

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2001 - 09

In the Matter of the Petition of
**PACIFIC LUMBER COMPANY
AND SCOTIA PACIFIC LUMBER LLC**

For Review of Monitoring and Reporting Order No. R1-2001-19
Issued by the
California Regional Water Quality Control Board,
North Coast Region

SWRCB/OCC FILE A-1380

BY THE BOARD:

Pacific Lumber Company and Scotia Pacific Company LLC (petitioners) filed a petition with the State Water Resources Control Board (SWRCB) on April 25, 2001. The petition asks for SWRCB review and issuance of an immediate stay of Monitoring and Reporting Order No. R1 2001-19, issued by the North Coast Regional Water Quality Control Board (Regional Board) on March 28, 2001.¹ The Regional Board order directs Pacific Lumber to conduct specified water quality monitoring before beginning to harvest timber on an area known as the "Hole in the Headwaters" located in Humboldt County. This order deals only with the petitioners' request for a stay of the Regional Board order pending resolution of the petition on the merits. For the reasons discussed below, the request for a stay of the Regional Board order is denied.

¹ The order was issued by the Executive Officer of the Regional Board pursuant to a delegation of authority.

I. BACKGROUND

The present dispute involves land that was acquired by Pacific Lumber Company in 1999 as one of several transactions provided for in the agreement to preserve the Headwaters Forest. The California Department of Forestry and Fire Protection (Department of Forestry) had previously approved Timber Harvest Plan No. 1-97-520 HUM (THP 520) for 720 acres in the spring of 1998. On March 6, 2001, the Department of Forestry approved Amendment #5 to THP 520. Amendment #5 revises THP 520 in several respects including: (1) changing the method of yarding from tractor/ground-based and cable yarding to helicopter only yarding;² (2) addition of one existing, permanent appurtenant road; (3) changes needed to comply with watercourse protection provisions of state law; (4) limitations on heavy equipment access; and (5) addition of specified winter operations including hauling on permanent rocked roads at least 48 hours after rainfall.

The Regional Board staff participated in the review of Amendment #5 to THP 520 and recommended specified water quality monitoring measures. The Department of Forestry approved THP 520 on March 6, 2001, but did not require the water quality monitoring measures requested by Regional Board staff. On March 28, 2001, the Executive Officer of the Regional Board issued Monitoring and Reporting Program Order NO. R1-2001-19.

The Regional Board order requires the petitioners to incorporate additional water quality monitoring measures into petitioners' current trend monitoring program. The order also requires that a monitoring station be added in the lower portion of the South Fork Elk River drainage to monitor for stream discharge, temperature, suspended sediment and turbidity. In

² "Yarding" refers to the movement of cut trees to a landing area from which the trees are loaded on a truck.

addition, the Regional Board order requires a detailed monitoring program to develop ambient water quality data. After determining ambient (pre-project) conditions, the order requires that petitioners conduct water quality monitoring and provide reports to the Regional Board pursuant to subdivision (b) of Water Code section 13267. The required monitoring programs are directed at determining the water quality effects of timber harvest activities and road crossing repair and mitigation activities.

On April 25, 2001, petitioners filed a petition requesting review of the Regional Board order, a hearing before the SWRCB, and an immediate stay of the Regional Board order. The SWRCB issued a notice of public hearing on May 7, 2001, and held a hearing on Petitioner's request for a stay on May 17, 2001. In order to issue a stay of the Regional Board order, the SWRCB must find that the Petitioner has alleged facts and produced proof of: (1) substantial harm to the Petitioner or to the public interest if a stay is not granted; (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and (3) substantial questions of law and fact regarding the disputed action. (Cal. Code Regs. tit. 14 § 2053.)

II. CONTENTIONS AND FINDINGS

1. Contention: Petitioners contend that they will suffer substantial harm if a stay of the Regional Board order is not granted.

Finding: There was conflicting evidence regarding the costs that petitioners will incur to implement and carry out the monitoring program required by the Regional Board. Petitioners will incur additional costs due to the delay in logging and the delay in petitioners' profit from timber sales and lumber production from the land in question. However, petitioners have not demonstrated that the costs of compliance with the Regional Board order are disproportionate to the benefit to be gained by the required water quality monitoring.

2. Contention: Petitioners contend that interested parties and the public interest will not be substantially harmed if a stay is granted.

Finding: The existence of serious water quality problems in the Elk River watershed is established by evidence in the record including the declarations of area residents. The Regional Board order is directed at developing information needed to document existing water quality conditions and to help resolve water quality problems. To stay the Regional Board order and allow the logging to go ahead without appropriate water quality monitoring could substantially harm the public interest. Without further review of the issues raised in the petition, the SWRCB cannot conclude that petitioners have met their burden of establishing that there will be no substantial harm to other interested persons or the public interest if a stay is granted.

3. Contention: Petitioners contend that there are substantial legal and factual issues that need to be resolved with respect to the Regional Board order.

Finding: Petitioners have raised several legal and factual issues that the SWRCB will consider in our review of the petition on the merits. However, in view of our finding regarding potential harm to other interested parties and the public interest if a stay is granted, the SWRCB concludes that a stay should not be granted pending resolution of the legal and factual issues raised by petitioners.

III. SUMMARY AND CONCLUSION

The SWRCB concludes that the petitioners have not met their burden of proving each of the three conditions required for issuance of a stay. Therefore, the Regional Board order should remain in effect pending the SWRCB's review of the petition on the merits.

IV. ORDER

IT IS HEREBY ORDERED that the requested stay of Monitoring and Reporting Order No. R1-2001-19 is denied.

IT IS HEREBY FURTHER ORDERED that denial of the requested stay is conditioned on the SWRCB's understanding that the Regional Board will not seek imposition of administrative civil liability for violations of monitoring and reporting requirements of Order No. R1-2001-19 if petitioners do not begin to harvest timber or undertake other activities pursuant to THP 520 prior to the SWRCB's review of the petition on the merits.

CERTIFICATION

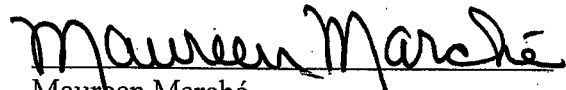
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 17, 2001.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Clerk to the Board