, CA 95814-4434.

On April 4, 2008, I served the foregoing:

**STATE OF CALIFORNIA'S POSITION BY GOVERNOR ARNOLD  
SCHWARZENEGGER IN SUPPORT OF MRC/MARATHON PLAN OF  
REORGANIZATION**

(By Electronic Mail) I caused to be transmitted the above described document(s) via electronic mail to the electronic addresses as indicated on the attached list.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on April 4, 2008, at Sacramento, California.

/s/ Karen L. Widder  
Karen L. Widder, Legal Assistant

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# **EXHIBIT 3**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC, \*  
DEBTOR \* CASE NO. 07-20027  
\*

\* \* \* \* \*

DAILY COPY

MAY 1, 2008

\* \* \* \* \*

On the 1st day of May, 2008, the above entitled and numbered cause came on to be heard before said Honorable Court, RICHARD S. SCHMIDT, United States Bankruptcy Judge, held in Corpus Christi, Nueces County, Texas.

Proceedings were reported by machine shorthand.

In Re: Scotia Pacific

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1 THE WITNESS: If we pay the  
2 professionals, we would be in excess of \$1 million short  
3 for the month of May.

4 THE COURT: And then in June?

10:36 5 THE WITNESS: In June I think it would be  
6 in excess of a couple \$3 million short.

7 THE COURT: \$2 to \$3 million?

8 THE WITNESS: \$2 to \$3 million short.

9 THE COURT: In July, is it ever going to  
10:37 10 flatten out or is it going to start getting bigger?

11 THE WITNESS: You know, I haven't looked  
12 recently at July or August or September for Palco. And  
13 we haven't calculated beyond the end of June for Scopac  
14 and we haven't calculated beyond the end of May for  
10:37 15 Palco. But I would expect that that shortfall would  
16 continue, yes.

17 THE COURT: Okay. Now looking at Scopac,  
18 what shortfall, if any, will there be, without dipping  
19 into any SAR account, will there be in May? Zero?

10:37 20 THE WITNESS: Well, we would not have  
21 enough cash at Scopac to get through May without dipping  
22 into the SAR account. And our budget contemplates  
23 dipping into the SAR account in the month of May.

24 THE COURT: How much?

10:37 25 THE WITNESS: I believe we drew down

In Re: Scotia Pacific

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1 about \$2 million this week at Scopac and I believe it  
2 would require an additional draw of about \$2 million to  
3 get through the month of May. That's --

10:38 4 THE COURT: So there's a \$4 million  
5 shortfall in May?

6 THE WITNESS: Coming from the SAR  
7 account, yes.

8 THE COURT: And how much will it be in  
9 June?

10:38 10 THE WITNESS: I think in June -- I  
11 believe that we -- it will be very close to break even  
12 cash in the month of June at Scopac because we'll have  
13 some cash coming out of May that we have drawn from the  
14 SAR account and I believe our revenues and expenses in  
10:38 15 June will be approximately normal expenses, about the  
16 same, so I believe we will not need any more draws on  
17 the SAR in the month of June. I don't have anything in  
18 front of me, that's just my best estimate off the top of  
19 my head.

10:38 20 THE COURT: Okay. Going forward from  
21 June, what do you anticipate?

22 THE WITNESS: Well, in July and August  
23 and September and October when the harvest season is at  
24 its peak and under the current operating environment  
10:39 25 where Scopac is paying for the logging and the hauling,



1 I believe that -- I have not run those numbers, but I  
2 believe that there will not be sufficient cash available  
3 without use of the SAR to pay the expenses at Scopac for  
4 that period.

10:39 5 THE COURT: So how much?

6 THE WITNESS: It could be \$2 and a half  
7 to \$3 million a month short, perhaps a bit more. And  
8 that depends on professional fees.

9 THE COURT: All right. You can step  
10:39 10 down.

11 THE WITNESS: Thank you.

12 MR. KRUMHOLZ: I have a follow-up  
13 question for the witness in light of Your Honor's  
14 questions.

10:39 15 THE COURT: Well, we don't normally do  
16 that, but I'm trying to be nice. I'll let you.

17 RECROSS-EXAMINATION

18 BY MR. KRUMHOLZ:

19 Q. Mr. Clark, the inventory at Scopac continues  
10:39 20 to increase during the summer months when you're  
21 concerned about some of the cash flow?

22 A. Yes.

23 Q. And you make up that in the fall, the cash  
24 flow, because you can actually sell some of this  
10:40 25 inventory?

# **EXHIBIT 4**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC, \*  
DEBTOR \* CASE NO. 07-20027  
\*

\* \* \* \* \*

DAILY COPY  
JULY 11, 2008

\* \* \* \* \*

On the 11th day of July, 2008, the above  
entitled and numbered cause came on to be heard before  
said Honorable Court, RICHARD S. SCHMIDT, United States  
Bankruptcy Judge, held in Corpus Christi, Nueces  
County, Texas.

Proceedings were reported by machine  
shorthand.

(COPY)

In Re: Scotia Pacific

July 11, 2008

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1 does. It preserves the status quo. It keeps the  
2 debtors operating. Surprisingly, it does. The math  
3 works out.

4 THE COURT: So there's really no question  
5 that absent free logs and a free DIP, these debtors are  
6 cratering; isn't that true?

7 MR. FROMME: No, I don't think that's the  
8 testimony. Not these debtors. Absent the free logs,  
9 Palco may crater if Marathon doesn't support that.

10 THE COURT: Well, and Scopac runs out of  
11 cash?

12 MR. FROMME: Well, Scopac -- I'm sorry to  
13 interrupt, Your Honor.

14 THE COURT: That's all right. Palco  
15 craters and Scopac runs out of cash.

16 MR. FROMME: Scopac runs out of cash.  
17 Scopac with debtor in possession financing could find  
18 third-party buyers for its logs and continue to operate  
19 it.

20 THE COURT: If they got financing.

21 MR. FROMME: If they got financing, yes,  
22 Your Honor. The risk is -- just to be clear, the risk  
23 is that Marathon walks in that scenario for Palco.

24 Quite frankly, as I said, we were  
25 surprised, but it works and the math works out. And

# **EXHIBIT 5**

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

Resource Management  
Humboldt Del Norte Unit  
118 Fortuna Blvd  
Fortuna CA 95540  
(707) 726-1258



May 1, 2008

JEFFERY BARRET  
THE PACIFIC LUMBER CO  
P O BOX 712  
SCOTIA, CA 95565

**NOTICE OF VIOLATION OF FOREST PRACTICE LAWS**

**For Harvest Document: 1-04-123-HUM "SOUTH SCOTIA FLATS"**

Section 4604 of the Public Resources Code (PRC) requires the Department to inspect timber operations for compliance with the Forest Practice Act and rules of the Board of Forestry and Fire Protection.

Timber operations were inactive at the time of inspection. See attached CDF inspection map.

Violations were observed on the above referenced timber operation. Violations may be a cause for action against a Timber Operator's License (see PRC 4573 and 4576); prosecution as a misdemeanor (see PRC 4601); injunctive action (see PRC 4605 and 4606); correction of violations by the director with the costs billed to the responsible parties, and if not paid become a lien upon the property (see PRC 4606-4610); or a combination of the foregoing actions. Civil penalties may also be imposed (see PRC 4601.1)

These violations only apply to those listed as the "Violator". The "Notice" to others is for informational purposes only. The report section below identifies the violation by code section and the date by which mitigation measures must be completed.

**Violator:** Jeffery Barrett Vice President of The Pacific Lumber Company (LTO A- 5326)

**Inspection #:** 3

**Inspection Dates:** January 23, 24, and 30, 2008.

**Inspection Type:** Completion

**Persons Contacted on site:** Ben Hawk, Dave Carter, and Ross Brazil

**VIOLATION OF 14 CCR 1035.3e**

**RULE: Licensed Timber Operator Responsibilities 1035.3 (e)**

Each affected licensed Timber Operator shall:

1-04-123HUM

Inspection Date: January 23, 24, and 30, 2008

Inspection # 3

Page 2

(e) Comply with all provisions of the Act, Board rules and regulations, the applicable approved plan and any approved amendments to the plan.

**VIOLATION:**

The licensed timber operator failed to construct the road site C4 crossing as described in the Timber Harvest Plan within the Work Order for Road Repair/Construction.

**MITIGATION:**

This violation can not be mitigated using this timber harvest plan. The timber harvest plan expired on September 27, 2007.

**COMMENT:**

On timber harvest plan page 56.15, Site C4 states that the licensed timber operator shall install three 36 inch culverts under the railroad tracks to replace the single 24 inch culvert. The licensed timber operator did not replace the culvert with three 36 inch culverts at Site C4. (As seen in picture #1A and #2A) The violation was discussed in the field with the Registered Professional Forester of record, Mr. Ben Hawk on January 24, 2008. It was noted that the single 24 inch culvert had recently become blocked and cleared. The railroad tracks and road showed signs of water diversion. Water has overtopped the railroad tracks and road. Minor damage to the road surface occurred before the water left the road surface and entered the timber stand to the southwest of the site. (As seen in picture #3A)

**VIOLATION OF 14 CCR 923.2(h)**

**RULE: 923.2(h) Road Construction**

Logging roads shall be constructed or reconstructed in accordance with the following requirements or as proposed by the RPF, justified in the THP, and found by the Director to be in conformance with the requirements of this Article.

(h) Drainage structures and facilities shall be of sufficient size, number and location to carry runoff water off of roadbeds, landings and fill slopes. Drainage structures or facilities shall be installed so as to minimize erosion, to ensure proper functioning, and to maintain or restore the natural drainage pattern. Permanent watercourse crossings and associated fills and approaches shall be constructed where feasible to prevent diversion of stream overflow down the road and to minimize fill erosion should the drainage structure become plugged.

**VIOLATION:**

The licensed timber operator failed to construct a properly functioning or sufficiently sized road

1-04-123HUM  
Inspection Date: January 23, 24, and 30, 2008  
inspection # 3  
Page 3

crossing at site C5 as described in the timber harvest plan within the Work Order for Road Repair/Construction

**MITIGATION:**

This violation can not be mitigated using this timber harvest plan. The timber harvest plan has expired.

**COMMENT:**

Site C5 is described on timber harvest plan page 56.15 as a 36 inch diameter culvert that needs to have culvert maintenance performed prior to the timber harvest deadline. The predetermined maintenance included removing a grate from the inlet, remove debris from the pipe, reinstall two posts (approximately 18 inches apart) four feet from the inlet, and armor the head/inlet of the pipe. The grate was removed and no debris was found during the inspection. The head/inlet has been armored and two posts approximately 18 inches apart have been installed. The posts are approximately one foot in front of the inlet, (as seen in picture #2B) which is a 30 inch half round or arch culvert with a cement bottom. The cement in the bottom of the inlet fills approximately 3/8 to 1/2 of the pipe. (As seen in picture #1B) According to Dave Carter, PALCO roads Engineer, a half round or arch culvert was placed at the inlet to extend the inlet so as to enable the head/inlet to be armored and the cement was placed at the inlet to prevent erosion of the channel bottom. By reducing the inlet capacity the culvert no longer functions properly. On January 30, 2008 I visited the site with Dave Carter and took a photograph of the site. (As seen in Picture #3B) which shows where the culvert is in relation to the posts and armored inlet. The inlet was under approximately four feet of water. The violation was discussed in the field with the Registered Professional Forester of record, Mr. Ben Hawk, on 1/24/2008. It is noted that water has recently backed up behind the inlet of the pipe depositing fresh mud on the channel banks.

**FURTHER LEGAL ACTION MAY BE PENDING.**

If you have any question about this matter, please contact Len Nielson at (707) 726-1258



by: Len M. Nielson RPF# 2792  
CAL FIRE Forest Practice Inspector

Attachment: CDF Inspection Map, Road work order, and pictures

cc: Northern Region Headquarters  
MBU RP File  
CDF Inspector--Len Nielson  
LTO/TLO The Pacific Lumber Company  
RPF Ben Hawk



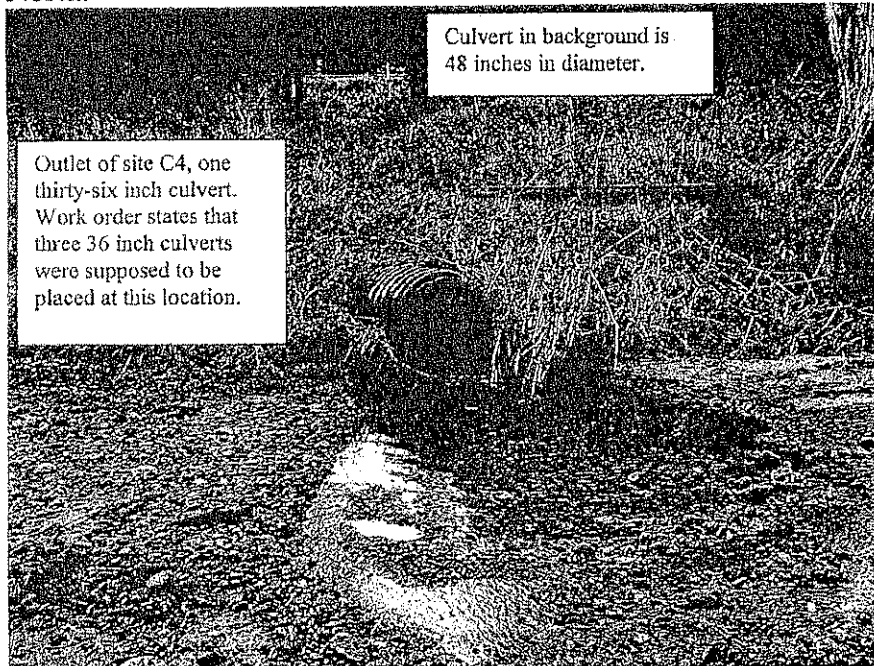
1-04-123HUM

Inspection Date: January 23, 24, and 30, 2008

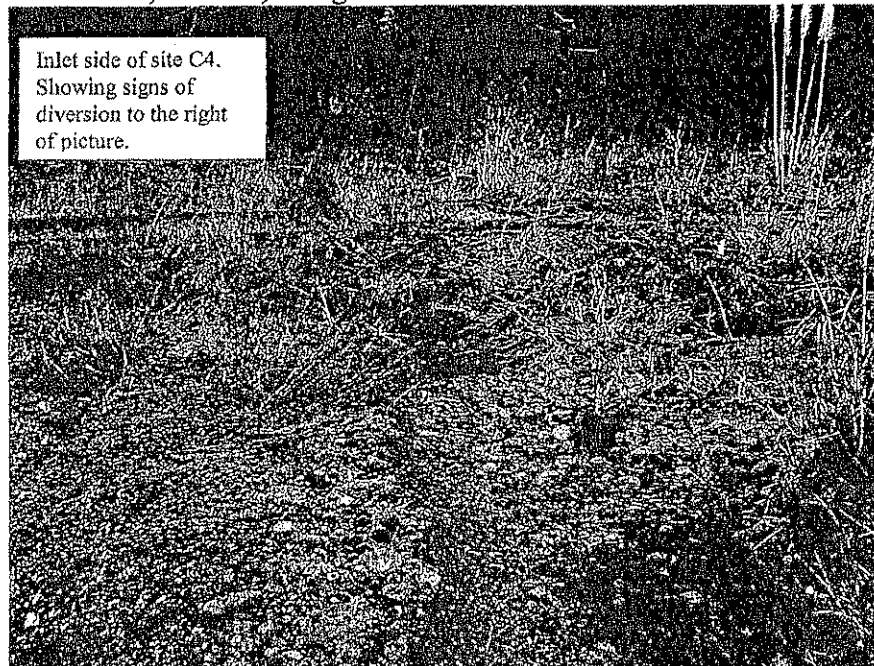
Inspection # 3

Page 4

Picture 1A. Site C4 Along road A 55.0167. Picture is of the outlet of Site C4 looking North.



Picture 2A, Site C4, along the A 55.0167. Picture is from above the inlet looking South.



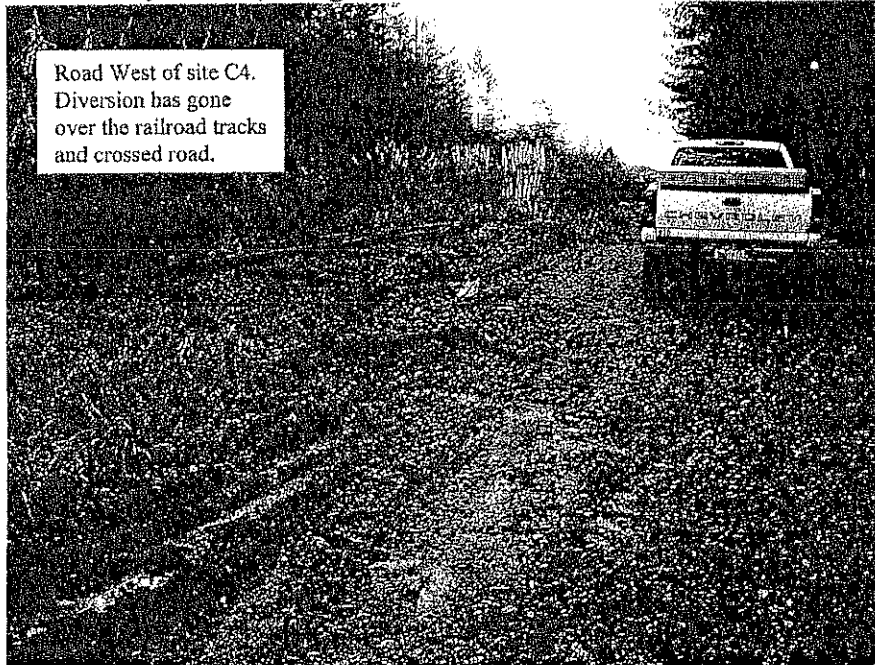
1-04-123HUM

Inspection Date: January 23, 24, and 30, 2008

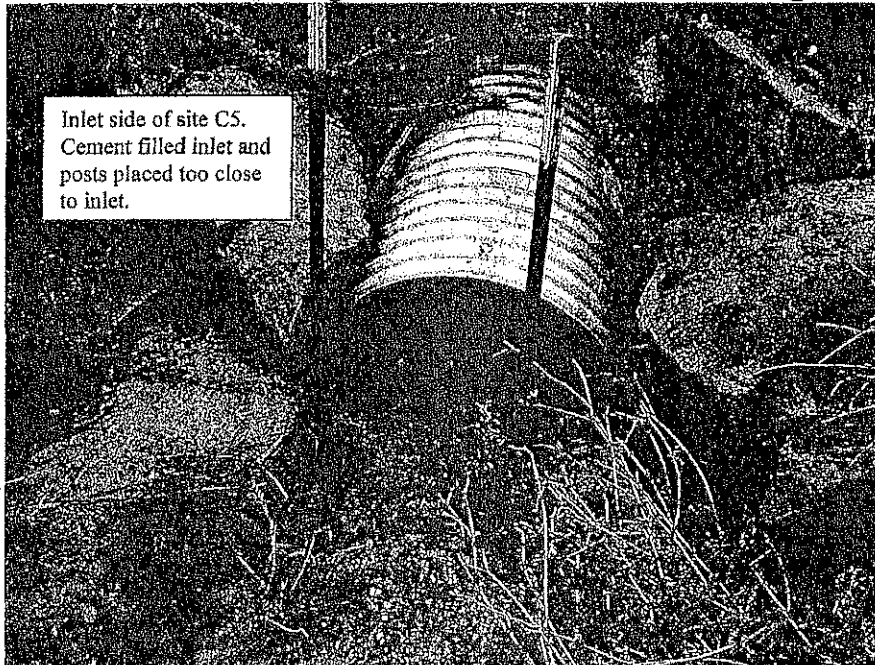
Inspection # 3

Page 5

Picture 3A, Site C4, along the 55.0167. Picture is from road grade looking East.



Picture 1B, Site C5, along the A 55.01. Picture is from road grade looking North.

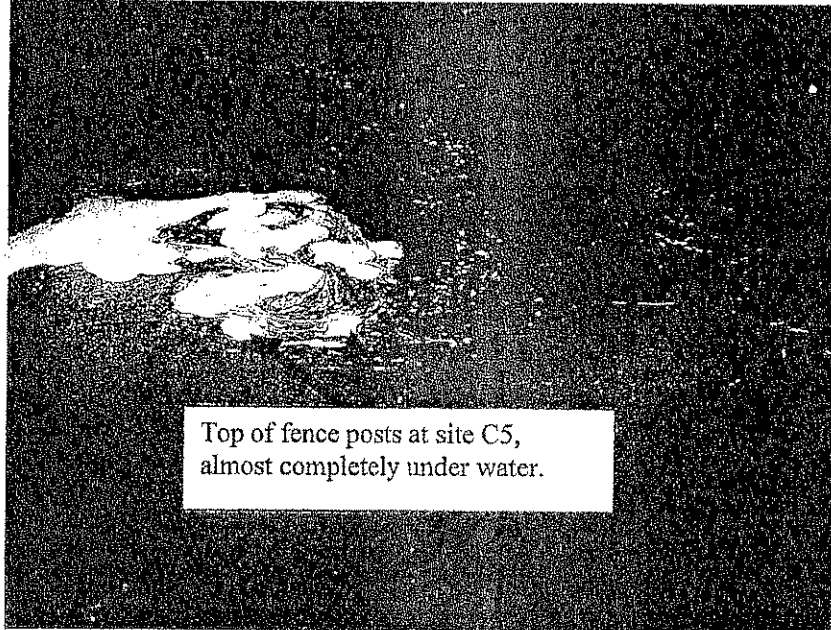


1-04-123HUM  
Inspection Date: January 23, 24, and 30, 2008  
inspection # 3  
Page 6

Picture 2B, Site C5, along the A 55.01. Picture is of the inlet of site looking South.



Picture 3B, Site C5, along the A 55.01. Picture is of the inlet of site looking South after a moderate rain storm on 1/30/2008.



# Work Order for Road Repair/Construction

Plan Addendum to Item 24

## A55.01

Start - End FT	Site	Road Class	Submitter	Ordered	Problem	Solution	Repair Type	Priority	CMP How Dia.	Est. Length	Soil Save	
5000--5000	C5	Rocked (Perm)	Collins	5/12/04	Culv.-Plug	Culv. Maintenance	THP Road	THP Deadline	36	36	0	
THP: south scottia flats WMA: Jordan Creek 1) REMOVE GRATE. 2) REMOVE DEBRIS FROM PIPE. 3) REINSTALL TWO POSTS (APPROX. 18" APART) FOUR FEET ABOVE PIPE INLET. 4) ARMOR HEAD/INLET OF PIPE.												
7000--7000	C3	Rocked (Perm)	Collins	5/10/04	Surface Drainage	Culv. Install	THP Mitigation	THP Deadline	0	60	30	27
THP: south scottia flats WMA: Jordan Creek INSTALL NEW 60" CULVERT FOR NEW WATERCOURSE ALIGNMENT. THE NEW PIPE STOPS WATER REDIRECTION AND IS THE MITIGATION FOR THE SED SAVINGS SITE (SEE BG'S REPORT SECTION V OF THP). REQUIRES 1600 PERMIT.												

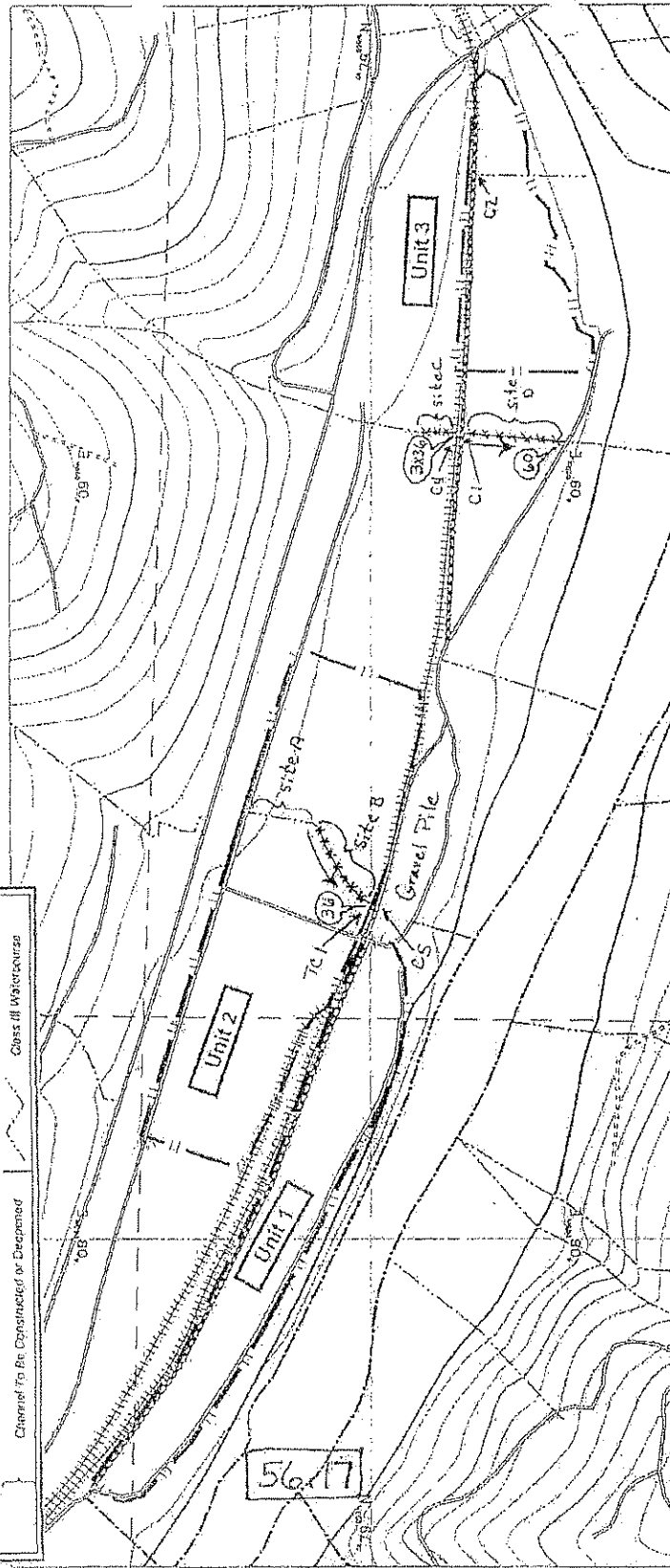
## A55.0123

Start - End FT	Site	Road Class	Submitter	Ordered	Problem	Solution	Repair Type	Priority	CMP How Dia.	Est. Length	Soil Save
0--2600	S1	Dirt (Seasonal)	Collins	5/14/04	New Road Const.	Cut and fill 50:50	THP New Con.	THP Deadline	0	0	0
THP: south scottia flats WMA: Jordan Creek BUILD ROAD A55-0123 PARALLEL TO RAILROAD TRACKS IN UNIT 1.											

## A55.0167

Start - End FT	Site	Road Class	Submitter	Ordered	Problem	Solution	Repair Type	Priority	CMP How Dia.	Est. Length	Soil Save	
0--2450	S2	Dirt (Seasonal)	Collins	5/14/04	New Road Const.	Cut and fill 50:50	THP New Con.	THP Deadline	0	0	0	
THP: south scottia flats WMA: Jordan Creek BUILD ROAD A55-0167 PARALLEL TO RAILROAD TRACKS IN UNIT 3.												
860--860	C1	Dirt (Seasonal)	Collins	5/10/04	New Road Const.	Temporary Crossing	THP New Con.	THP Deadline	0	6	20	0
THP: south scottia flats WMA: Jordan Creek INSTALL TEMP CULVERT. IF WATER IS PRESENT AT THE TIME OF OPERATIONS A CULVERT WILL BE INSTALLED OF ADEQUATE DIAMETER TO CARRY THE ANTICIPATED FLOW. THE MINIMUM CULVERT DIAMETER IS SIX INCHES. REQUIRES 1600 PERMIT.												
860--860	C4	Dirt (Seasonal)	Collins	4/22/04	Culv.	Culv. Install	THP New Con.	THP Deadline	24	36	20	0
THP: south scottia flats WMA: Jordan Creek INSTALL THREE 36" PERMANENT CULVERTS UNDER RAILROAD TRACKS TO REPLACE 24" PIPE. REQUIRES 1600 PERMIT. SEE RAIL ROAD ENCROACHMENT PERMIT FOR MINIMUM DEPTH OF PIPE BELOW BOTTOM OF RAILS.												
2000--2000	C2	Dirt (Seasonal)	Collins	4/22/04	Culv.	Temporary Crossing	THP New Con.	THP Deadline	0	6	20	0
THP: south scottia flats WMA: Jordan Creek INSTALL TEMP CULVERT. IF WATER IS PRESENT AT THE TIME OF OPERATIONS A CULVERT WILL BE INSTALLED OF ADEQUATE DIAMETER TO CARRY THE ANTICIPATED FLOW. THE MINIMUM CULVERT DIAMETER IS SIX INCHES. REQUIRES 1600 PERMIT.												

<b>South Scotia Flats</b>	
Channel Stabilization	Timber Harvest Boundary
8' Realignment (Map (After))	Property Line
14', 18', 24', 30' and 21' HRM	Existing Permanent Road
Dian reop. Slope USGS 1:3' Contour	Existing Seasonal Road
Culvert Size (feet)	Proposed Road
Road Work Order Site #	Roadway tracks
Site #	Water Flow
CDPS Form 2023 (Antidep Item 76 Section 10)	Class I Watercourse
Channel To Be Constructed or Deepened	Class II Watercourse



Map Scale: 1 inch = 660 feet

Prepared By SCC/AC GIS: jcm-hy44an/pat/lybert; and ps. Monday, April 19, 2008 at 5:12 PM

# **EXHIBIT 6**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC, \*  
DEBTOR \* CASE NO. 07-20027  
\*

\* \* \* \* \*

DAILY COPY

MAY 1, 2008

\* \* \* \* \*

On the 1st day of May, 2008, the above entitled and numbered cause came on to be heard before said Honorable Court, RICHARD S. SCHMIDT, United States Bankruptcy Judge, held in Corpus Christi, Nueces County, Texas.

Proceedings were reported by machine shorthand.

In Re: Scotia Pacific

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1 million board feet in 2007 and in fact it harvested  
2 something around 74 million board feet in 2007, correct?

3 A. Yes, sir.

4 Q. Now, in paragraph 5 of your new declaration,  
10:52 5 you state that the overwhelming majority of Scopac's  
6 timberlands is readily accessible by road for harvest  
7 operations, correct?

8 A. Yes, sir.

9 Q. And you may have heard Mr. Doren ask the  
10:52 10 question yesterday of Mr. Yerges where he said the  
11 property is well roaded, correct?

12 A. Yes, I heard that response, sir.

13 Q. And -- but there is in fact a \$15 million  
14 backlog of required roadwork to comply with the HCP; is  
10:52 15 that right?

16 A. I think my best estimate is actually about \$14  
17 million, but yes, there is a backlog.

18 Q. And you're required to do that roadwork under  
19 the HCP?

10:52 20 A. Either under the HCP or cleanup and abatement  
21 orders with water quality or as timber harvesting plan  
22 requirements. So that's a collective backlog, not just  
23 an HCP, sir.

24 Q. And in fact, the clock is sort of running on  
10:53 25 your time to do that maintenance, that backlog; is that



In Re: Scotia Pacific

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1 right? And I believe you testified to this earlier.

2 A. Yes, the clock is different for the three  
3 different programs, HCP, THP and water quality. But all  
4 of them have timeliness requirements.

10:53 5 Q. And you've sought an extension on at least  
6 some of those requirements, correct?

7 A. Yes, sir.

8 Q. And you're now in the extension period, if you  
9 will, for some of them?

10:53 10 A. For some of them, yes, sir.

11 Q. And in paragraph 6, you state that foresters  
12 have been planting cloned trees of species other than  
13 redwood for decades; is that right?

14 A. Yes, sir.

10:53 15 Q. But how long has cloned redwoods been planted?

16 A. I don't claim to know the field thoroughly. I  
17 am aware of plantings that date back to at least the  
18 early '90s.

19 Q. How about at Scopac, how about the cultivars  
10:54 20 or the cloned redwoods they're using at Scopac?

21 A. Beginning in about 1996 or so, the company  
22 that really led the way in cultivars, which is at the  
23 time Simpson Timber Company, would occasionally sell  
24 lots of excess cultivars and we were aggressive in  
10:54 25 purchasing those. So the first plantings of cultivars

# **EXHIBIT 7**

1           A.    Two questions there.  The first is:  No, this  
2 isn't completely operative because the Court approved a  
3 different way of dealing with log sales as part of the  
4 Scopac log deck motion.  As to whether or not this  
5 language would govern in the proposal for what's --  
6 we've been calling free logs, I'm sorry, sir, I don't  
7 know if it's operative or not.

8                   MR. BRILLIANT:  I have no further  
9 questions, Your Honor.

10                   THE COURT:  All right.  California.

11                   MR. PASCUZZI:  Thank you, Your Honor.  
12 Paul Pascuzzi for the California State Agencies.

13                                   CROSS-EXAMINATION

14 BY MR. PASCUZZI:

15           Q.    Good afternoon, Dr. Barrett.

16           A.    Good afternoon.

17           Q.    I believe Mr. Krumholz asked you if Scopac is  
18 in compliance with all governmental regulations and  
19 compliance with the HCP.  Do you recall that?

20           A.    Yes, sir.

21           Q.    And your answer was yes; is that correct?

22           A.    He specifically -- yes, but I mentioned that  
23 we do have THP violations and things like that, but that  
24 there are no, to the best of my knowledge, any  
25 accusations that are operations that are significantly

1       harming the environment, something close to that, sir.

2           Q.    Okay.  And Mr. Neier asked you about road  
3 maintenance and the backlog of road maintenance; is that  
4 correct?

5           A.    Yes, sir.

6           Q.    Do you remember that?  And you talked about  
7 the certain period of time to clear out that road  
8 maintenance.  Otherwise, I think either he or you said  
9 they'd be subject to citations and unpleasant actions?

10          A.    That was my testimony; yes, sir.

11                   MR. PASCUZZI:  Okay.  Your Honor, if I  
12 may approach?

13                   THE COURT:  Sure.

14          Q.    (By Mr. Pascuzzi)  Dr. Barrett, do you  
15 recognize what I've just handed you?

16          A.    Yes, sir.

17          Q.    And is it a letter dated May 1, 2008 from the  
18 Department of Forestry and Fire Protection?

19          A.    Yes, sir.

20          Q.    Addressed to you?

21          A.    Yes, sir.

22          Q.    And it is a notice of violation of forest  
23 practice laws; is that correct?

24          A.    Yes, sir.

25          Q.    And it alleges a violation of a THP involving

1 South Scotia flats; is that correct?

2 A. Yes, sir.

3 Q. And the main violation, I guess, or a  
4 violation in there is failing to install culverts under  
5 railroad tracks; is that correct?

6 A. I don't know if it was a railroad track. It  
7 looked more like a dirt road to me; but if that's what  
8 it says, I'll go with that, sir.

9 Q. Okay. And it's on page 2 in the comments  
10 section. It also alleges the failure to install the  
11 culverts has caused water to overtop the railroad tracks  
12 and the road in the comments section on page 2; is that  
13 correct?

14 A. I see that; yes, sir.

15 Q. It alleges the failure to perform maintenance  
16 on the culverts as well?

17 A. Yes, sir.

18 Q. And this could be something that there could  
19 be fines for these violations, is that correct?

20 A. Yes, sir.

21 Q. And Palco is also on the hook for these  
22 violations in addition to Scopac; is that correct?

23 A. All correspondence comes to Scopac, but I  
24 would assume that at least historically we've been a  
25 wholly-owned subsidiary that the liability would accrue

1 to Palco as well, sir.

2 Q. Well, isn't it direct that Palco and Scopac  
3 are both parties to the HCP and that violations of the  
4 THPs cause violations of the HCP; is that correct?

5 A. No. Actually -- first of all, they are both  
6 parties to the HCP. But it is certainly possible to  
7 have a violation on a THP that is not a violation of the  
8 HCP. Sometimes a violation will accrue to both the THP  
9 and HCP and sometimes not, sir.

10 Q. And the work that's required for this  
11 particular violation, it cannot be done without amending  
12 THP or otherwise getting approval in a new THP; is that  
13 correct?

14 A. Yes, sir. Under California law, any kind of  
15 substantial roadwork has to go through what's called  
16 California Environmental Quality Act, CEQA or CEQA  
17 equivalent environmental review. In practice, no one  
18 does EIS's and -- excuse me, EIR's and EA's, so they use  
19 the THP, which is deemed a CEQA equivalent document to  
20 do that compliance, sir.

21 Q. Dr. Barrett, are you also aware of some  
22 alleged violations of cleanup and abatement orders by  
23 the California State Water Resources Control Board?

24 A. Yes, sir.

25 Q. And are you in discussions with those folks

1 about resolving those violations?

2 A. Yes, sir.

3 Q. And there will likely be fines for those  
4 violations?

5 A. Yes, sir.

6 Q. And do you know how much?

7 A. There's a proposal that would total  
8 approximately \$500,000.

9 Q. You were asked some questions about the timber  
10 harvesting, I believe, for the balance of the year for  
11 Scopac by Palco's counsel. Do you recall that?

12 A. Yes, sir.

13 Q. Isn't it fair to say that most of Scopac's  
14 remaining harvest for the balance of this year relates  
15 to Tier II THPs?

16 A. No, sir.

17 Q. Are they -- does it relate to THPs that have  
18 already been approved?

19 A. Yes, sir.

20 Q. Okay. Then -- just a couple more questions.  
21 Do I under your testimony correctly that Scopac can  
22 survive the rest of this year, 2008, with the DIP and  
23 the free log program, as we're calling it?

24 A. Yes, sir. That is my testimony.

25 Q. I mean, you're not testifying and you're not

# **EXHIBIT 8**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC,           \*  
  \* CASE NO. 07-20027  
  \*  
  \*  
DEBTOR                               \*

\* \* \* \* \*

DAILY COPY  
JULY 11, 2008

\* \* \* \* \*

On the 11th day of July, 2008, the above entitled and numbered cause came on to be heard before said Honorable Court, RICHARD S. SCHMIDT, United States Bankruptcy Judge, held in Corpus Christi, Nueces County, Texas.

Proceedings were reported by machine shorthand.

(COPY)

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1 the auction rate securities.

2 Q. Okay. You used a judgment rate down here,  
3 didn't you? It was 2.35 percent?

4 A. Yes.

5 Q. You think that the cost of capital to  
6 Marathon, to MRC, to any of the creditors is 2.35  
7 percent?

8 A. No.

9 Q. Do you think it's significantly higher than  
10 that?

11 A. I do think it's higher.

12 Q. Do you have any idea what it might be?

13 A. I don't know the cost to capital of those  
14 organizations, no.

15 Q. Okay.

16 MR. HAIL: Your Honor, I'd like to take a  
17 look at Mr. Kamensky's proffer to see what that says  
18 about the Lehman DIP. But with that, I have no more  
19 questions for the witness.

20 THE COURT: All right. Anyone else?  
21 California.

22 CROSS-EXAMINATION

23 BY MR. PASCUZZI:

24 Q. Paul Pascuzzi for the California State  
25 Agencies. Mr. Young, Mr. Hail asked you about the

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1 testimony yesterday by Dr. Barrett, I think, when I was  
2 asking him questions about cleanup and abatement  
3 violations. Do you recall that?

4 A. Yes.

5 Q. And I think what he testified to is that the  
6 \$500,000 potential or resolution number is not in this  
7 budget for your six-month period, correct?

8 A. It's not specifically provided for, no.

9 Q. Okay. And you don't know when that \$500,000  
10 or if they resolve it in a different amount is going to  
11 be payable, do you?

12 A. I just learned of this yesterday.

13 Q. Okay. So you don't know when it will be  
14 payable; is that correct?

15 A. I do not.

16 Q. Okay. Are there any other amounts in your  
17 budgets for contingencies in case there are other  
18 violations of environmental laws?

19 A. On the Palco budget you have the 3 or \$4  
20 million or \$2 or \$3 million of cash that's available  
21 that can be used. On the Scopac budget, you know, as I  
22 suggested before, we feel those operating expense  
23 numbers are conservative and don't expect to spend up  
24 those levels. We would expect to spend less to cover  
25 some of the items that you're describing, I believe.

1 Q. But that's not a cushion you specifically put  
2 in there for environmental compliance; is that correct?

3 A. There is -- you're correct.

4 Q. And you heard Dr. Barrett testify when I was  
5 asking questions about a violation -- a notice of a  
6 violation of a THP in the South Scotia flats yesterday  
7 as well, right?

8 A. That's correct.

9 Q. So there's nothing specifically in this budget  
10 for potential fines that might result from that either,  
11 right?

12 A. That's correct.

13 Q. And so if there isn't money in the budgets,  
14 those will be further administrative claims that would  
15 be building up; is that correct?

16 A. They -- they potentially could be, yes.

17 MR. PASCUZZI: I'll pass the witness,  
18 Your Honor. Thank you.

19 THE COURT: Anyone else? Okay.

20 CROSS-EXAMINATION

21 BY MR. LITVAK:

22 Q. Good afternoon, Mr. Young. Max Litvak for the  
23 creditors committee.

24 MR. KRUMHOLZ: Your Honor, I know

25 Mr. Litvak is usually brief and to the point. But we've

**CERTIFICATE OF SERVICE**

I, Lori N. McCleerey, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. I am an employee of Felderstein Fitzgerald Willoughby & Pascuzzi LLP and my business address is 400 Capitol Mall, Suite 1450, Sacramento, CA 95814-4434.

On July 22, 2008, I served the foregoing:

*CALIFORNIA STATE AGENCIES' APPENDIX TO OPPOSITION TO EMERGENCY MOTION FOR STAY AND INJUNCTION FILED BY INDENTURE TRUSTEE*

(By Electronic Mail) I caused to be transmitted the above-described document(s) via electronic mail to the electronic addresses as indicated on the attached list.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on July 22, 2008, at Sacramento, California

/s/ Lori N. McCleerey  
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