

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition by  
Richard Wilson for Review of the  
California Regional Water Quality  
Control Board, North Coast Region,  
Failure to Act on October 26, 1978.  
Our File No. A-208.

Order No. WQ 79-24

BY THE BOARD:

The Louisiana-Pacific Corporation (Corporation) has constructed access roads and conducted logging operations adjacent to the Middle Fork of the Eel River near Hoxie Crossing in Trinity County. These activities took place on land owned by Richard Wilson (petitioner). The discharge of waste resulting from these activities is regulated by orders of the California Regional Water Quality Control Board, North Coast Region (Regional Board) as amended by State Board Order No. WQ 78-10.

By letter dated August 16, 1978, and during the Regional Board meeting on August 24, 1978, the petitioner alleged the Corporation had failed to comply with these orders and demanded that an enforcement action be initiated. On October 16, 1978, a five member hearing **panel** of the Regional Board conducted an on site inspection of the Corporation's timber harvesting operation. Thereafter, the hearing was continued to the October 26, 1978, Board meeting for receipt of testimony. At the end of the hearing, the Regional Board concluded that the Corporation was complying with the orders.

On November 27, 1978, the State Board received a petition on behalf of Richard Wilson from Paul H. Rochmes.<sup>1/</sup> The petitioner alleges that the Regional Board failed to initiate enforcement actions and requests the State Board to take appropriate action. The petitioner failed to respond to the State Board's letter of February 21, 1979, allowing 20 days in which to make additional arguments or comments.

#### I. BACKGROUND

The following findings contained in Regional Board Order No. 76-174 characterize the physical setting and identify the salient environmental considerations of this controversial project:

\* \* \*

- "11. The proposed logging operation is adjacent to the Middle Fork Eel River in a mixed conifer forest of Douglas fir, White fir, Ponderosa pine, and Sugar pine along with smaller stands of hardwoods. A significant portion of the area proposed for logging or road construction is on steep slopes underlain by thin, highly erosive soils, with numerous active and dormant slumps, slides and other types of earth movement. Average 24 hours rainfall in a storm with a recurrence interval of 25 years is approximately 9.0 inches. The large scale harvesting of commercial timber and construction of roads in the unstable areas severely threaten to remove the cohesive force of tree roots and to destabilize the already unstable slopes. If the logging operation activates or accelerates further movement of the unstable slopes, then increased siltation of the Middle Fork Eel River and the Henthorne Lakes would be expected to occur, deleteriously affecting the beneficial uses of Henthorne Lakes and the Middle Fork Eel River.

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<sup>1/</sup> On September 25, 1978, the State Board received an earlier petition on behalf of Richard Wilson from Thomas C. Wahlund. The petitioner has conceded that only those matters raised in the second petition challenging the October 26th decision of the Regional Board need be considered by the State Board.

- "12. The Middle Fork Eel River, which is adjacent to this logging operation, was designated for protection in 1972 in SB 197, the Wild and Scenic Rivers Act. This Act requires that the designated rivers and their immediate environment are to be preserved in their freeflowing state for the benefit and enjoyment of the people of the State of California (Section 5093.30).
- "13. The beneficial uses of the Middle Fork Eel River and its tributaries are:
- a. agricultural supply
  - b. industrial service supply
  - c. groundwater recharge
  - d. water contact recreation
  - e. noncontact water recreation
  - f. cold freshwater habitat
  - g. wildlife habitat
  - h. preservation of rare and endangered species
  - i. fish migration
  - j. fish spawning
- "14. Of particular importance is a unique summer steelhead population of the Middle Fork Eel River which presently accounts for approximately two-thirds of the State of California's extraordinary resource.
- "15. The beneficial uses of Henthorne Lakes include:
- a. water contact recreation
  - b. noncontact water recreation
  - c. cold freshwater habitat
  - d. wildlife habitat
- "16. This operation is within an extensive de facto wilderness area and within one-half mile of the Yolla Bolla-Middle Fork Eel River Wilderness Area. Castle Peaks, a roadless area, is one-quarter mile south of this operation."

## II. RELATED PROCEEDINGS

On August 26, 1976, the Regional Board adopted Order No. 76-174 providing waste discharge requirements for the proposed operation and on May 26, 1977, the Regional Board adopted Order No. 77-86 amending Order No. 76-174.<sup>2/</sup> Among other matters, Prohibition B.4 of Order No. 77-86 provided that technical reports must precede road construction within the area to be logged. The technical reports were required to delineate mudflow areas, head-scarp areas and other geologically sensitive areas and prescribe engineering design and mitigation measures. On December 22, 1977, the discharger submitted its technical report regarding the area to be logged and, subsequently, on March 30, 1978, the discharger submitted an addendum thereto. The Regional Board adopted Resolution 78-4 on April 10, 1978, accepting the discharger's technical report for road construction within the area to be logged and placing certain conditions on the discharger's operation. Upon petition, this action was reviewed by the State Board in Order No. WQ 78-10. Subsequent discussion under the contentions will focus on portions of these orders.

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<sup>2/</sup> This action was required by State Board Order No. WQ 77-9 remanding Order No. 76-174 for consideration of new information.

### III. CONTENTIONS AND FINDINGS

In general, the petitioner seeks review of the Regional Board's failure to initiate one or more enforcement measures against the Corporation for actions (or the lack thereof) which the petitioner alleges are a violation of waste discharge requirements. The contentions of the petitioner and our findings relative thereto are as follows:

1. Contention: The petitioner contends the Corporation failed to submit plans for and to construct sediment collection facilities.

Findings: As amended by State Board Order No. WQ 78-10, Condition 4 of Resolution 78-4 includes the following provisions:

"(b) The erosion control program for which the discharger is responsible shall include but not be limited to the following:

(1) Install and maintain sediment collection facilities up-stream from the Henthorne Lakes to collect sedimentation from any area subject to overland yarding.

\* \* \*

(c) A plan for the location and design of sediment collection facilities shall be submitted by July 30, 1978, to the Regional Board Executive Officer. A plan showing all stabilization and erosion control work already completed and work to be accomplished shall be submitted to the Regional Board Executive Officer not later than August 30, 1978, and all such work shall be completed by October 15, 1978." (Emphasis added)

By letter dated July 27, 1978, the Corporation transmitted its preliminary plan for erosion control to the Regional Board. As noted in the letter:

"The program as outlined does not include energy dissipation structures or settling basins (per Board order). We propose to remove culverts and bridges and restore channels to approximately original configuration, thereby eliminating the necessity for energy dissipators." (Emphasis is in the original).

Following site inspections on August 9 and 21, 1978, and discussions on August 29, 1978, between regional staff and the Corporation, an amended erosion control program was submitted on August 31, 1978. The amendments included the commitment to place two sedimentation collection facilities above the larger Henthorne Lake. The record indicates that the sedimentation collection facilities were in place at the time the hearing panel inspected the logged area.

No sedimentation collection facilities were constructed above Swan Lake (the smaller Henthorne Lake). The petitioner contends this is a violation of provision (b)(1) set forth on the preceding page. Evidence presented by the regional staff, indicates that there was no "overland yarding" on slopes exceeding  $\pm$  5 percent above Swan Lake. Trees on the steeper slopes above the lake were removed by helicopter. Further, regional staff testified that the area immediately upslope of the lake was relatively level for a substantial distance and that sedimentation collection facilities were considered unnecessary. Regarding this point, the staff testified that the process of constructing such facilities above the lake would be counter productive inasmuch as it would

result in more erosion than would otherwise be the case. In conclusion, technical compliance with the terms of provision (b)(1) would not have been in keeping with the intent of Resolution 78-4 as a whole.

2. Contention: The petitioner alleges that the Corporation failed to comply with mandatory cut slope and fill slope dimension guidelines.

Findings: On December 22, 1977, the Corporation submitted a technical report and on March 28, 1978, an addendum prescribing, among other matters, mitigation measures which would accompany road construction within the area to be logged. The petitioner's letter of August 16, 1978, makes reference to the following language found on page 27 of the report:

"Generally, cuts and fills on proposed roadway construction will be relatively low; i.e., less than  $\pm$  10-15 ft. Appropriate cuts slopes through intact graywacke or greenstone can be as steep as  $\frac{1}{4}$ :1. In fresh shale or angular rocky debris, slopes of  $\pm$   $\frac{3}{4}$ :1 generally would be acceptable to height of  $\pm$  10-15 ft. In soil or weathered/sheared shale, slopes should be no steeper than 1:1 and flatter slopes may be required in local areas or for higher cuts. Fill slopes should be no steeper than  $1\frac{1}{2}$ :1."

Following four inspections in July and August 1978, Donald H. Gray, Professor of Civil Engineering, prepared an evaluation for the petitioner dated August 23, 1978. In the evaluation, Professor Gray alleges that the Corporation failed to comply with the preceding language in its own technical report. More specifically, he indicated he observed noncompliance for cut slopes located at grid sections K4-35, L3-43, O3-61 and O3-51 and observed noncompliance for fills located at grid sections K4-35, K4-88, O3-75 and O3-74.

While the mitigation measures in the technical report were approved by the Regional Board's adoption of Resolution 78-4, the Corporations' obligations were altered, subsequently, by amendments to the Resolution in State Board Order No. WQ 78-10. As noted under the previous contention, the Corporation was required to develop an erosion control plan and further to be responsible for erosion control "...until all soils and slopes destabilized by road building and logging operations have restabilized."

Responding to its new obligations, the Corporation submitted an erosion control plan calling for drained rock buttresses for cuts at those locations identified by Professor Gray. Further, the erosion control plan called for removal of those fills previously identified. During the hearing on October 26, 1978, Frank Reichmuth, of the regional staff, testified that, in his opinion, these measures were superior to those measures proposed, initially, in the Corporation's technical report.

3. Contention: The petitioner contends that the Corporation logged beyond Point EL via skid trails in violation of Resolution 78-4.

Findings: Condition 2 of the Resolution prohibited "[t]he discharge of waste (by road or skid trail construction) beyond the Point EL..."<sup>3/</sup>. Testimony by regional staff indicated skid trails were constructed for about 300 feet beyond Point EL. While acknowledging staff's testimony; Mr. Dedekan, Counsel for the Corporation,

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<sup>3/</sup> Point EL is designated on drawing No. 2 of the Corporation's technical report accepted by Resolution 78-4.



testified that construction of the skid trails was an error made during the logging activities. The petitioner argues that the skid trail construction is a violation of conditions imposed on the Corporation's operations. Both the Regional Board and State Board<sup>4/</sup> assumed the prohibition would require the Corporation to helicopter log beyond Point EL in order to avoid the discharge of waste from skid trail construction. Notwithstanding this assumption, the Regional Board was presented with the following staff report on September 28, 1978:

"The Louisiana-Pacific Corporation has constructed skid trails beyond Point EL and the tributary of the most southwestern lake (Swan Lake)--a distance of approximately 300 feet. All timber west of the tributary has been helicopter logged. No skid trails were built within 75 feet of the tributary, and a buffer of 100 feet has been left surrounding Swan Lake. The slope of the ground in the area of skid trail construction is very gentle, averaging approximately +/-5 percent, and is composed of very porous soils. It is staff's position that the discharge of waste from the area of skid trail construction to Swan Lake is highly unlikely due to the high permeability of soils, gentle slopes, and the distance separating the skid trails from the tributary to Swan Lake. The staff believes that the skid trail construction beyond Point EL will not result in a discharge of waste in violation of Condition 2 of Resolution No. 78-4."

During the October 26, 1978, hearing, the staff's position was unchanged from its September status report. Not one of the five members of the Regional Board that inspected the logging site on October 16, 1978, took exception to this evaluation.

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<sup>4/</sup> State Board Order No. WQ 78-10, page 12.

4. Contention: The petitioner contends that the abandonment of the logging road into the Henthorne Lakes area by the Corporation is a violation of the Resolution.

Findings: Of concern is the petitioner's view that the Corporation will be unable to fulfill its long term obligations to restabilize "...all soils and slopes destabilized by road building and logging operations..."<sup>5/</sup>. We quote with approval the comprehensive summary of this matter set forth in the September 28, 1978, status report to the Regional Board:

"At the outset, we would point out that neither the Regional nor State Board Orders on this matter have ever dictated that a permanent or temporary road be constructed. That has strictly been a matter between L-P and the landowner. During the course of our dealings with this timber operation, the status of the road has been described numerous times.

L-P's original Waste Discharge Requirements Order No. 76-174, adopted on August 26, 1976, contained reference to the status of the truck road and states:

Finding 10, c. "It is presently contemplated that all roads will be constructed as temporary roads . . . . On all major drainages, railroad car bridges will be used."

Finding 10, f. "Roads, main skid trails, and landings will be put to bed and reseeded as operations in each area are completed."

On December 14, 1977, Louisiana-Pacific Corporation submitted a technical report which further discusses the status of roads on the timber harvest plan (page 26):

"THP Roadway System

The following discussion assumes that the main roadway will continue in use and receive periodic maintenance. Spur roads are expected to be abandoned after one or two years and the road 'put to sleep' by constructing permanent surface drainage control measures and removing culverts."

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<sup>5/</sup> Provision (a), Condition 4, Resolution 78-4 as amended by State Board Order No. WQ 78-10.

Mr. Francis Mathews, attorney for Mr. Wilson, submitted a letter on February 3, 1978, to the Regional Board which further clarified the status of the road on the timber harvest area:

"In the hearing at Eureka on January 26, 1978, the Louisiana-Pacific representatives stated that they were agreeable to placing either a temporary or permanent road upon the premises, whichever Mr. Wilson might desire. So that no question can arise with respect thereto, Mr. Wilson desires that all of the roads into the Henthorne Basin be temporary roads."

On March 15, 1978, the Regional Board staff, representatives of the landowner, Louisiana-Pacific Corporation, and the Citizens' Committee to Save Our Public Lands, reviewed the December 14, 1977 technical report in the field. As a response to that field trip, L-P submitted an addendum to the technical report dated March 28, 1978, which the Regional Board accepted and approved in a public hearing on April 10, 1978. The addendum to the technical report further clarified the status of the truck road.

"The following is a summary of our discussion in the field on March 15, and in the Water Quality Control Board office in Santa Rosa on Monday, March 20. Purpose of these discussions was to respond to the project developments since the submittal of our report dated December 14, 1977.

1. Indication by the owner that the roadway should be minimum, temporary construction.
2. Indications by L-P that, barring severe delay, road construction and logging east of the divide would be performed so the road can be abandoned before next winter."

In a letter dated August 11, 1978, from the State Board to L-P, the State Board clarified L-P obligations in meeting the requirements of the State Board Order.

"It is the Company's obligation to develop a plan for implementing stabilizing-and-erosion-control measures approvable by the Executive Officer of the Regional Board. If L-P can develop and implement approvable control measures which do not include permanent maintenance of the road or related culverts, it is entitled to do so."

Accordingly, L-P submitted an erosion control plan designed to best meet the intent of the State Board Order as described in the cover letter of the erosion control plan.

"It is our understanding that the road system is "temporary"; roadway constructed this year is 'minimum level' construction intended to remain in service only during logging. The State Board Order implies necessity to have access to the site for inspection and repairs, if needed. However, the roads have the most 'destabilizing' influence of any part of the logging operation and maintaining them as a permanent system would run counter to the basic intent of the Order; i.e., to restabilize slopes disturbed by road building and logging."

In summary, neither the Regional Board Orders nor the State Board Orders have ever dictated whether the road should be temporary or permanent. All the technical reports which the Regional Boards have accepted from L-P and approved in a public hearing assume that the truck road would be of temporary status. We believe that L-P's erosion control plan does not abandon the recommendations of their technical reports but goes beyond those recommendations by requiring drained rock buttresses, French drains, fill removal, and revegetation which will restabilize slopes disturbed during road building and logging."

While we agree with the preceding summary, we wish to emphasize that the absence of a road should not be a justification for not requiring the Corporation to proceed with any necessary efforts in the future to restabilize soils and slopes destabilized by road building and logging.

#### IV. CONCLUSIONS

After review of the record and for the reasons heretofore expressed, we conclude there is substantial evidence to support the Regional Board's action in this matter. In reaching this conclusion, we take note, particularly, of the long history of this matter before the Regional Board and this Board. Comments by the panel members that inspected the logging operations indicated their satisfaction that requirements had been met. Beyond that, several members considered the Corporation's efforts a showplace of how logging operations could be conducted. Considerable weight must be given to the judgments of Board members that have personally made an inspection.

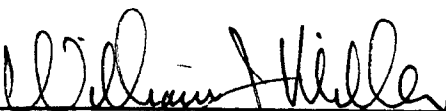
This is true, particularly, in the instance where the members had the opportunity to inspect after specific violations had been alleged and when, to a certain extent, compliance could be ascertained by visual observation. While concluding that the Corporation had to that date complied with requirements, the Regional Board also recognized that the Corporation had a continuing obligation and that substantial work might be required of the Corporation in the future.

V. ORDER


IT IS HEREBY ORDERED THAT the petition be denied.

Dated: June 21, 1979

  
W. Don Maughan, Chairman

  
William J. Miller, Vice Chairman

  
L. L. Mitchell, Member

  
Caria M. Bard, Member

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