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201 Mission Street, 12<sup>th</sup> Floor, San Francisco, CA 94105

## FIRM HISTORY AND GOALS

The Law Offices of Thomas N. Lippe, APC, specializes in environmental law, including land use, timber, water rights and water pollution, coastal resources, endangered species, landslide, flooding and unlawful business practices relating to the environment. The firm primarily practices litigation, in both state and federal courts, but also has significant experience developing environmental policy and drafting environmental legislation.

The firm's goals are to protect the natural environment, to develop comprehensive legal strategies to achieve our clients' mission objectives, to bring top shelf litigation skills to this mission, and to serve the firm's clients responsibly and with sensitivity to their specific needs and budget.

Mr. Lippe began practicing law in 1982 with Bronson, Bronson & McKinnon, and environmental law in 1985 with Pillsbury & Wilson. In 1987, Mr. Lippe successfully represented the Environmental Protection Information Center at trial in the first lawsuit challenging the California Department of Forestry's approval of Pacific Lumber Company's Timber Harvest Plans after Maxxam, Inc. acquired Pacific Lumber.

In 1988, Mr. Lippe formed the partnership of Towner & Lippe, to practice public interest environmental law. In 1994, Mr. Lippe formed the Law Offices of Thomas N. Lippe. In 2009, Mr. Lippe formed the partnership, Lippe Gaffney Wagner LLP, which dissolved in December of 2013. Mr. Lippe continues his law practice as the Law Offices of Thomas N. Lippe, APC.

## ATTORNEYS

The firm's principal, **Thomas N. Lippe**, has established an excellent reputation in the environmental field, winning important victories in efforts to protect ancient forest, watershed, and other environmental values from unlawful logging of old-growth redwood and Douglas fir forests on the north coast of California and mixed conifer forests in the Sierra Nevada. Mr. Lippe is rated "AV" by Martindale-Hubbell, that organization's highest rating.

The firm's clients have included the East Bay Municipal Utility District, the Sierra Club, the Natural Resources Defense Council, the Environmental Protection Information Center, the Planning and Conservation League, the Wilderness Society, California Public Interest Research Group, and numerous local and regional environmental organizations.

Thomas N. Lippe, a native of Tampa, Florida, obtained his Bachelor of Arts degree in Psychology from Princeton University, graduating *magna cum laude* and Phi Beta Kappa in 1979.

Mr. Lippe obtained his Juris Doctor degree from Stanford University School of Law in 1982. At Stanford, Mr. Lippe was business manager of the Environmental Law Society and co-authored an ELS publication on hazardous waste management regulation. Mr. Lippe also served on the Board of Directors of the Stanford Public Interest Law Foundation.

Mr. Lippe joined the San Francisco firm of Bronson, Bronson and McKinnon in the fall of 1982. While with Bronson, Bronson and McKinnon, Mr. Lippe handled a range of business litigation matters, including securities class actions and Federal Trade Commission enforcement actions. In the fall of 1986, Mr. Lippe associated with the San Francisco firm of Pillsbury and Wilson, where he practiced plaintiff's civil litigation, primarily involving land use and landslide property damage. In 1988, Mr. Lippe founded the firm of Towner & Lippe, specializing in environmental litigation. In 1994, Mr. Lippe established the Law Offices of Thomas N. Lippe. The partnership, Lippe Gaffney Wagner LLP, was formed in 2009 successfully spanning five years to 2013. Mr. Lippe continues his practice as the Law Offices of Thomas N. Lippe, APC.

## **PRACTICE AREAS**

### **Land Use**

The firm has litigated dozens of land use cases at both the administrative level and in California state courts. These cases typically require enforcement of the California Environmental Quality Act ("CEQA") and the California Planning and Zoning Law.

An example of a recent land use case is the "Bickford Ranch" case, in which the firm, as co-counsel with the Law Office of J. William Yeates, represented the Sierra Club, Foothill Audubon Society, and California Oak Foundation challenging Placer County's approval of a 2,000-home development that proposed to eliminate old-growth blue oak woodlands. The case was resolved by way of a settlement agreement in which the developers agreed to fund the acquisition and preservation of oak woodlands in Placer County.

### **Forestry**

The firm has litigated over fifty (50) forestry cases, in both state and federal courts. State cases typically require enforcement of the California Forest Practice Act and the California Environmental Quality Act, and sometimes require enforcement of the Clean Water Act in conjunction with the state Porter-Cologne Water Quality Act. Federal cases typically involve enforcement of the National Forest Management Act and/or the Federal Endangered Species Act.

In 1987, Mr. Lippe represented the Environmental Protection Information Center at trial in the first lawsuit challenging the California Department of Forestry's approval of Pacific Lumber Company's Timber Harvest Plans after Maxxam, Inc. acquired Pacific Lumber. This litigation resulted in a permanent injunction preventing logging of one of the virgin old-growth redwood groves in the Headwaters Forest in Humboldt County that the federal and state governments later

acquired as part of the Headwaters Forest Preserve.

From 1988 to 1994, Mr. Lippe represented the Sierra Club and Environmental Protection Information Center against the California Department of Forestry and Pacific Lumber Company in a case challenging the Department's approval of two Pacific Lumber Company Timber Harvest Plans in virgin old-growth redwood groves. This litigation resulted in a published decision by the California Supreme Court in *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, which established the precedent that the Department of Forestry has the authority, under the California Environmental Quality Act and the Forest Practice Act, to require timberland owners to conduct surveys for wildlife species that may be harmed by logging.

From 1995 to 1997, Mr. Lippe represented the Environmental Protection Information Center against Pacific Lumber Company and the U. S. Fish & Wildlife Service in a federal court action to enforce the federal Endangered Species Act. Mr. Lippe obtained a preliminary injunction that prohibited Pacific Lumber from logging in the Headwaters Grove in the Headwaters Forest in Humboldt County. The federal and state governments later acquired this grove as the centerpiece of the Headwaters Forest Preserve. This litigation resulted in two published decisions: *Marbled Murrelet v. Babbitt*, 83 F.3d 1068 (9th Cir. 1996); and *Marbled Murrelet v. Babbitt*, 111 F.3d 1447 (9th Cir. 1997).

In 1999, Mr. Lippe designed a legal strategy for the environmental community to address the failure of the California Department of Forestry to adequately evaluate the impact of Sierra Pacific Industries' logging on over 750,000 acres of timberland in the Sierra Nevada Range on the forest ecosystem. The firm implemented this legal strategy by prosecuting seven cases challenging the Department's approval of eleven Sierra Pacific Industries' Timber Harvest Plans. The case resulted in a California Supreme Court ruling that even though the Department of Pesticide Regulation registers herbicides, CDF has independent legal authority and responsibility to assess and mitigate their environmental effects when used in connection with timber harvesting. (*Ebbetts Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Cal.4th 936, 956 ["Regarding the plans' reliance on the Department of Pesticide Regulation's registration of herbicides, we agree with plaintiffs that the fact a sister agency had assessed the environmental effects of various herbicides *in general* and registered them for use did not excuse CDF from assessing those herbicides' use *as part of a particular timber harvest plan*" (italics in original)].)

## Coastal Resources

The California Coastal Act is one of the strongest environmental protection laws in the world, primarily because it prohibits most development in specific types of coastal resources, including wetlands and Environmentally Sensitive Habitat Areas. The firm has litigated a number of Coastal Act cases, including cases for Wetland Action Network. In 2005, Mr. Lippe represented the Sierra Club in opposing a proposal by the Pebble Beach Company to clearcut much of the remaining Monterey Pine Forest on the Monterey Peninsula to make way for a ninth golf course on the peninsula.

## **Vineyard Conversions**

In 1999, Mr. Lippe designed a legal strategy for the Sierra Club to challenge permits issued by Napa County or the California Department of Forestry for the conversion of natural vegetation communities (e.g., forests, grasslands, chaparral, and oak woodlands) to vineyards. This program has been extremely successful, significantly reducing the number of vineyard conversion projects from over one hundred per year in the 1990s to a handful per year since 1999. Starting in 2002, this program was continued by Earth Defense for the Environment Now and more recently by Living Rivers Council to the present time.

## **Water Resources**

In 2000, Mr. Lippe designed a legal strategy for the Sierra Club to challenge water rights permit applications in the Napa River drainage submitted by land owners to the State Water Resources Control Board (“SWRCB”) to withdraw stream waters for irrigation and other consumptive uses, primarily for vineyard conversions. This program has been extremely successful at the administrative level in preventing the State Board from approving new water appropriation permits in the Napa River drainage. Starting in 2002, this program was continued by Earth Defense for the Environment Now and more recently by Living Rivers Council to the present time.

The firm has also prosecuted cases to enforce the federal Clean Water Act. In 1999-2000, the firm, acting as co-counsel with Earthjustice, represented San Francisco Baykeeper in a federal court action to enforce the State of California’s obligation to establish Total Maximum Daily Loads (TMDLs) of pollutants in waters of the state designated “impaired” under section 303(d) of the Clean Water Act.

From 2001-2003, the firm, again representing San Francisco Baykeeper, successfully challenged storm water permits issued by the San Francisco Bay Regional Water Quality Control Board to San Mateo and Contra Costa counties pursuant to the federal Clean Water Act and the state Porter-Cologne Water Quality Act.

## **Endangered Species**

Many of the firm’s cases involve threats to species listed as endangered or threatened under the federal or state endangered species acts. Therefore, the firm has substantial experience working with wildlife and fish biologists, hydrologists and soil scientists, and other resource consultants in developing evidence to demonstrate the impact of development projects on these species. In addition, the firm has prosecuted a number of cases in federal court under the federal Endangered Species Act.

For example, from 1995 to 1997, Mr. Lippe represented the Environmental Protection Information Center against Pacific Lumber Company and the U. S. Fish & Wildlife Service in a federal court action to enforce the federal Endangered Species Act. Mr. Lippe obtained a preliminary

injunction that prohibited Pacific Lumber from logging in the Headwaters Grove in the Headwaters Forest in Humboldt County. The federal and state governments later acquired this grove as the centerpiece of the Headwaters Forest Preserve. This litigation resulted in two published decisions: *Marbled Murrelet v. Babbitt*, 83 F.3d 1068 (9th Cir. 1996); and *Marbled Murrelet v. Babbitt*, 111 F.3d 1447 (9th Cir. 1997).

## False Green Advertising

The firm has also been active in the area of “false green advertising” or “greenwashing.” For example, in 2003, the firm prosecuted a class action suit against several major retail grocery chains for false advertising regarding the claimed pesticide residue content of fresh produce. The case settled with the retailers agreeing to change the challenged advertising to make it accurate and not misleading.

In another case, the firm prosecuted an action against several pesticide application companies regarding advertising claims that their application of pesticides is “safe.” The case settled with the companies agreeing to stop making this advertising claim.

## SELECTED CASES AND MATTERS

- 2013-Present** California Environmental Quality Act case for Living Rivers Council challenging the State Water Resources Control Board’s second approval of the Policy for Maintaining Instream Flows in Northern California Coastal Streams.
- 2014-Present** California Environmental Quality Act case for the California Sportfishing Protection Alliance and Protecting Our Water and Environmental Resources challenging Stanislaus County’s policy and practice of approving groundwater well construction permits.
- 2015-2016** California Environmental Quality Act case for the Mission Bay Alliance challenging the City of San Francisco’s approval of the Golden State Warriors’ sports arena and event center in the Mission Bay area of San Francisco.
- 2013-2015** California Environmental Quality Act case for the Friends of Yerba Buena and the 765 Market Street Residential Owners Association challenging the City of San Francisco’s approval of a luxury condominium high-rise project in the Yerba Buena area San Francisco. Case settled.
- 2011-2014** California Environmental Quality Act case for Citizens for a Sustainable Treasure Island challenging the City of San Francisco’s approval of a mixed-use community development area plan for Treasure Island in San Francisco Bay.
- 2012** California Environmental Quality Act case for San Francisco Tomorrow, Golden

Gate Audubon Society, Waterfront Watch, Telegraph Hill Dwellers and the Sierra Club challenging the City of San Francisco's approval of the America's Cup race in San Francisco Bay. Case settled.

- 2011-2013** California Environmental Quality Act case for Living Rivers Council challenging the State Water Resources Control Board's approval of the Policy for Maintaining Instream Flows in Northern California Coastal Streams.
- 2011-2014** California Environmental Quality Act case for Living Rivers Council challenging the State Water Resource's Control Board's approval of the Amendment to the Water Quality Control Plan for the San Francisco Bay Basin to Establish a Total Maximum Daily Load for Sediment in the Napa River (the "Napa River Sediment TMDL").
- 2002-2008** California Environmental Quality Act and Forest Practice Act cases for Ebbets Pass Forest Watch against the California Department of Forestry and Sierra Pacific Industries regarding the cumulative effects of logging on wildlife populations and habitat in the Sierra Nevada range. *Ebbetts Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Cal.4th 936, 956.
- 2006** California Environmental Quality Act case for the California Oak Foundation challenging the County of Tehama's approval of a housing development proposing to fragment over 2,000 acres of blue oak woodlands.
- 2001-2005** California Environmental Quality Act case for the Sierra Club, Audubon Society and the California Oak Foundation challenging the County of Placer's approval of a 2,000-home development that proposed to eliminate old growth blue oak woodlands. Case settled with developers agreeing to fund acquisition and preservation of oak woodlands in Placer County.
- 2005** California Environmental Quality Act case for the Sierra Club challenging Pebble Beach Company proposal before the California Coastal Commission to clearcut much of the remaining Monterey Pine Forest on the Monterey Peninsula to make way for a ninth golf course on the peninsula.
- 2004** California Environmental Quality Act case for Association of Irrigated Residents against the San Joaquin Valley Air Pollution Control District challenging the District's request to EPA to reclassify the District's ozone pollution non-attainment status from "severe" to "extreme."
- 2003** Unfair Competition and False Advertising case against several major retail grocery chains for false and misleading advertising regarding the pesticide residue content of fresh produce. Case settled with retailers agreeing to change the challenged advertising.

- 2002** California Environmental Quality Act and California Pesticide Regulation Act case against the California Department of Pesticide Regulation and Dow Agrosciences, FMC Corporation *et al.* alleging the Department failed to reevaluate the registrations of pesticides that impact endangered frog species.
- 2001** Four California Environmental Quality Act and Forest Practice Act cases for Ebbets Pass Forest Watch against the California Department of Forestry and Sierra Pacific Industries regarding the cumulative effects of logging on wildlife populations and habitat in the Sierra Nevada range. Sierra Pacific withdrew all eight challenged timber harvest plans to avoid a ruling on the merits.
- 2000-2001** National Environmental Quality Act and National Forest Management Act litigation for Earth Island Institute, Tule River Conservancy, and Forest Conservation Council challenging the U.S. Forest Service's approval of timber sales affecting California spotted owl and Pacific fisher in eleven Sierra Nevada national forests.
- 2000-2001** Forest Practice Act case for California Oak Foundation and Mountain Lion Foundation challenging California Board of Forestry's exemption of oak woodland logging from regulation under the Forest Practice Act.
- 1999-2000** California Environmental Quality Act case for the Sierra Club challenging the County of Napa's pattern and practice of approving new vineyard conversions. Case settled with County agreeing to CEQA review.
- 1998-2000** California Environmental Quality Act and Forest Practice Act case for the Redwood Coast Watersheds Alliance against the California Department of Forestry and Mendocino Redwood Company. Litigation in Mendocino County Superior Court regarding the cumulative effects of logging on the Albion River, Elk Creek, and Greenwood Creek in Mendocino County, California. Judgment for plaintiffs; writ of mandate issued.
- 1998 -1999** False advertising/unfair business practice case for California Public Interest Research Group Trust and Environmental Law Foundation against pesticide applicators to enjoin false "green" advertising. Case settled with injunctive relief and corrective advertising.
- 1995-1997** Endangered Species Act case for the Environmental Protection Information Center against Pacific Lumber Company and the U.S. Fish & Wildlife Service. Litigation in the U.S. District Court for the Northern District of California and the U.S. Court of Appeals for the Ninth Circuit. Published decisions in the case: *Marbled Murrelet v. Babbitt* 83, F.3d 1068 (9th Cir. 1996); *Marbled Murrelet v. Babbitt*, 111 F.3d 1447 (9th Cir. 1997).

In this case, Mr. Lippe obtained a preliminary injunction which temporarily prohibited Pacific Lumber from logging in the Headwaters Forest in Humboldt County. Pacific Lumber then agreed to sell (and not to log) the “Headwaters Grove” and one other ancient redwood grove to the federal and state governments, subject to Pacific Lumber receiving an “incidental take” permit under the federal Endangered Species Act and an approved “Sustained Yield Plan” under the California Forest Practice Act.

- 1996-1999** Mr. Lippe represented the Sierra Club and Environmental Protection Information Center in the administrative proceedings related to Pacific Lumber Company’s application for an Incidental Take Permit/Habitat Conservation Plan under section 10 of the Endangered Species Act.
- 1988-1994** California Environmental Quality Act case for the Sierra Club and Environmental Protection Information Center against the California Department of Forestry and the Pacific Lumber Company. Litigation in the California Superior Court, First District Court of Appeal, and California Supreme Court. Published decision by the Supreme Court: *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, holding that the California Department of Forestry has the authority, under the California Environmental Quality Act and the Forest Practice Act, to require timberland owners to conduct surveys for wildlife species that may be harmed by logging.
- 1994-1996** Forest Practice Act case for the Environmental Protection Information Center against the California Department of Forestry. Litigation in the California Superior Court and First District Court of Appeal. Published decision: *Environmental Protection Information Center v. California Department of Forestry* (1996) 43 Cal.App.4th 1011, holding that the Board of Forestry’s regulatory exemption of logging on parcels of less than three acres was invalid.
- 1991-1996** California Environmental Quality Act and Forest Practice Act cases for the East Bay Municipal Utility District against the California Department of Forestry and Georgia Pacific Corporation. Litigation in the California Superior Court and First District Court of Appeal regarding the cumulative effects of logging in the Mokelumne River watershed in the Sierra Nevada mountains on EBMUD’s reservoirs. Judgment for plaintiffs; writ of mandate issued by the Superior Court in the first case. Published decision by the First District Court of Appeal in the second case: *East Bay Municipal Utility District v. California Department of Forestry* (1994) 43 Cal. App. 4th 1113.
- 1995** California Environmental Quality Act and Forest Practice Act case for the Lost Coast League against the California Department of Forestry and Pacific Lumber Company. Litigation in the California Superior Court regarding the cumulative effects of logging on the Mattole River in Humboldt County, California. Judgment for plaintiffs; writ of mandate issued.

- 1990** Mr. Lippe co-wrote, provided legal services to, and campaigned for Proposition 130, the “Forests Forever” initiative, which appeared on the 1990 ballot in California. The initiative garnered 47.5% of the vote. Mr. Lippe handled litigation concerning the language of the ballot statements for Proposition 130 and a competing initiative sponsored by the timber industry. Mr. Lippe participated in numerous television, radio, and print interviews and talk shows as part of the campaign for Proposition 130 and against the competing initiative.
- 1991** Mr. Lippe was one of a team of three negotiators for a coalition of environmental organizations, including the Sierra Club, Natural Resources Defense Council, the Wilderness Society, the Planning and Conservation League, and others, that negotiated with representatives of California’s timber industry to draft compromise legislation to reform forest practices. This effort resulted in proposed legislation known as the “Sierra Accord.” Governor Wilson vetoed the Sierra Accord in the fall of 1991. The state legislature and Governor Wilson then changed the Sierra Accord to accommodate industry objections and renamed it the “Grand Accord.” The Grand Accord was defeated in the legislature in early 1992.
- 1988** California Environmental Quality Act and Forest Practice Act case for the Friends of Dougherty Creek against the California Department of Forestry and the Louisiana Pacific Corporation. Litigation in the California Superior Court regarding the cumulative effects of logging on the Big River in Mendocino County, California. Judgment for plaintiff; writ of mandate issued.
- 1987** California Environmental Quality Act and Forest Practice Act case for the Environmental Protection Information Center against the California Department of Forestry and the Pacific Lumber Company. Litigation in the California Superior Court. This was the first case brought against the California Department of Forestry and Pacific Lumber Company following the purchase of Pacific Lumber by Maxxam Corp. This case involved Maxxam’s plan to log all of its old-growth redwood forests in northern California. In that case, the Humboldt County Court ruled that the Department of Forestry simply “rubber-stamped” Pacific Lumber’s logging plans without legally required review of impacts on old-growth dependent wildlife species. Judgment for plaintiff; writ of mandate issued.
- 1986-1988** Inverse condemnation case for private landowners against the City of Lafayette for property damage from landslides. Litigation in the California Superior Court. (After Mr. Lippe left the firm handling this case, it reached the California Supreme Court, which published a decision: *Locklin v. Lafayette* (1994) 7 Cal.4th 327, in which the Supreme Court announced a new rule governing the duties of landowners regarding the collection and discharge of surface waters into “natural watercourses.”)
- 1981** Internship, Environmental Defense Fund. Work included a project evaluating the

effectiveness of the California Department of Agriculture's regulation of agricultural pesticide use.

## **PUBLISHED DECISIONS**

*Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160.

*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036.

*California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217.

*Ebbetts Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Cal.4th 936, 956

*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (as Amicus Curiae).

*Californians for Alternatives to Toxics v. Department of Pesticide Regulation* (2006) 136 Cal.App.4th 1049.

*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2004) 123 Cal.App.4th 1331.

*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490.

*San Francisco Baykeeper v. Whitman* 297 F.3d 877 (9th Cir. 2002).

*San Francisco Baykeeper, Inc. v. Browner* 147 F.Supp.2d 991 (N.D.Cal. 2001).

*Marbled Murrelet v. Babbitt* 182 F.3d 1091 (9th Cir. 1999).

*Marbled Murrelet v. Babbitt* 111 F.3d 1447 (9th Cir. 1997).

*Marbled Murrelet v. Babbitt* 83 F.3d 1068 (9th Cir. 1996).

*Environmental Protection Information Center v. California Department of Forestry* (1996) 43 Cal.App.4th 1011.

*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215.

*East Bay Municipal Utility District v. California Department of Forestry* (1994) 43 Cal.App.4th

1113.

*Schulz v. City of San Francisco*, 849 F.Supp. 708 (N.D.Cal. 1994).

*EPIC v. Maxxam* (1992) 4 Cal. App. 4th 1373.

## PUBLICATIONS

**2001.** Lippe, Thomas N. and Bailey, Kathy. *Regulation of Logging under Governor Gray Davis*. Golden Gate Law School Law Review. Spring, 2001.

**1981.** Lippe, Thomas N.; Franklin, Steven R., and Belfiglio, Jeffrey. *Hazardous Waste Disposal Sites: A Handbook for Public Input and Review*. Stanford Environmental Law Society.

## LECTURES

**2005-2013** Boalt Hall, University of California at Berkeley School of Law, Guest Lecturer in Wine Law course taught by Richard Mendelson.

**2007** Public Interest Environmental Law Conference, University of Oregon School of Law. "Use of Experts in Environmental Litigation."

**2001** Golden Gate Law School Symposium: Gray on Green - The Environment Under Governor Davis.

**2001** Statewide Forester's Meeting, California Department of Forestry and Fire Protection.

**1998** Seventh Annual Environmental Law Institute at Yosemite, Environmental Law Section of the State Bar of California. "The Headwaters Forest Agreement."

**1994** Continuing Legal Education: Seminar on California Forest Practice Law.

**1992** First Annual Environmental Law Institute at Yosemite, Environmental Law Section of the State Bar of California. "Timber - the Grand Accord and Forest Planning."

**1989** California Association of Registered Professional Foresters Annual Meeting.

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