

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF MARCH 19, 2004**

Prepared on February 26, 2004

**ITEM: 13**

**SUBJECT: WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR THE RMC  
2004-2006 TIMBER HARVEST, THP NO. 1-O3-082 SCR, SANTA CRUZ  
COUNTY ORDER NO. R3-2004-0009**

**SUMMARY**

On November 20, 2003, Regional Board staff received a request from Gary Paul, Regional Professional Forester (RPF), for Water Quality regulation of the RMC 2004-2006 Timber Harvest (THP). The THP involves selective harvesting of 740 acres of land utilizing ground based yarding techniques. During the June 9, 2003 preharvest inspection, Regional Board staff found the THP to be a moderate risk to water quality and appropriate to receive a conditional waiver of waste discharge requirements. The "Review Team" members evaluated this THP and reached concurrence on most issues and concerns. The length and extent of monitoring is an issue of disagreement between Regional Board staff and the RPF.

The THP is located in the San Vicente Creek Watershed that is the sole source water supply for the town of Davenport. Resident trout are present in the vicinity of the THP with Coho Salmon and Steelhead trout downstream (below a substantial fish barrier). Monitoring requirements are recommended to include both visual (photo-point, inspections) and water column monitoring (turbidity, temperature). Many disagreements on issues of timing, duration and safety of monitoring proposed for this plan have been worked out with the RPF.

**DISCUSSION**

At the September 2003 Board Meeting Regional Board staff presented the "Timber Harvest Framework" and "Decision Matrix". Regional

Board staff was able to follow the framework in a stepwise fashion and a draft waiver for this THP was circulated for public comment in late December 2003. Comments and responses are made part of this staff report.

The Decision Matrix focuses on risk to water quality. If the timber harvest poses essentially no risk to water quality, then no action by the Board is necessary. If the THP does pose risk to water quality but this risk can be adequately mitigated then the THP is appropriate for a waiver of waste discharge requirements. And finally, if the THP poses risk to water quality and there is significant uncertainty that this risk will be adequately mitigated, then waste discharge requirements may be necessary.

The RMC 2004-2006 THP (THP) does pose some risk to water quality, but this risk is mitigated in the approved timber harvest plan. No additional mitigation measures beyond those contained in the timber harvest plan are proposed to be added via this Waiver, except for recommended monitoring and reporting requirements. The Monitoring & Reporting program is based in part on the risk to water quality along with site features. Regional Board staff's approach to developing the proposed waiver for this THP follows.

**Risk to Water Quality**

This THP is considered a “moderate risk” to water quality primarily because the Town of Davenport relies on San Vicente Creek as their sole source water supply. Additional water quality risk factors include the following:

1. San Vicente Creek is not listed on the 303(d) list of Impaired Water Bodies, but it is considered a “threatened and impaired watershed” due to the presence of Coho Salmon and Steelhead Trout downstream.
2. All proposed and existing roads and landing are located and designed to avoid significant erosion.
3. Timber harvest is proposed throughout the watershed and lake protection zone (WLPZ).
4. RMC Pacific Materials has an established history of good land management.
5. All landslides, which were observed during the PHI, are not expected to be adversely affected by this THP.
6. Monitoring is proposed to be implemented in a manner such that erosion problems that might occur will be addressed as soon as practical.

### Monitoring & Reporting

Regional Board staff recommend that the Plan proponent be required to implement photo-point and visual monitoring of watercourses, unstable area, roads, landings, and skid trails. Water column monitoring should include temperature up- and downstream and turbidity at class I and II crossings and up- and down stream of the THP. Reporting should be required on an annual basis with additional reporting when significant erosion events are observed. The RPF should be required to report any water quality impact or a violation of the THP that could lead to a water quality impact to the Regional Board within forty-eight (48) hours. Log books of field inspections will be maintained by RMC Pacific Materials or the consulting forester.

This THP will be conducted as prescribed in Timber Harvest Plan 1-03-082 SCR with the following recommended additional conditions.

### Conditions

1. The discharger must comply with all requirements of applicable water quality control plans adopted by the Central Coast Regional Water Quality Control Board and approved by the State Water Resources Control Board, and water quality control plans and policies adopted by the State Water Resources Control Board.
2. The discharger shall conduct timber harvest activities in accordance with the approved Timber Harvest Plan and with all applicable sections of the Forest Practice Rules.
3. The discharger shall not create a pollution, contamination, or nuisance, as defined by CWC Section 13050.
4. The discharger shall not discharge any waste not specifically regulated by the waiver described herein and shall not cause alteration in stream temperature which exceeds Basin Plan requirements. Waste specifically regulated under this waiver includes: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark. Examples of waste not specifically regulated by this waiver include petroleum products, hazardous materials, or human wastes.
5. The discharger shall allow Regional Board staff reasonable access, pursuant to Public Resources Code 4604 (b), onto the affected property for the purpose of performing inspections to determine compliance with waiver conditions.
6. This Waiver does not regulate point-source discharges that require an NPDES permit under the Clean Water Act including silvicultural point-source discharges as defined in 40CFR Chapter 1 Part 122.27.

This project, if conducted in accordance with Timber Harvest Plan 1-03-082 SCR and the above-named conditions will be in the public interest. This waiver is conditional and can be terminated at any time. This waiver expires on March 1, 2009.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

THP 1-03-082SCR was submitted by a Registered Professional Forester and has been certified by the California Department of Forestry and Fire Protection (CDF). CDF is listed in Section 15251 of the CEQA guidelines as a certified program under CEQA. CDF has made written findings for each of the potential significant environmental effects of the project in accordance with Section 15091 of the CEQA Guidelines. Regional Board staff participated in the review process for this project and all recommendations for water quality mitigations were incorporated in the THP in accordance with Section 15253 (b)(4) of the CEQA guidelines. Timber Harvest Plan No. 1-03-082 is therefore accepted as equivalent to a mitigated negative declaration for this project in accordance with Section 15253 of the CEQA guidelines.

### COMMENTS

Most of the following comments are paraphrased to make them concise and clear.

Gary Paul, RPF, submitted the following comments on January 22, 2004:

1. **Monitoring & Reporting Program - Five Years of Monitoring:** Considering the level of monitoring required for each THP, five years of monitoring seems excessive and burdensome, particularly if no problems are revealed within the first year of monitoring. Could the monitoring be eliminated or reduced if no temperature, turbidity, or other problems are found in the first year following logging, when most problems should result?

**STAFF RESPONSE:** Staff has adjusted the monitoring for all recent timber harvest waivers to scale back the monitoring automatically in the second year following completion of timber harvest operations. Starting in the second year following timber operations, turbidity and visual monitoring are required after three inches in 24-hour storm events rather than two-inch events. Reporting 30 days following inspections has also been eliminated to decrease the cost of monitoring.

2. **Monitoring & Reporting – Inspection timing:** On the RMC property, I will be doing extensive monitoring on possibly three to four large harvest areas/year. The staffing required for that to be done, within the time framework required by the monitoring plan, would not be feasible. I don't have excess people who I could pick up after every storm for this work. Not to mention other harvest areas for which I will be responsible. The costs for this are enormous. I think Big Creek and Redwood Empire have documented the potential costs.

**STAFF RESPONSE:** Staff wants the foresters to inspect their highest priority timber harvest plans first. The highest priority THPs are usually the ones that were the most recently harvested. Staff has increased the amount of time allowed to complete post storm inspections and monitoring to 48 hours starting in the second year after completion of timber harvest operations.

3. **Monitoring & Reporting Program-Photo-Point Monitoring:** I have 37 confluences with no good access (mostly Class III into II or I). I have 16 watercourse crossings, mostly dry dip crossings of Class III watercourses.

**STAFF RESPONSE:** Any site that is unsafe to hike to is not required to be monitored. However, photo-point monitoring can usually be done everywhere once the ground dries. Although the number of photo point sites is high, they only need to be collected twice per year in the year following timber harvest operations and once per year thereafter. The photo-point monitoring requirement at the beginning of the wet season (after the first significant storm event of the season) is only required at the beginning of the wet season following any timber harvest activities.

4. **Monitoring & Report Program - Point C:** Point C on Attachment B, a change in watercourse class from II to I, was moved on the PHI to immediately below crossing "f".

**STAFF RESPONSE:** Monitoring Point "C" has been moved to adjacent to crossing "f."

**The Ocean Conservancy, Citizens for Responsible Forest Management, Sierra Club – Santa Cruz Group and the Lompoc Watershed**

**Conservancy** jointly submitted the following comments. (The comments and responses to this letter are identical for all three timber harvest waivers on the March 19 2004 Board agenda. )

**Monitoring & Reporting Program:** The Monitoring Provisions of the proposed waivers are inconsistent with Porter-Cologne Monitoring Requirements for Waivers.

Under SB 923 (Sher 2003), a recent amendment to the Porter-Cologne Water Quality Control Act, “[t]he conditions of [waivers] shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring ... Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver’s conditions.” Accordingly, monitoring must be able to verify that the waiver’s conditions are consistent with the Basin Plan.

Currently, no systematic water quality monitoring occurs to assess the water quality impacts of timber harvesting throughout the State. In general, approved plans are monitored only at the individual site level, and then only to check internal compliance with FPRs and BMPs. It is widely acknowledged that this THP-level monitoring is inadequate to gauge the effectiveness of BMPs at meeting basin plan standards. Consequently, under most monitoring regimes, “the actual water quality impact of silvicultural activities conducted under the current THP process is unknown for most watersheds.”

The monitoring provided for in the proposed waivers does not go beyond the minimal, site-level monitoring alluded to above and is therefore inconsistent with SB 923’s requirements for monitoring pursuant to waivers of waste discharge requirements. A watershed-based, in stream monitoring plan is the only effective means of gauging the waivers’ ability to meet Basin Plan Goals. If the Board intends to issue waivers of waste discharge requirements for these timber harvest activities, it is legally obligated to adopt such a plan. If it does not, waste discharge requirements must be issued.

It should be noted that in order to monitor the effectiveness of waiver conditions, comprehensive pre-harvest water quality data is necessary. Such “background” data should be sufficient to describe pre-harvest conditions during both dry-weather and wet-weather flows. If such data is unavailable, the effectiveness of the waiver will – by definition – be impossible to assess, and consequently the Board cannot legally issue a waiver under Porter-Cologne. Under these circumstances, the Board would be obligated to either conduct the necessary background monitoring before issuing waivers or develop waste discharge requirements for these plans.

**STAFF RESPONSE:** The monitoring requirements are intended to be forensic in nature and not a rigorous study. If visual or water column monitoring indicates a problem, then the forester must fix it as soon as possible. And if the monitoring does not indicate a problem, this is considered at least preliminary evidence that the best management practices for the timber harvest plan are working adequately.

Senate Bill 923 does not require comprehensive watershed-based monitoring or a comprehensive baseline analysis. Water Code section 13269 specifically permits individual monitoring and allows the Board to consider existing monitoring efforts. The Regional Board’s ambient monitoring program and monitoring data from existing discharges provide significant background information about watershed conditions. In addition, since none of the three THPs in question discharges to a 303(d)-listed water body, the implication is that water quality objectives are currently being attained. If ongoing monitoring demonstrates that the waivers are not adequately protective, appropriate action can be taken once that data become available.

5. **General Comment – Legal Landscape:** The New Legal Landscape Governing Timber Harvesting Activities Necessitates a New, Forward-Looking Approach by the Central Coast Regional Water Quality Control Board.

Within the last several months, several significant events changed the law governing

the management of timber harvest. We refer, specifically, to the opinions of the District Court in EPIC v. Pacific Lumber Company, et al., and the enactment of SB 810 (Burton 2003). The implications of these occurrences are discussed in detail below. SB 923 (Sher 2003) also made important changes, the significance of which was discussed above. We respectfully request that the Board cease consideration of these and other prospective logging waivers and direct staff to begin development of a new program that takes these legal changes into account.

Two recent decisions of the Court in EPIC v. Pacific Lumber Company, et al. (C 01-2821 MHP) portend changes in the regulatory landscape governing timber harvest activities by clarifying that many logging-related activities result in point source discharges, making them expressly subject to the requirements of the National Pollutant Discharge Elimination System (NPDES) program. Specifically, on October 14, 2004, the Court held that EPA's regulation establishing the scope of the term "silvicultural point source" may not be interpreted to exclude any pollution source that would qualify as a point source under the language of the Clean Water Act. The Court stated that:

Where this runoff system utilizes the kind of conduits and channels embraced by Section 502(14) [of the Clean Water Act], EPA's regulation does not control: It cannot control, for one, because ... EPA may not alter the definition of an existing 'point source.'

Put simply, discrete conveyances of pollution associated with logging activities are subject to the Clean Water Act's NPDES permitting requirements. The Court provided further clarification on this point in its January 23, 2004 order, in which it also expressed frustration with Pacific Lumber's failure to acknowledge the significance of its interpretation of the law:

In its complaint, EPIC alleges that many of the pollution sources in the Bear Creek area are "point sources," discharging both storm water and pollutants into the creek itself. [These pollution sources] were (and are) "point sources" like other "point sources" subject to

the terms of the CWA and the NPDES. That PALCO misunderstood, and apparently continues, despite the court's October 14, 2003 opinion, to misunderstand - this point does not change the validity of this legal conclusion or the scope and effect of Section 402(p). Where PALCO's Bear Creek runoff system utilizes the kind of conduits and channels embraced by section 502(14), this court has noted, the pollution sources are definitively "point sources"; EPA may not alter this categorization, and section 122.27 does not - and cannot - absolve silvicultural businesses of CWA's "point source" requirements. Nor does section 402(p).

We acknowledge that, because the Board is not a party to the EPIC lawsuit, it is not - technically - bound by these opinions. However, as the language above indicates, the Court has repeatedly articulated its intention to construe to relevant sections of the CWA and its implementing regulations as requiring NPDES permits for discrete conveyances of silvicultural runoff. All that remains for the Court to do is complete its review of the merits of the claims (*e.g.* decide the question of whether the Pacific Lumber timber harvests actually utilize discrete conveyances).

The Board should not wait for the ultimate resolution of the fact issues in this case, because the issue of significance to the Board - whether THPs utilizing discrete conveyances for runoff are required to obtain NPDES permits - has already been decided. Nor should the Board await the application of this precedent to the Board through a lawsuit in which it is the named defendant. The Board should see the writing on the wall and recognize that, as a result of the decisions in this case, it will ultimately be required to write NPDES permits for these and other timber harvesting operations. The Board could most efficiently and effectively use its resources by addressing this issue now.

The Regional Board has an obligation to "obtain coordinated action in water quality control ..." Accordingly, the Board must do more than simply note that: "this waiver does not regulate point-source discharges that require an NPDES permit under the Clean Water Act ..." The Board should cease its development of waivers for prospective timber

harvest plans and direct staff to develop an integrated program for regulating these discharges that includes solicitation of NPDES permit applications, as appropriate.

SB 810 (Burton 2003) empowers the Board to reject a timber harvest plan whenever it finds that the plan allows discharges into an impaired waterbody where such discharges cause or contribute to a violation of the Basin Plan. This gives the Board substantial new regulatory authority over timber harvest plans. To date, the Board has been relegated to participation in an inter-agency review team in which it makes recommendations and may occasionally file a non-concurrence – an action that has few practical implications – if it determines that the plan “does not adequately protect water resources.” This new legislation gives the Board a substantially stronger voice at the stage of timber harvest plan review and strengthens the legal standard under which the Board must review timber harvest plans.

Although none of the three THPs that the Board is currently reviewing are located on water bodies that are listed as impaired for sediment, there are 35 such impaired water bodies in the Central Coast Region. Consequently, it is inevitable that the Board will be faced with this issue in the near future. Pursuant to the Board’s obligation to “obtain coordinated action in water quality control,” it is critical for the Board to decide how it will handle this new authority and advise staff and the public accordingly before it makes any further decisions on timber activities in our region. The Board should cease its development of waivers for prospective timber harvest plans until this issue has been formally addressed.

**STAFF RESPONSE:** The State Board recently issued the following ruling regarding timber harvest waivers:

*The Waiver specifically states that it “does not apply to discharges requiring an NPDES permit under the Clean Water Act, including silvicultural point sources as defined in 40 Code of Federal Regulations part 122.27.” (Waiver at p. 4.) We also note that the State Board, the*

*regional boards, and USEPA traditionally have not required NPDES permits for discharges associated with forest roads and other types of discharges associated with timber harvesting that are not listed as point sources in 40 Code of Federal Regulations part 122.27(b) or other applicable regulations. In the absence of legal authority establishing that such discharges should be regulated under the NPDES permit system, the State Board concludes that the regional boards may continue to issue waivers for discharges associated with timber harvesting subject to compliance with applicable requirements under Water Code section 13269.13. In the event future legal developments establish that an NPDES permit is required for certain types of discharges previously considered to be non-point source discharges, then the Regional Board can advise affected dischargers to apply for a permit at that time.*

(Petition of California Forest Agency, State Board Order WQO 2004-0002 at 13.) The State Board further held that reliance on *Environmental Protection Information Center v. Pacific Lumber Co.* was not warranted until that decision becomes final. (Id. at 13 n.13.) Although the *EPIC* court issued an additional ruling on January 23, 2004, that ruling did not augment, clarify or change the October 14, 2003 ruling and does not call the State Board’s conclusion into question.

Regarding SB 810, your letter concedes that the “veto” authority of Public Resources Code section 4582.71 does not apply. We do not recommend that the Regional Board refuse to issue any waivers until it decides how to address hypothetical THPs that are not before it and that may discharge into listed water bodies. The alternative would not be to delay making any decisions on THPs, but to require the dischargers to submit reports of waste discharge and for the Board to issue WDRs.

6. **General Comment – Timber Harvest Policy:** The Board must adopt a

comprehensive timber harvest policy, with public notice, comment and environmental review pursuant to CEQA.

Unlike every other Regional Board that manages water quality impacts from timber harvest operations, the Central Coast Regional Water Quality Control Board waives waste discharge requirements for individual THPs, instead of acting categorically. Staff has argued that, by approving waivers on a THP-by-THP basis, the waivers fall under the CEQA equivalency of the California Department of Forestry and Fire Prevention's (CDF's) THP review and that, consequently, the Board is exempt from environmental review.

The Regional Boards have an obligation, independent of the Management Agency Agreement (MAA) with CDF, to protect the quality of the waters of the Central Coast Region. It is well known that the Forest Practice Rules (FPRs) and the THP Review process have proven grossly inadequate to protect water quality. Numerous experts have criticized the FPRs and THP Review for failing to address cumulative watershed effects and for failing to monitor for those effects as well as the effectiveness of Best Management Practices (BMPs) in protecting water quality and beneficial uses. Similarly, it is widely recognized that BMPs, even if perfectly implemented, are simply not designed to eliminate water quality impacts from logging activities. Consequently, it is clear that CDF's timber harvest review process is inadequate to protect water quality in the Central Coast Region.

The only other layer of water quality protection that the Board is providing – and the only other action the Board takes in furtherance of its obligation to protect water quality – is the waivers. However, individual waivers do not, indeed cannot, address the deficiencies cited above – particularly the deficiencies in cumulative impact review. Any THP-by-THP review, regardless of which agency conducts it, will never be able to assess, predict, or mitigate cumulative watershed effects that may be caused by an individual logging project throughout an entire watershed. At a minimum, some sort of

coordinated, watershed-wide review must occur.

The Regional Board has a “Timber Harvest Framework,” which appears to attempt to coordinate decision-making on waivers in the region. The Framework is a mysterious document. Although it was listed as an action item on the Board's September 12, 2003 agenda, a staff report prepared, and public comment received, it is unclear what action the Board has taken on the Framework, which has also been known, variously, as a “template” and “decision model.” As described in a staff report, the Framework outlines: (1) what constitutes a complete waiver application, (2) what the main components of a monitoring program are, (3) what maintenance activities will be required; and (4) how staff will handle enforcement. Despite these apparent policy-like characteristics, staff claims that the Template is “a work in progress” and “an internal staff guidance tool.”

In light of the Board's obligation to protect water quality, the failure of the THP review process to do this especially as it relates to cumulative impacts, and the critical importance and legal necessity of coordinated management under these circumstances, we respectfully request that the Board assemble a cogent, transparent, and formal policy for its prospective regulation of timber harvest projects. Such a policy must be adopted following public rulemaking procedures and only after conducting an appropriate environmental review pursuant to CEQA. The Timber Harvest Framework has some characteristics of such a policy; if it is to serve as the Board's framework for timber-related water quality regulation, it should be formally adopted following public procedures and environmental review. Until the Board has adopted a uniform policy with respect to timber-related discharges, it should cease development of waivers for prospective timber harvest plans.

**STAFF RESPONSE:** The Regional Board considered a proposed framework for evaluating timber waivers at its September 2003 meeting. At that meeting, staff and the Regional Board made clear that the framework was intended to be a dynamic document. The

staff report, the document itself and the Board's comments all indicated that the framework is not a binding document, either on staff decision-making or on applicants. In fact, your letter actually criticizes staff for *not* following the usual procedure for the Smelt-Locatelli plan, where site-specific timing issues made a different procedure more appropriate. The framework clarifies for the Board and the public what information is necessary to support a waiver and why the information is significant. No formal procedural or environmental review requirements apply to the framework, except the Open Meeting Act requirements applicable to staff discussions with the Board. Nor does any law require the Board to adopt a policy or procedural requirements before considering site-specific waivers. Simply put, staff had two choices: to inform the public and the Board about the usual procedures and technical factors that inform staff decisions, or to avoid writing any of the timber framework down. We believe the former better serves the public interest.

Your letter also objects to a THP-by-THP review, as opposed to a watershed-wide review. Unless it decides to issue a conditional waiver of waste discharge requirements for all timber harvesting, the Board can only consider the specific facts of each THP and waiver before it, on a case-by-case basis. This consideration can include any cumulative impacts of a particular project, if the CEQA document or other evidence in the record identifies any. The Regional Board does have other program, including ambient monitoring and total maximum daily load (TMDL) programs, to address watershed-wide impacts. The data from these programs do not indicate that any of the waivers are inappropriate.

Moreover, the alternative to issuing site-specific waivers is to consider applications for waste discharge requirements, not to develop a region-wide policy. WDRs also require decision-making on a case-by-case basis. Although we agree that coordinated, watershed-wide planning is good public policy, the time constraints for reviewing WDRs applications (see Water Code section 13264(a)(2)) do not allow the Board to delay a decision on WDRs while policy is being

developed. As with individual waivers, the Board would base each WDRs decision on the CEQA document and other evidence before it.

7. **General Comment – Public Interest:** The proposed waivers are not in the public interest. Underlying the comments above are the three THPs that are the subject of the proposed waivers (on the March 2004 Board agenda). Although the THPs themselves pose threats of varying magnitudes, the points above apply equally to all three, as well as to any THPs the Board will consider in the future. We request that the Board consider these points both as applied to these specific THPs, and also as generally applicable to the Board's overall approach to timber harvest. These comments are not exclusive. We will continue to review these plans for consistency with the law and the public interest, and in the upcoming weeks, will supply additional comments that are specific to the individual THPs and waivers. However, the points outlined above amply demonstrate that the proposed waivers are not in the public interest because they do not contain safeguards adequate to protect water quality. The Board should refuse to approve the waivers and undertake to either develop waste discharge requirements for these plans or provide for such safeguards, including development of a comprehensive and protective timber program and development of legally sufficient monitoring programs.

**STAFF RESPONSE:** The California Legislature has declared in the Z'berg-Nejedley Forest Practice Act "that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations."

Regional Board staff has participated in the THP Review Team process and has been consulted in the development of this THP. Furthermore, Regional Board staff has imposed additional conditions on the THP proponent in the proposed waiver document. In addition, monitoring is required of the



project proponent in order that he will adapt accordingly to any problems in a timely manner. Regional Board staff feels that these protective measures in conjunction with CDF and Regional Board staff inspections will protect water quality and downstream beneficial uses while allowing “prudent and responsible forest management”.

**8. General Comment – Public Review:** The Board has not provided for adequate public review of the proposed Waivers.

We have serious concerns about the procedure followed by staff in releasing these plans for review by the public. All three of the proposed waivers were completed and sent to the applicants on December 23, 2003, requesting that comment be submitted in writing by January 23, 2004. The Board will consider the proposed waivers at its March 19, 2004 meeting. As of the date of this writing, neither the agenda of the March meeting, nor the staff reports accompanying these plans, are available on the Board’s website. Most alarmingly, as of the date of this writing, a THP has not been approved for the Smelt-Locatelli Timber Harvest (THP No. 1-04-008 SCR).

For the RMC and Bartlebaugh plans, although this timeframe may comply with the letter of the law, it did not provide sufficient time to meaningfully review these plans and compare them with the proposed waivers. Timber harvest plans are massive documents, and the water quality issues concerned are both numerous and complex. Often, a meaningful review would involve consultation with an expert with experience in timber management, water quality, or geology. By providing only the minimal 30-day review period, (beginning two days before Christmas, no less) the Board indicates either that it is unaware of the need for detailed review of plans, or that it does not care about meaningful public input. We appreciate that staff has been flexible on this deadline in this case, and has permitted us to submit these comments past the official deadline. However, we respectfully request that in the future, the public review period set by the Board be adequate to provide sufficient time to complete a meaningful and detailed review.

**STAFF RESPONSE:** Your letter suggests that a public review period of thirty days is required. That is incorrect. Water Code section 13167.5 provides a thirty-day comment period for waste discharge requirements. It does not apply to waivers. The only applicable notice period for waivers is the ten-day requirement under the Bagley-Keene Open Meeting Act. (Ca. Gov. Code §11125.) However, our policy is to provide a longer review period where possible because we agree with you that doing so is good public policy, and we will continue to provide as much opportunity for public comment as is feasible. In this case, the public comment period was 30 days, and staff allowed you an extra week to submit comments. In addition, the Board will hear public comments at the March 19 meeting and the agenda notice permits further written comments on the draft waivers in the agenda, so the public review period is actually closer to three months.

The Open Meeting Act does not require publication of the agenda or staff report more than ten days before the meeting. Both the agenda and staff reports will be posted on our website and provided to interested parties in a timely fashion. Staff makes all available documents available to the public at the earliest possible date. Any interested parties who believe that consultation with experts is necessary have the opportunity to initiate that consultation when the timber harvest plan becomes available or during the Board of Forestry review process. There is no reason to wait to initiate such consultations until draft waivers become available. In this case, your letter does not specify what additional comments or evidence you would provide given a longer comment period, or make any other offer of proof. Generalized concerns do not justify a delay of the March hearing date.

Kevin Collins, Lompico Watershed Conservancy submitted the following comments.

**10. General Comment - Erosion Hazard:** The RMC plan has been given a high erosion hazard rating (EHR). It is my understanding that the EHR can be generalized to include moderate, high, and extreme ratings into one single average rating. In this THP the entire plan area is designated as high. Both THPs use

averaging to arrive at the EHR. In any case, extreme rating areas have to be at least 10 acres in size before the area must be so designated. These two conditions for the calculation of the EHR can lead to serious underreporting of erosion hazard.

**STAFF RESPONSE:** Comment Noted.

11. **General Comment - Mapping of Landslides:** In regard to the mapping of landslides or unstable areas; there is considerable misunderstanding by CDF of what constitutes a landslide or debris slide. As a result, an underestimate of erosion potential is part of THP mapping. In most cases CDF does not consider logging on landslides to increase slide risk. This is a very questionable conclusion and is another matter that the Regional Board should be aware of.

**STAFF REPORT:** Comment Noted.

12. **General Comment – Winter operations, Road Re-Grading:** The RMC plan permits winter re-grading of roads, as well as ground yarding during the winter. This is a major source of soil erosion. There are 45 log landings, 6.5 miles of skid trails (the actual number is far higher), and 15.6 miles of roads. This plan cannot be considered to be moderate risk to water quality. It is a high-risk plan by any objective measure.

**STAFF RESPONSE:** Re-grading of roads during the wet season is a concern of Regional Board staff. However, no reports or evidence of water quality problems caused by such grading have been reported. Regional Board staff will continue to investigate how often this occurs and how appropriate best management practices are utilized to prevent water quality impacts, Section 3.d. has been added to the Monitoring & Reporting Program to require staff notification whenever winter period road regrading is planned.

13. **Monitoring & Reporting Program – Turbidity Monitoring:** As to monitoring, the turbidity monitoring recommended by staff continues to state that water samples for turbidity may be taken 24 hours after the end of rain storms. This is useless in most cases. In small sub-watersheds where most logging occurs, turbidity levels drop by orders of

magnitude within 24 hours. At the December Water Quality Monitoring Conference in Redding CA, one presenter noted that turbidity can drop by 400% within 2 hours. Monitoring turbidity a day after a rainstorm is useless or worse than useless because it will confuse the situation. For THPs bordering on or surrounding large streams, there is no way to separate out the effects of the THP from all the other erosion sources impacting the stream. This is elementary hydrology. The situation of the RMC and Red Tree plans being on opposite sides of San Vincent Creek is an obvious example of a problem with confusing the effect of two different plans that will occur simultaneously. THP areas bleed excess sediment for more than 10 years after the completion of logging. Again an example of how confusion can be introduced with turbidity readings. Only in-stream automated measuring devices can begin to address any legitimate protocol for using turbidity measurement unless a person can measure a location every half hour over night. Still these expensive devices would need to be used in at least 2 or 3 locations for a monitoring a single THP. And Comparisons between un-logged drainages and nearby logged drainages, or measurements above and below a tributary or a stream crossing, are among the few ways to use turbidity that is not measured continuously. Still, the measurement needs to be taken at, or a least near peak discharge.

**STAFF RESPONSE:** The proposed turbidity monitoring is forensic in nature and not intended to be a scientific study. Each watershed behaves uniquely in terms of turbidity. The proposed turbidity monitoring will ensure that the forester or landowner improves their understanding of their watershed and that they locate significant erosion sources as promptly as possible.

The commenter acknowledges that all streams experience increases in turbidity during and for a few hours after storms; these are common, acute events. Investigations after 24 hours are meant to identify chronic, discrete events that can be identified and controlled.

14. **Photo-Point Monitoring:** Photo points can be more useful (than turbidity monitoring), but taking photos only at the beginning and the end of the winter rain season will miss most of

the opportunities to correct problems or stop operations when necessary. Nearly all major erosion takes place episodically during intense storms, not in April or November. There is still the problem of asking a THP operator such as the LTO or RPF to monitor him or herself. If smog tests were done by car owners, in such a subjective situation, I doubt there would be much reason to do it. This is why I have consistently recommended that fees for these permits be collected to pay for the staff time necessary. The point of this monitoring is to determine if Clean Water Act requirements are being met, not to conduct an exercise that uses up time without a useful outcome. The most cost effective monitoring, region wide, could be on the ground staff inspections of THPs during and after THP operations.

- Gary Paul (e-mail)
- Ocean Conservancy
- Lompico Watershed Conservatory

**STAFF RESPONSE:** Photo-point monitoring is intended to document long-term changes to the landscape. Episodic events are monitored via visual monitoring at this THP. At this time, Staff is not aware of any reason Registered Professional Foresters, can not be trusted to perform visual and photo-point monitoring. Nevertheless, Staff will perform compliance inspections to the maximum extent possible with existing resources. The idea of collecting fees to fund additional staff time to perform monitoring is not being considered at this time due to the existing hiring freeze. The vast majority of monitoring done in association with Regional Board Orders is self-monitoring. Falsifying monitoring reports is a serious offense that will be prosecuted to the full extent of the law.

## RECOMMENDATION

Staff recommends adopting Resolution R3-2004-0009 and Monitoring and Reporting Program R3-2004-0009.

## ATTACHMENTS

1. Draft Board Order No. R3-2004-0009
2. Draft Monitoring & Reporting Program No.R3-2004-0009
3. Site Plans (Attachment A and B)
4. Timber Harvest Information Package
5. July 14, 2003 Board letter.
6. Comment Letters