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March 15, 2010

**HAND-DELIVERED (3-15-10)**

Dr. Eric Loft, Chief  
CA Department of Fish and Game – Wildlife Branch  
1812 Ninth Street  
Sacramento, CA 95818

Re: *Comments on Draft Environmental Document Prepared for Expanded Black Bear  
Hunting Regulations*

Dear Dr. Loft:

On behalf of a coalition of organizations, including The Humane Society of the United States, Los Padres ForestWatch, and Big Wildlife (collectively “Coalition”), we are hand-delivering the following comments on the “**DRAFT ENVIRONMENTAL DOCUMENT** (Sections 265, 365, 366, 367.5, 401, 708 Title 14, California Code of Regulations) Regarding Bear Hunting (January 27, 2010)” (“DED”) today, Monday March 15, 2010. Because the noticed public comment period closed on Saturday March 13, 2010, and the previous Friday March 12, 2010, was an enforced state employee furlough day, we had requested and you agreed that we be allowed to submit our comments on Monday March 15, 2010. (See attached Exhibit 1.)

The DED purportedly analyzes proposed modifications to Title 14, California Code of Regulations (CCR), Sections 365, 366 and 265, respectively, to (1) modify the bear hunting zones by including additional areas of the state, (2) eliminate the in-season closure mechanism based on a quota of 1,700 bears, (3) modify the bear archery season by opening the season concurrent with deer archery in respective hunt zones, (4) modify dog control zones by removing areas of the state from the existing dog control zones, and (5) allow collars specially equipped with global positioning system (GPS) technology and treeing switches (otherwise known as “tip switches”) on dogs while hunting bear (collectively the “Proposed Project”).

On behalf of our clients, we request that the California Fish & Game Commission (“Commission”) not go forward with the proposed changes to the bear hunting regulations that allow expanded bear hunting because the DED fails to adequately analyze and disclose the impacts on the environment associated with these changes as required by California Environmental Quality Act (“CEQA”). Because the DED fails to adequately evaluate the environmental consequences of the Proposed Project, our clients are strongly opposed to the Proposed Project and urge the California Fish and Game Commission to reject the Proposed Project.

**I. THE DED’S STATEWIDE PERSPECTIVE SKEWS THE ENVIRONMENTAL ANALYSIS OF THE PROPOSED PROJECT.**

**A. THE DED DOES NOT ADEQUATELY EVALUATE THE ENVIRONMENTAL CONSEQUENCES OF EXPANDING THE BLACK BEAR HUNTING SEASON AND INCREASING THE KILLING OF BLACK BEARS FOR SPORT ON LOCAL OR REGIONAL BLACK BEAR POPULATIONS.**

The DED states the “Department [of Fish and Game] manages the bear resource at a statewide level.” (DED, p. 5.) This document also states throughout that “no evidence suggests the statewide population is being negatively impacted from regulated sport hunting” or that the Proposed Project will significantly affect the statewide bear resource. (DED, pp. 34-36, 40-41, 44-46, 48, 53.)

By managing the Black Bear population at the statewide level and considering the effects of the Proposed Project from a statewide perspective, the environmental analysis overlooks the potential significant adverse effect of increasing the killing of Black Bears by 47% on smaller more ecologically relevant Black Bear populations. Dr. Rick Hopkins points out that evaluating the impact of the Proposed Project from a statewide perspective is dependent on the false “assumption that bear reproductive capacity and age/gender survivorship varies little statewide – an assumption that is almost certainly violated as food resources and availability (both spatially and temporally) is vastly different across the bear range in this State.” (Exhibit 2, Dr. Rick Hopkins March 12, 2010 letter to Bill Yeates at p. 2. This comment letter incorporates Dr. Hopkins’ comment letter in its entirety.) Dr. Hopkins acknowledges the inherent diversity within the State of California:

This state is roughly 1239 km long (north-south) and 402 km wide (east-west) with a diverse climate, topography, and land cover types (vegetation complexes). Garshelis and Noyce (2008) argue that diversity in food resources is an important contributor to stability in bear populations. Thus, given the diversity in weather patterns and the variation in food production for bears across its broad distribution in this state, it would be nearly impossible to conclude (and the DED provides no contrary analysis) that changes in bear food resources in Southern California are a good predictor of changes in food resources in northern California – the annual variation in the diversity, spatial and temporal distribution of food resources for bears in Humboldt County is almost certainly going to be different than what is available to bears in Santa Barbara County. In fact, there can be significant differences within a much smaller region as food resources in low elevation mountain ranges are almost certainly going to be different than in high-elevation ranges.

(Exhibit 2, p. 2.)

It is the variation in food diversity (e.g., during a drought) and how it could influence localized bear populations that the DED has failed to analyze. Instead, the DED paints the bear population with a broad brush claiming that the Proposed Project will have no effect on the statewide population – treating the population as if it is one homogenous statewide population occupying continuously every available suitable habitat statewide.

When considering hunting regulations, the State Legislature has directed the California Fish and Game Commission (“Commission”) to “consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.” (Fish & G. Code, § 203.1.) Section 203.1 of the Fish and Game Code requires the Commission to address “populations” and “food supplies.” CEQA requires the DED to evaluate the Proposed Project’s significant adverse effects on the existing environment. (Pub. Resources Code, § 21002.1, subd. (a).) CEQA defines “environment” to mean “the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.” Although the Fish and Game Commission’s hunting regulatory program has been certified by the Resources Agency so that the California Department of Fish and Game (“CDFG”) does not have to prepare a separate environmental impact report, the Commission and CDFG’s “functional equivalent” document must still comply with CEQA’s other requirements. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 113-114.)

In his analysis of the DED, Dr. Hopkins points out that reliance on statewide population estimates are of limited use in evaluating the impacts of an expanded sport hunting quota at a scale that considers the variation of food diversity at a more local or regional scale. (Exhibit 2, p. 3.) The DED treats the bear population like a bathtub full of water. The document claims that a certain amount of water can be drained from the tub with little or no effect overall. Further, that the bath tub will be replenished with more water seasonally. But, as Dr. Hopkins points out the Black Bear population in California is not one single homogenous unit. (Exhibit 2, pp. 2-4.)<sup>1</sup> Because CDFG manages the Black Bear from a statewide perspective the DED has no information about the variations in bear populations within the state or the variation of food diversity, which could effect local populations.

The DED provides no baseline population information about Black Bears within various biological regions of the state despite the obvious diverse habitat conditions within the State of California. The “environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines, § 15125, subd. (a).) Dr. Hopkins argues that by dividing the statewide Black Bear population into at least four geographical and biologically-based Bear Management Units, the DED could have evaluated the Black Bear populations within these differing environmental settings in order to

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<sup>1</sup> An August 2008 Virginia Technical Report title “Hunting with Hounds in Virginia: A Way Forward” (Virginia Dept. of Game and Inland Fisheries) states that “Bear hunting seasons should be conservative because depleted populations are slow to recover due to low reproductive potential.” (VDIF Report, p. 41, attached as Exhibit 3 to this comment letter.)

fully evaluate the impact of the Proposed Project on Black Bears in California. (Exhibit. 2, p. 2.)  
The CEQA Guidelines state:

In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes...

(CEQA Guidelines, § 15126.2, subd. (a).)

Based on the information provided in the DED there is no way to adequately determine the environmental consequences of killing 47% more Black Bears for sport on smaller more ecologically relevant Black Bear populations in California. (Exhibit 2, p. 1.)

#### **B. EXPANDING BEAR HUNTING INTO SAN LUIS OBISPO COUNTY**

Under the proposed changes to Section 365, Title 14, CCR, one of the recommended options includes expanding Black Bear hunting into a portion of San Luis Obispo County encompassed by Highway 1 on the west and the Salinas River and Highway 58 on the east by incorporating this area into the Southern California Hunt Zone. (DED, p. 36-41.) This area of the state has never been open to Black Bear hunting before.

The Draft ED purportedly analyzes the impacts associated with expanding bear hunting into San Luis Obispo on pages 37-42. However, as Dr. Hopkins demonstrates the alleged baseline population estimate of Black Bears in San Luis Obispo County is flawed.

CDFG concludes that based on a series of indices (including local perception of the number of bears), similarity in the number of depredation incidents reported for the adjacent Santa Barbara County (see Table 2-4 of the DED) and estimates of bears within the County, derived by the number of acres of low, medium and high quality habitat in County multiplied by estimates of bear density for each category.

The use of indices such as the perception of locals and local biologist are notoriously poor predictors of trends in wildlife populations. As noted by Garshelis and Noyce (2008) increased sightings of bears can just as easily be explained by a lack of food resources than an increase in the bear population.

Given that we are at the end of the 3<sup>rd</sup> year of a drought, it is more likely that these perceptions are highly unreliable and should be simply ignored.

Table 2-4 provides a comparison of bear-related incidences and depredation permits filed with CDFG between 2004 and 2008 for Santa Barbara and San Luis Obispo Counties. CDFG implies the similarity in the reports for both counties provides another line of reasoning that population estimates for both counties are similar. I would argue it is impossible to infer anything useful from this Table, other than there have been a low number of incidents for both counties. The limited amount of information (small number of incidents – 1 to 2 each year, except for 4 in 2008 for Depredation Permits Issued and bears removed in Santa Barbara County) in any given year or over time is best explained as limited variation in rare events.

Lastly, CDFG estimates the number of bears in SLO based on the elements of Table 2-5. There are a series of errors and poor assumptions that rendered any conclusion regarding SLO meaningless. **The most important error is that CDFG estimates there is 4,918 mi<sup>2</sup> of low, medium and high quality habitat (based on [California Wildlife Habitat Relationship (CWHR) model]) in a county that measures only 3,316 mi<sup>2</sup>.** That is an error of at least 33% and likely much more because it is doubtful the entire county is bear habitat. In addition, they estimate bear density for each HSI category based on Brinkhaus (2000) and the professional opinion of local biologist Bob Stafford. The second error is that Brinkhaus did not provide any density estimates in her thesis. This is not surprising since Ms. Brinkhaus was studying habitat utilization for urban bears in the San Gabriel Mountains by radio-collaring 2 female bears and 4 male bears. I suspect the broad area of where these bears were captured and small sample size precluded her estimating density, as this was not really central to her research question. As mentioned above, population or density estimates based on imprecise measurements or uncertainty are nearly impossible to interpret. In reality CDFG's population estimate is not a true estimate, but better classified as "guesstimate."...

CDFG has not provided adequate information to evaluate whether the environmental effects of expanding bear hunting into SLO will have a significant adverse impact on the local bear population, given the significant number of errors integrated into this table and the reliance on unbounded guesstimates for bear density by habitat category.

(Exhibit 2, pp. 4-5, emphasis added.)

As the CEQA Guidelines require and as the California courts have consistently held:

Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.

(*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952, citing section 15125(a) and 15126.2(a) of the CEQA Guidelines.) The DED’s inaccurate description of the available Black Bear habitat within San Luis Obispo County, and, as a result, the flawed estimate of the Black Bear population in San Luis Obispo County renders the DED’s evaluation of the Proposed Project’s impact on the existing environment legally insufficient. (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830, [“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”])

**II. THE DED DOES NOT ADEQUATELY ANALYZE THE POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE PROPOSED CHANGES TO THE BLACK BEAR REGULATIONS.**

**A. THE DED FAILS TO PROVIDE A SEPARATE SECTION WITH THE ANALYSIS OF THE ENVIRONMENTAL EFFECTS OF THE PROPOSED CHANGES**

The DED does not have a separate section with information on the environmental effects of the proposed Project as was included in the prior 1999, 2000, 2001 and 2004 Final EDs (“FED”). For example, the 2004 FED had a heading entitled “Environmental Effects of the Proposed Project” which has the following impacts analysis by section:

**METHODOLOGY**

Natural Factors Influencing Target Species; the Impact of Hunting on Black Bears; Additive and Compensatory Mortality; Computer Simulation Model; Model Assumptions  
Computer Simulation Modeling Results

**THE IMPACTS OF HUNTING ON THE POPULATION OF BLACK BEARS**

Effects of Hunting on the Age Class Structure; Influence of Hunting on Natural Mortality  
Effects of the Use of Dogs to Assist in Hunting Bears; Effects of Using Radio Telemetry  
Equipment for Bear Hunting

**IMPACTS ON THE GENE POOL**

**IMPACTS ON THE SOCIAL STRUCTURE**

**IMPACTS ON HABITAT**

**EFFECTS ON RECREATIONAL OPPORTUNITIES**

**EFFECTS ON OTHER WILDLIFE SPECIES**

Listed Species; Other species

**EFFECTS ON ECONOMICS**

**EFFECTS ON PUBLIC SAFETY**

**GROWTH-INDUCING IMPACTS**

**SHORT-TERM USES AND LONG-TERM PRODUCTIVITY**

**SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES**

The DED does not contain an “Environmental Effects of the Proposed Project” section with the sections of analysis listed above. The DED does state on page 9,

Furthermore, additional areas of controversy have been identified related to bear hunting in general. These items have been specifically addressed in the 2004 [FED] Regarding Bear Hunting and are made reference to therein.

Following this statement is a list of twenty items taken from the “Areas of Controversy” section of the 2004 FED. (2004 FED, p.10.)

If this statement and list is intended to incorporate by reference the analysis of the environmental effects of the Proposed Project from the 2004 FED, then the incorporation was not carried out as required by CEQA. The CEQA Guidelines state that when a lead agency is incorporating all or a portion of a previously certified environmental document, the lead agency should either briefly summarize the information where possible or briefly describe the information if it cannot be summarized. (CEQA Guidelines, § 15150, subds. (a) & (c), accord *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443-444 (“*Vineyard*”) [criticizing a public agency for failing to comply with CEQA’s tiering or incorporation by reference informational requirements, and ultimately determining that the lead agency had prejudicially abused its discretion by failing to provide the necessary information to support its findings].) Furthermore, CEQA requires the agency to “refer to the prior [EIR] and state where a copy of the prior [EIR] may be examined.” (Pub. Resources Code, § 21094, subd. (e); CEQA Guidelines, § 15152, subd. (g).)

CDFG did none of this. The DED’s brief reference to the 2004 FED’s “Areas of Controversy” section does not explicitly incorporate by reference the relevant sections of the 2004 document, it does not summarize the relevant sections, nor did the 2010 DED indicate where this prior document could be examined. This passing reference to a prior environmental document is no substitute for the reasoned consideration and analysis of impacts that CEQA requires. (See *Vineyard, supra*, 40 Cal.4th at p. 443.)

**B. THE INFORMATION PROVIDED UNDER THE HEADING “PROPOSED CHANGES AND ANALYSIS” IS TOO LIMITED AND LACKING IN ANALYSIS TO FULLY DISCLOSE THE POTENTIAL IMPACTS ASSOCIATED WITH THE PROPOSED PROJECT.**

Rather than include a full impacts analysis, the DED apparently attempts to cover the required impacts analysis in a section titled “Proposed Changes and Analysis.” (DED, pp. 33-51.) This section provides a description of each proposed regulation change, a brief discussion along with sections titled “Advantages of this Option,” “Disadvantages of This Option” and “Conclusions Regarding this Option.” The information in this section is very limited, lacks a full analysis, and lacks reference to sufficient studies or reports to support the agency’s conclusions. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 955 [an adequate EIR requires an analysis that will provide decision makers with sufficient information to make intelligent decisions].)

**i. ELIMINATION OF THE BEAR KILL QUOTA**

For Section 365, Title 14, CCR, the CDFG recommends eliminating the in-season closure mechanism which currently requires the CDFG to close the hunting season on the last Sunday in December or when 1,700 bears have been reported harvested, which ever occurs first. (DED, pp. 42-45, 49.) The Proposed change to the language of Section 365 is as follows:

(b) Seasons: Except in the deer hunt areas designated as zones X-1 through X-7b in subsection 360(b), the bear season shall open on the opening day of the general deer season as described in subsections 360(a) and (b) and extend until the last Sunday in December in the areas described in subsections 365(a)(1), (2), (3) (4) and (5) above. In those areas designated as deer hunting zones X-1 through X-7b, the bear season shall open on the second Saturday in October and extend until the last Sunday in December ~~and extend for 79 consecutive days. The bear season shall be closed when the department determines that 1,700 bears have been taken pursuant to the reporting requirement in section 708(e). The department shall notify the commission, the public via the news media and bear tag holders via the U.S. mail and the news media when implementing this closure~~

With the elimination of the language with the strikethrough line, the changed regulations would mean that within the seasonal period there is no longer a limit on the number of bears that can be killed.

In 1994, bear hunting regulations were changed to increase of the in-season closure mechanism from 1,250 to 1,500 bears. (DED, p. 23.) In 2000 the Commission eliminated the bear tag quota of 18,000, and in 2002 the in-season closure mechanism was changed from 1,500 to 1,700 bears. (DED, p. 24.) With the proposed change above, there is no quota on bear tags sold and no quota on bears that may be killed within the bear hunting season.

The DED section that allegedly analyzes the impacts of this change states that eliminating the in-season closure mechanism is expected to increase the annual bear kill by 50 to 100 bears. It also states that the closure would increase the total annual bear take to 2,150 bears which it states is below “the modeled maximum sustained annual hunter harvest of approximately 3,100 bears.” (DED, p. 43.)

What is the basis for this estimate? What evidence supports this conclusion that eliminating a quota on the number of bears that may be killed will result in the additional killing of only 50 to 100 bears when there is no quota on bear tags? What about the elimination of the quota of bears killed combined with the expansion of bear hunting zones and the expansion of areas where dogs may be used?



**ii. EXPAND THE USE OF DOGS**

The proposed changes to Section 265, Title 14, CCR expands the areas where dogs are allowed to be used both for hunting and training and eliminates the current prohibition on "tip switches" and GPS technology on dog radio collars.

**(a) MODIFY DOG CONTROL ZONES**

The Proposed Project includes changes to Section 265, Title 14, CCR that modify "dog control zones" where dogs may be used as illustrated in Figure 1-2. (DED, pp. 3-4.) There are several problems with the analysis of this proposed change of the regulations.

First, Figure 1-2 shows the proposed dog control zones but there is no figure illustrating the existing dog control zones. Appendix 1 includes the proposed changes to the regulation language with strike through of language describing the current dog control zones and underlined language for the new zones. However, without an illustration, it is difficult for a member of the public to discern what the change is that is occurring to the dog control zones. Without this baseline information, it is difficult to assess what the extent of the change is being proposed and assess the potential impacts associated with this change. Please provide an illustration showing the existing dog control zones.

Secondly, the DED does not make it clear whether the proposed change is increasing the amount of land available to hunting with dogs generally or only for dog training purposes. The analysis section of the DED states, "[t]his action would provide an increased amount of public land with easily identifiable boundaries for dog training." (DED, p. 51.) This language gives the impression that the change in the dog control zones is only expanding access to these areas for dog training.

However, Section 265 (a)(4) in Appendix 1 states:

*The use of dogs for the pursuit/take of mammals or for dog training is prohibited from the first Saturday in April through the day preceding the opening of the general deer season in the following dog control zones.*

(DED, pp. A-2 -10 [emphasis added].) Following this section are subsections (A), (B), (C), and (D) which describe the boundaries of the dog control zones.

Section 265 (b)(1) states:

*Dog Control Zones. The use of dogs for the pursuit/take of mammals or for dog training is permitted in the dog control zones described in subsections 265(a)(4) (A), (B), (C) and (D) from the opening day of the general deer season through the first Friday in April.*

(DED, p.A-10 [emphasis added].) These two sections do not distinguish the use of dogs for the pursuit/take of mammals from the use of dogs for training purposes within the dog control zones. Therefore, it appears that the change to the dog control zones will increase the amount of land available to hunters for the use of dogs for both pursuit/take of mammals and for dog training. Please clarify this aspect of the change to the regulations and analysis.

Furthermore, this section of the DED provides little information about the potential impacts of expanding the area where dogs may be used, yet the DED concludes that this change will have no significant adverse effect on the statewide Black Bear population or the environment. (DED, p. 52.) The DED “must contain facts and analysis, not just the bare conclusions.” (*Santiago County Water Agency, supra*, 118 Cal.App.3d at p. 831.) CDFG’s “opinion concerning matters within its expertise is of obvious value, but the public and decision-makers...should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment.” (*Ibid.*)

There are several potentially significant impacts that should be considered in the analysis associated with this proposed change:

#### **(1) Potential Impacts to Private Lands Caused by Trespass**

By expanding the areas in which dogs may be used for both the pursuit/take of mammals and for dog training, the change in regulations has the potential to increase trespass onto private lands. A technical report written by the Virginia Department of Game and Inland Fisheries in 2008 titled “Hunting with Hounds in Virginia: A Way Forward” examines various issues associated with hound hunting. (Exhibit 3.) Chapter 4 of the Technical Report discusses various concerns associated with hound hunting including conflicts with landowners caused by the trespass of hunting hounds onto private land. The Report states:

Landowner trespass commonly has been associated with dog-hunting. Landowners claim their property rights are violated and hunters view access restrictions as a threat to their right to use hounds. Urban residents who become rural landowners tend to be less tolerant of traditional hunting methods (Brown et al. 200, Teel et al. 2002.) Increasing land fragmentation increases trespass potential (Peyton 1998)....

(Exhibit 3, p. 61.) Landowner conflicts due to trespass are described as one of the most common problems associated with hunting bears with dogs. (Exhibit 3, pp. 61-66.) Trespass by dogs is cited as causing impacts to livestock and property damage.

The Proposed Project expands the areas in which dogs may be used for hunting bear. Yet, the DED that is supposed to analyze the potential significant impacts associated with this change, fails to discuss the potential increase in illegal trespass onto private lands and associated potential impacts such as invasion of private property rights, harassment of livestock and property damage.

The DED should be revised and recirculated with an analysis of these potential impacts associated with the proposed changes in the dog control zones. (Pub. Resources Code, § 21092.1; see *Laurel Heights Improvement Ass'n v. Regents of the Univ. of California* (1993) 6 Cal.4th 1112, 1129-1130.)

## **(2) Potential Impacts to Other Wildlife Species**

Another potentially significant impact associated with expanding the areas where dogs may be used are the potential impacts on other wildlife species. The Virginia Technical Report discusses the documentation of dogs harassing wildlife. (Exhibit 3, p.50.) The Technical Report summarizes various disturbances to wildlife species caused by the presence of dogs which include disruption of normal maintenance activities (such as feeding, bedding, grooming), alarming, displacing, changing behavior, and directly or indirectly causing injury or death.

The DED fails to discuss the potential increase in harassment of wildlife on public lands caused by the proposed increase in access to public lands for hunters using hounds both for direct hunting purposes and/or for training purposes.

Is there a training protocol? Do wardens actually determine how well a dog is trained? How many years does it take to train a dog? Do younger dogs tend to get more easily distracted?

There is no information in the DED that informs the interested public and their decision-makers about the dogs' behavior during training and their potential impact on other wildlife species during training. This information is necessary for informed decision making about the proposed change to expand areas where dogs maybe used for training purposes. (See *Mountain Lion Coalition v. CA Fish and Game Comm'n* (1989) 214 Cal.App.3d 1043, 1050-1051.)

### **(b) AUTHORIZATION OF GPS TECHNOLOGY AND TREE SWITCHES**

#### **(1) The DED Fails to Analyze the Unfair Advantage Provided by This Technology**

In 1994, the Commission prohibited the use of "tip switches" and GPS technology on dog radio collars. (DED, p. 23.) These restrictions were enacted in an effort to ease concerns about potential unfair advantages that this equipment provides. The Proposed Project modifies dog-use and training regulations to permit GPS collars and treeing switches to be used on dogs while bear hunting. The DED, however, does not address the issue of unfair advantage as identified as the basis for the 1994 prohibition on the use of this equipment.

The DED allegedly addresses the change to the regulations that would allow dogs to be fitted with GPS collars and tip switches stating:

Some members of the general public may misunderstand the intent of this action as providing bear hunters who use hounds an unfair advantage. However, as discussed in prior environmental documents regarding bear hunting, the Department has determined this to not be the case.

(DED, p. 53.)

However, a review of the 1999, 2000, 2001, and 2004 FEDs reveals only the following language regarding the use of dogs and telemetry equipment:

#### Effects of Using Radio Telemetry Equipment for Bear Hunting

Over the past 20 years, radio telemetry equipment has become less expensive. Bear hunters using dogs routinely place radio collars on their dogs. Houndsmen indicate that these collars are used for locating lost dogs and for training young dogs. Houndsmen also state that radio telemetry equipment is an indispensable tool which allows them to retrieve their dogs in a timely manner before the dog is potentially injured after wandering onto a road (Elowe 1991). While radio telemetry equipment is certainly used for this purpose, the same technology can also be used by poachers to retrieve dogs before enforcement personnel arrive and to more quickly locate dogs which have treed a bear.

In an effort to address this issue, the Commission adopted regulations prohibiting the use of "tip switches" on dog radio collars in 1994. Tip switches contain an element which changes the pulse rate of the radio collar when the dog is in a vertical position (i.e., the dog's front legs are on the tree trunk). Radio telemetry equipment is already widely used by houndsmen for bear hunting. Therefore, any negative impacts to the bear population associated with the use of radio telemetry equipment would be detected as originating with the use of dogs. As previously stated, there is no evidence to suggest that the use of dogs (or dogs with radio collars) for hunting bears is negatively impacting the bear resource.

These two paragraphs in the prior FEDs do not evaluate the use of GPS equipment on dog collars. These prior documents simply acknowledged that the Commission had previously outlawed the use of "tip switches" due to concerns about this equipment enabling poachers. There is no other mention of GPS equipment in the prior FEDs other than the same reference to GPS potentially causing an unfair advantage. (2004 FED, p. 26.) Therefore, the current 2010 DED cannot rely on the 2004 FED or other "prior environmental documents" for the required analysis of allowing GPS collars and tip switches on dogs. (See *Vineyard, supra*, 40 Cal.4th at p. 442-443.)

The DED simply concludes that "the use of GPS technology in lieu of radio telemetry would not constitute any additional or unfair advantage to bear hunters." (DED, P. 53.) There are no facts, studies or analysis to support this bald conclusion that previously

banned GPS and tip switches are no different than radio telemetry equipment and that there would be no negative impact on bears through the addition of this equipment. Therefore, the public and decision makers do not have the benefit of CDFG's analytical route from any evidence in the DED to the conclusion reached that the elimination of GPS and tip switches will not have a significant impact on the bear population or the environment. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515-517, 522.)

Furthermore, this bare conclusion contradicts the previous conclusions of CDFG regarding the use of this equipment. The Commission banned the use of this equipment in 1994 based on a concern about the unfair advantage and the potential impacts on bears. (2004 FED, p. 26) Furthermore as recently as April 2009, CDFG's stated that this equipment allows hunters to not follow and monitor their dogs and "would limit the sporting aspect of a fair chase." The April 2009 Final Statement of Reasons regarding the Commission's decision not to change this section of the code states:

If the treeing switch were allowed, the hunter would have no need to follow the dogs on foot during the chase. The hunter could just wait until the treeing switch went off and walk to the tree and find the treed animal and dogs with telemetry equipment. Without the use of a treeing switch device, the hunter is required to follow the dogs on foot and be with the dogs when an animal is treed or be close enough to hear the barking of the dogs to determine if an animal is treed. The use of treeing switches on dog collars would limit the sporting aspect of fair chase.

(See Exhibit 4, p.4.) The DED does not address this issue identified in 2009 by the CDFG, and without any analysis concludes there will be no impacts associated with eliminating the ban on this equipment. The DED "must contain facts and analysis, not just the bare conclusions." (*Santiago County Water Agency, supra*, 118 Cal.App.3d at p. 831.) CDFG's "opinion concerning matters within its expertise is of obvious value, but the public and decision-makers...should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." (*Ibid.*)

The DED must evaluate the environmental consequences of allowing GPS and tip switches on dog collars. The impacts of this change must be analyzed and this analysis must be circulated to the public for review and comment. The omission of this required analysis of the environmental consequences of this proposed major change to the bear hunting regulations is a fundamental flaw for failure to follow CEQA's requirements. (See *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236-1237.)

**(2) The DED Fails to Consider Feasible Mitigation Measures to Alleviate Potential Impacts Associated with Allowing GPS and Tip Switches.**

The Proposed Project eliminates the ban on GPS equipment and tip switches, increases bear hunting zones, increases areas for the use of dogs and eliminates the quota of the number of

bears that may be killed in a year. All of these changes are instituted at one time without adding any mitigation measures that could potentially address some of the potentially significant impacts identified in this comment letter. Several states required a permit or license to hunt or chase bear with dogs (Exhibit 3, p. 85.)

The Virginia Technical Report states,

In New York, bear-dog handlers are required to be licensed by the New York State Department of Environmental Conservation (NYSCEC) and to file training logs at the end of each season. These training logs capture data regarding the use of radio collars, expenditures, group/pack sizes, success in striking scent, extent of chase, and interactions with landowners and other citizens.

(Exhibit 3, p. 85.)

The DED fails to provide any information about whether there are any requirements for training, required certification of trained dogs or tracking of the use of dogs used for hunting.

**C. THE DED FAILED TO ANALYZE THE IMPACT OF AN INCREASING TREND IN POACHING**

The DED states that prior to 1985 poaching was a major mortality factor for bears in California. (DED, pp. 21-22.) In 1985, based on Department recommendations, the Commission adopted regulation proposals designed to reduce the illegal take of Black Bear including limiting the use of dogs. (*Ibid.*)

The population modeling described in the DED used an estimate for the illegal kill of bear as 25 percent of legal take. (DED, p. 31.) According to the DED, the results of the computer modeling indicate that the bear population at 2010 levels can sustain an illegal take of 775 bears without any negative impact. (*Ibid.*) This estimate of illegal kill, however, does not take into account both the increasing trend in poaching in California due to the bad economy, the decrease in the number of game wardens in California and the proposed increased use of dogs and dog equipment.

Currently, poaching is an increasing problem in California due to the decline in the economy and the increasing incentive to poach wildlife in order to sell wildlife parts on the black market. Nancy Foley, chief of enforcement for CDFG, stated to a San Francisco Chronicle journalist that there has been “a tremendous increase in the amount of poaching for profit” including bear. (San Francisco Chronicle, “Poaching for Profit in Tough Economic Times”, June 9, 2009 attached as Exhibit 5.) The illegal sale of wildlife and wildlife parts has been estimated to generate \$100 million a year. (*Ibid.*) For bear, the incentive is the bile in the bear gall bladder which can fetch upwards of \$5,000 a pound for its use in traditional Asian medicine. (The Press-Enterprise, “State Investigating Discovery of Bear Paws in Riverside”, May 27, 2008 attached as Exhibit 6.) The current downturn in the economy is attributed as the major cause in the dramatic rise in

poaching since 2005. (The Associated Press, “Poaching in California Ramps Up in Bad Economy”, January 15, 2009 attached as Exhibit 7.)

Concurrently, the downturn in the economy and the state’s fiscal crisis has reduced the number of game wardens available to enforce hunting regulations over 159,000 square miles of land. (*Ibid.*) The numbers available from media articles estimate from 190 to 230 game wardens currently in California. (Exhibit 6 & 7.)

The Proposed Project opens up additional lands for the use of dogs and authorizes the use of GPS and tip switches on dogs. The use of dogs is the preferred method of hunting by poachers because dogs can find and corner bears more frequently than a hunter on foot. (Los Angeles Times, “Agents in Poaching Sting Describe Hunt”, February 10, 2003 attached as Exhibit 8.) This change has the potential to increase poaching because it is difficult for game wardens to distinguish between the legal use of dogs for training and the illegal use of dogs to kill bear. (*Ibid.*) Furthermore, the Department’s own 2004 FED states that “increase illegal kill of bear can be anticipated in areas opened to dog training” (2004 FED, p. 148.)

The proposed change in regulations will increase the use of dogs and dog equipment at a time when poaching is dramatically increasing and game warden enforcement capacity in on the decline. The DED fails to analyze the increasing trend in poaching due to the current economic conditions, the decrease in the numbers of wardens to enforce hunting requirements and the proposed increase in access to lands for the use of dogs and use of GPS and tip switches which are likely to increase poaching.

On behalf of our clients, we believe that in order to reduce the incentive to poach Black Bears and illegally sell their parts, the Commission should develop and promulgate a regulation that requires successful hunters to provide the CDFG with the bear’s gall bladder along with the skull. Additionally, unless the bear’s skin has been given to a taxidermist for mounting or preservation, the bear’s paws and claws should also be turned over to CDFG.

**D. THE DED FAILED TO ANALYZE WHETHER SOCIAL ATTITUDES ABOUT THE USE OF DOGS MAY HAVE SIGNIFICANT INDIRECT EFFECTS ON THE ENVIRONMENT.**

Although CEQA is not concerned with the social effects of a Proposed Project, when those social effects lead to indirect changes in the physical environment then the lead agency must evaluate those indirect effects. (CEQA Guidelines, § 15064, subd. (e); accord *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205-1207.)

There is no analysis of the environmental consequences of using and expanding the use of dogs in the hunting of Black Bears in the DED. At page 9 there is the following item within a long list of additional areas of controversy: “the use of dogs while hunting bears is cruel, inhumane, and unethical.” For further information about this and the other areas of controversy listed on pages 9 and 10, the 2010 DED refers the reader to the 2004 FED.

The 2004 FED at page 76 states, “[a]lthough the Legislature has indicated that the use of dogs to assist in taking bears and other wildlife is acceptable, some individuals are philosophically opposed to hunting bears with trailing hounds.” This document goes on to state, “[t]he Department is unaware of any biological evidence to indicate that the regulated use of dogs to assist in hunting bears has had, or will be likely to have, a significant negative effect on the State’s bear resource.” (*Ibid.*) Based on the analysis in the 2004 FED, the Department only evaluated the dogs’ direct affect on the statewide Black Bear resource.

The Virginia Technical Report acknowledges the unpopularity of hunting with hounds and dogs. (Exhibit 3, p 7.) As noted above this report also acknowledges that there are frequent interactions among landowners and other outdoor users and hounds on the chase. (Exhibit 3, p. 11.) The Virginia study acknowledges that “changing societal values present challenges to hunting in general, but particularly to hunting with hounds.” (Exhibit 3, p. 4.) An indirect environmental effect of the public’s unfavorable view toward hunting with dogs and hounds is that more and more private areas are prohibiting access. Prohibiting access restricts hunting opportunities for other hunters and other recreationists that might otherwise have had access to these private lands. The result puts more pressure on public lands. The DED and CDFG’s prior environmental documents never even addressed this issue. Unlike the Virginia Technical Report there is no discussion about the loss of access to private lands.

**E. THE DED LACKS REQUIRED ANALYSIS INCLUDED IN PRIOR ENVIRONMENTAL DOCUMENTS FOR BLACK BEAR HUNTING REGULATIONS.**

**i. THE DED LACKS A SECTION DESCRIBING THE ENVIRONMENTAL SETTING.**

The DED lacks a section addressing the environmental setting of the project. The FED’s for Black Bear Hunting Regulations from 1999, 2000, 2001 and 2004 all have a section labeled “Environmental Setting of the Project.” That section in those prior four FEDs included the following information:

ENVIRONMENTAL INFLUENCES ON THE BLACK BEAR POPULATION  
Range and Distribution; Life History; Historical Range; Black Bear Habitat ; Species-  
Habitat Relationship Models; Habitat Evaluation; Bear Habitat Inventory; Land  
Ownership; Natural Resource-Based Industries ; Timber Industry; Livestock Industry  
NATURAL INFLUENCES ON THE ENVIRONMENT  
Precipitation; Wildfire; Threatened and Endangered Species

The DED does not include an ‘Environmental Setting’ section with updated information on both the environmental influences on the Black Bear population and the natural influences on the environment. Why was this information not included in the 2010 DED?



**ii. THE CUMULATIVE IMPACTS ANALYSIS IS INCOMPLETE AND OUTDATED**

The DED's "Cumulative Effects" section has information under headings: "Gene Pool," "Social Structure," "Habitat," "Recreational Opportunities" and "Effects On Other Wildlife Species." The text on "Social Structure," "Habitat," "Recreational Opportunities," and "Effects on Other Species" is taken verbatim from the text in the 2004 FED which covered this analysis under the heading "Environmental Impacts of the Project," not the cumulative impacts section. (DED, pp.54-57; 2004 FED, p. 79-83.)

How can the DED take what appears to be impacts analysis of direct impacts from the 2004 FED and transfer it directly to the cumulative impacts analysis for the current document? Is this information still relevant? Why is there no updated information that reflects current baseline information about Black Bear?

Furthermore, the DED's "Cumulative Effects" section does not cover environmental issues covered in the 2004 FED. The 2004 FED "Cumulative Impacts" section included analysis under the headings: "Effects of Habitat Loss and Degradation", "Projected Land Use", "Habitat Conversion", "Livestock Grazing; Effects of Urban Development and Other Projects", "Timber Harvest", "Major Projects Planned for Immediate Future", "Effects of Drought", "Effects of Drought on Habitat", "Effects of Drought on Populations", "Effects of Wildfires", "Effects of Diseases", "Effects of Illegal Harvest", and "Effects of Depredation." (2004 FED, pp. 87-116.)

Why was the analysis of these potential cumulative effects, which was analyzed in prior FEDs, omitted from the 2010 DED's cumulative impacts analysis?

**iii. THE ALTERNATIVES ANALYSIS IS TOO LIMITED**

The alternatives analysis in the DED is inadequate because CDFG failed to consider a reasonable range of alternatives to the proposed Project. An EIR must describe a reasonable range of alternatives to the project. (CEQA Guidelines, § 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 566.)

For example, the 2004 FED included a "No Hunt" alternative in addition to eight other alternatives. In contrast, the DED has just two alternatives. The required "No Project" alternative which would maintain existing bear hunting, bear archery hunting and use of dogs for pursuit/take of mammals or for dog training regulations without change. The other alternative would manage bears according to bear management units. The DED does not provide an analysis of a "No Hunt" alternative as provided in prior documents. Nor does the DED provide other alternatives such as: different zones and quotas, less intensive harvest, prohibiting the use of dogs, prohibiting the use of archery equipment, and prohibiting the use of GPS and tree switches.

The alternatives section should be rewritten to examine a reasonable range of alternatives and recirculated for public review and comment.

**III. CDFG FAILED TO INCLUDE AND RESPOND TO LOS PADRES FORESTWATCH IN THE SUMMARY AND DEPARTMENT RESPONSE TO PUBLIC RECOMMENDATIONS FOR THE 2010-2012 BEAR HUNTING REGULATIONS.**

Los Padres ForestWatch submitted a letter dated November 27, 2009 in response to CDFG's solicitation of public scoping comments on the 2010 changes to the regulations. (See Exhibit 9.) The Los Padres ForestWatch letter is not listed in the document entitled "Public Recommendations on Proposed Regulatory Changes and Department Responses For 2010 Bear Hunting Regulations Triennial Review Cycle." As a result, there is no response provided to this organization's scoping comment letter.

In addition, ForestWatch's scoping letter outlined several recommended alternatives that the CDFG failed to evaluate in the DED. Specifically, ForestWatch presented the following recommendations for CDFG to consider as part of its triennial review of the state's mammal hunting regulations:

- Consider reducing the number of bears allowed to be taken each year statewide, and should improve the method of notifying hunters that the season is closed;
- Implement a system to track the total number of bears killed per year by all causes, including legal hunting, poaching, depredation permits, vehicle strikes, wildlife management activities, and other activities;
- Establish Bear Management Units (BMUs) and limit the amount of take in each BMU;
- Increase the number of wardens and implement other measures to reduce poaching; and
- Consider temporarily closing bear hunting in Santa Barbara and Ventura counties to allow bear populations to rebound from large wildfires.

The DED failed to respond to or evaluate any of these recommendations. (CEQA Guidelines, §15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.)

In addition, the CDFG failed to properly notify ForestWatch about the availability of the DED, even though ForestWatch requested such notification on several occasions. Specifically, ForestWatch requested notification of all public notices and environmental documents pertaining to this proposal in its November 27 scoping comments. Specifically, the ForestWatch letter stated:

Please consider this letter to be our written request to receive the NOP and other CEQA notices and documents (including the draft and final EIR), pursuant to Pub. Res. Code §21092. We would prefer to receive such notices via email at <info@LPCFW.org>. Please notify us of any additional procedures that we must follow to receive such notices in the future, as we would like to continue to provide our comments and recommendations to the Department on this matter.

In addition, ForestWatch followed this request with an email on January 14, repeating their request for placement on the CDFG's mailing list to receive notice of the DED. Despite receiving an assurance from CDFG that ForestWatch was in fact on the notification list,

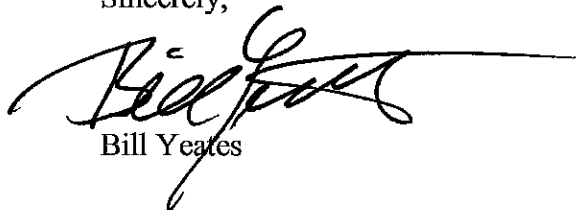
March 15, 2010

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ForestWatch received no such notification. CEQA requires the Department to provide notice to interested parties upon request. (Pub. Res. Code, § 21092(b)(3) [“The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice.”].)

Further impeding ForestWatch’s ability to gain a full understanding of the CDFG’s proposal and to submit meaningful comments thereon, CDFG failed to provide ForestWatch with access to (or copies of) several documents incorporated by reference into the DED. ForestWatch requested several documents in a request dated February 8, 2010, and to date, ForestWatch has not received any copies of, nor access to, any of the requested records. CEQA requires that all records referenced in a DED be made publicly available during the comment period. (CEQA Guidelines, § 15150(b).) The Department’s failure to do so materially prejudiced ForestWatch’s ability to meaningfully participate in the Department’s decision and environmental review. Forest Watch’s requests and the Department’s response are attached as Exhibit 10.

Sincerely,



Bill Yeates

**Exhibits:**

- Exhibit 1: Email from Eric Loft to Bill Yeates sent March 1, 2010.
- Exhibit 2: Letter from Dr. Rick Hopkins to Bill Yeates dated March 12, 2010 with cited literature attached.
- Exhibit 3: “Hunting with Hounds in Virginia: A Way Forward” by Virginia Department of Game and Inland Fisheries, 2008.
- Exhibit 4: Final Statement of Reasons for Regulatory Action, Amend Section 265, Title 14, CCR, Re: Use of Dogs for Pursuit/Take of Mammals or for Dog Training, April 27, 2009.
- Exhibit 5: “Poaching for Profit in Tough Economic Times”, San Francisco Chronicle, June 9, 2009.
- Exhibit 6: “State Investigating Discovery of Bear Paws in Riverside”, The Press-Enterprise, May 27, 2008.
- Exhibit 7: “Poaching in California Ramps Up in Bad Economy”, The Associate Press, January 15, 2009.
- Exhibit 8: “Agents in Poaching Sting Describe Hunt”, Los Angeles Times, February 10, 2003.
- Exhibit 9: Los Padres Forest Watch letter dated November 27, 2009.
- Exhibit 10: Correspondence between Los Padres Forest Watch and CDFG.