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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition and Request for a Stay by the Citizens Committee to Save Our Public Lands of Resolution No. 78-4 of the California Regional Water Quality Control Board, North Coast Region, and the Petition to Intervene of Clean Water Action, Friends of the River and California Trout. Our Files Nos. A-199 and A-199(b).

WQ 78-9

BY THE BOARD:

The Louisiana Pacific Corporation (discharger) proposes to construct certain access roads and conduct logging operations near Hoxie Crossing adjacent to the Middle Fork of the Eel River in Trinity County. On April 12, 1978, the Committee to Save Our Public Lands (Committee) filed a petition with the State Water Resources Control Board (State Board) for review of Resolution No. 78-14 of the California Regional Water Quality Control Board (Regional Board). The petition was accompanied by a request for a stay of the effect of Resolution No. 78-4. The Resolution constitutes the Regional Board's acceptance of the "technical report" which Regional Board Order No. 76-174 (as amended) requires the discharger to submit prior to certain road construction and logging. The effect of the Resolution is to permit the discharger to proceed with the road construction necessary to commence immediate logging operations. The Committee alleges that the Regional Board has permitted the discharger to proceed with road construction in a manner which will result in violations of applicable waste discharge requirements. More particularly, the Committee alleges that Discharge

Prohibition D.1. of Order No. 76-174 will be violated. This requirement provides that the discharge from the property shall not cause turbidity to be increased more than 20 percent above naturally occurring background levels. Inasmuch as the road building activities could commence at any time after adoption of Resolution No. 78-4 by the Regional Board, the Committee requested a stay alleging that "...the widely acclaimed beneficial uses of the Wild and Scenic Middle Fork Eel River will..." be compromised. Responding to the request for a stay, the State Board held a hearing on April 20, 1978, to consider the merits of the requested stay. On the day of the hearing, additional petitioners denominating themselves as Clean Water Action, Friends of the River and California Trout, acting through John W. Corbett, jointly filed a petition, requested a stay of the effect of Resolution No. 78-4 and participated in the State Board's stay hearing. Comments of Mr. Corbett made at the hearing as well as references in the written petition indicate that it is intended to be viewed as a petition to intervene in the matter of the Committee's petition.

I. REQUEST FOR STAY AND FINDINGS

The issue before the State Board is whether the effect of Resolution No. 78-4 should be stayed.

Section 2053, Title 23, California Administrative Code, provides in part:

"(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts, and produces proof of (1) substantial harm to petitioner or to the public interest if a stay is not granted, (2) lack of substantial harm to other interested persons and to the public

interest if a stay is granted and (3) substantial questions of fact and law regarding the disputed action. A petition for a stay shall be supported by affidavit of a person or persons having knowledge of the facts alleged."

An affidavit by Mr. Don Samson accompanying the Committee's petition alleges that substantial harm will result to the Committee and public interest. Referring to both the Committee's petition and the affidavit it appears that the affiant believes that substantial harm will occur to the beneficial uses of the Middle Fork of the Eel River if the discharger constructs certain roads as proposed and approved by the Regional Board. The affiant alleges, further, that in view of the potential harm to the River, "...any harm resulting to the discharger can hardly be deemed substantial.". The allegations found in the body of the Committee's petition cure the affiant's failure to allege substantial questions of fact and law in the request for a stay.

At the State Board's hearing, Counsel for the petitioners and the discharger indicated, inasmuch as an extensive record on this matter had already been made before the State Board (see State Board Orders No. 77-9 and No. 77-31), that oral argument, only, would be made to the State Board regarding the stay request.

In an effort to provide assurances to the petitioners and the State Board, the discharger indicated that it would undertake certain interim measures respecting ongoing operations pending a decision by the State Board on the merits of these petitions in May. The measures, set forth in Attachment 1, will limit, to a degree, the soil disturbing activities associated with road building and logging

which produce siltation in receiving waters. The petitioners did not produce proof that there would be substantial harm from the discharger's operations if conducted in conformity with these commitments during the pendency of these petitions. Since this is dispositive of the request for a stay, we need not discuss whether the petitioners met their burden of proof with respect to the other issues involved in resolution of a stay request pursuant to the State Board regulation set forth above.

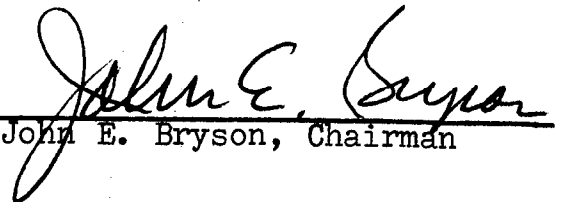
II. CONCLUSION


Based on our review of the entire record in this matter we find that the petitioners failed to demonstrate that substantial harm would occur to the petitioner or to the public interest if a stay is not granted.

III. ORDER

IT IS HEREBY ORDERED that the request for a stay of Resolution No. 78-4 is denied. This denial is based, in part, upon the discharger's commitment to conduct its operations in accordance with certain interim mitigation measures as set forth in Attachment 1.

Dated: APR 20 1978


John E. Bryson, Chairman


W. Don Maughan, Vice Chairman


W. W. Adams, Member

TELEPHONE 443 5643
AREA CODE 707
MAILING ADDRESS
P. O. Box 1428

CLIFFORD B. MITCHELL
R. C. DEDEKAM
RONALD F. ANGELL
DALE A. REINHOLTSEN
NANCY K. DELANEY
WALTER J. CARTER
OF COUNSEL
EMERY F. MITCHELL

MITCHELL, DEDEKAM & ANGELL
ATTORNEYS AT LAW
814 SEVENTH STREET
EUREKA, CALIFORNIA 95501

April 21, 1978

Mr. William R. Attwater
Chief Counsel
State Water Resources Control Board
P. O. Box 100
Sacramento, California 95801

Re: North Coast Regional Water Quality
Control Board Resolution Number 78-4,
adopted April 10, 1978

Dear Mr. Attwater:

This letter is being addressed to you in regard to the stipulation offered by Louisiana-Pacific Corporation at yesterday's meeting in Sacramento. With the consent of the Director of Timberlands, who was present at the meeting, we have stipulated to the following:

Pending completion of the hearing to be held before the State Board in May of this year, Louisiana-Pacific Corporation will not:

1. Operate in any stream side protection zones;
2. Operate in any area designated sensitive on the Regional Board maps;
3. Operate within one-half mile of the Eel River;
4. Fall any species other than fir over fifteen inches;
5. Operate within any lake protection zone;
6. Build any skid trails;
7. Yard any timber in any fashion;

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8. Build any roads other than pioneer. "Pioneer" is defined as bringing roads to rough grade and the installation of drainage structures.

During the interim, weather permitting, we will attempt to complete and repair drainage structures and road failures--particularly in uncompleted or inadequate drainage portions of the road, which we were heretofore enjoined from doing.

Confirming our discussion following the hearing, Mr. Corbett and I are supposed to get together this afternoon and talk to the reporter; thereby obtaining an estimate of when a transcript would be available. We will communicate this information to you as soon as possible.

Very truly yours,

MITCHELL, DEDEKAM & ANGELL

By



RCD:cb

CC: Francis Mathews, Esq.
John Corbett, Esq.
Mr. Don Samson
North Coast Regional Water
Quality Control Board