

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL  
MAY 15, 2006**

**Item 9**

**SUBJECT**

IN THE MATTER OF THE PETITION OF HUMBOLDT WATERSHED COUNCIL, ENVIRONMENTAL PROTECTION CENTER, AND SIERRA CLUB REGARDING ENROLLMENT OF PACIFIC LUMBER COMPANY TIMBER HARVEST PLANS UNDER GENERAL WASTE DISCHARGE REQUIREMENTS, ORDER NO. R1-2004-0030. NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD. SWRCB/OCC FILE A-1692

**DISCUSSION**

The State Water Resources Control Board (State Water Board) has previously issued an order staying the effects of the decision of the Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Water Board) to enroll additional timber harvest plans proposed by Pacific Lumber Company (PALCO) for coverage under its General Waste Discharge Requirements Order No. R1-2004-0030 (General Order), pending resolution of the petition on its merits. (Order No. WQ 2005-0006.) The State Water Board then issued a ruling on the merits of two petitions filed by the Humboldt Watershed Council (HWC) *et al.* (Order No. WQ 2005-0009.) The Order sustained the petitions, vacating enrollments under the General Order and preventing further enrollments. That order was challenged in court and a decision was rendered on April 26, 2006 by Judge John K. Letton, sitting by special assignment in the Humboldt County Superior Court, reversing and remanding that order. In his decision, the judge directed the State Water Board to “forthwith schedule a hearing to be held not later than May 15, 2006 to determine whether such a stay should remain in effect pending the Board’s hearing on the merits of HWC’s petitions.” The State Water Board scheduled a hearing to consider the issue.

On May 8, 2006, the North Coast Water Board issued two watershed-wide waste discharge requirements (WWDRs) for the Elk River and the Freshwater Creek watersheds. These WWDRs address timber harvesting as proposed by PALCO in those drainages, the subject of the two pending petitions (A-1683 and A-1692). Because of the adoption of those WWDRs, State Water Board legal staff have concluded that the question of whether a stay should be issued under A-1692 is moot. Furthermore, the petitioners do not propose to offer any evidence in support of the request for stay because they believe that the regulation of harvesting in these watersheds is regulated entirely by the WWDRs. The North Coast Water Board Executive Officer does not intend to offer any evidence regarding the stay request, believing that the issue is moot and that any further timber harvesting by PALCO in either watershed must comply with the WWDRs. PALCO and the Owners Group have declined to agree that the matter is moot.

**POLICY ISSUE**

Should the stay request be denied because the pending issue is moot?

**FISCAL IMPACT**

N/A

**REGIONAL BOARD IMPACT**

None. The North Coast Water Board believes that the issue is moot and that all further timber harvesting in the two drainages is covered solely by the new WWDRs.

**STAFF RECOMMENDATION**

Adopt the proposed order dismissing the stay request as moot.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WQ 2006-**

---

---

In the Matter of the Petition of

**HUMBOLDT WATERSHED COUNCIL,  
ENVIRONMENTAL PROTECTION INFORMATION CENTER,  
AND SIERRA CLUB**

For Review of Directive to Enroll Pacific Lumber Company Timber Harvesting  
Plans under General Waste Discharge Requirements, Order No. R1-2004-0030  
California Regional Water Quality Control Board,  
North Coast Region

SWRCB/OCC FILE A-1692

---

---

BY THE BOARD:

On March 16, 2005, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted a motion directing its Executive Officer to enroll additional timber harvesting plans (THPs) submitted by the Pacific Lumber Company (PALCO) under General Waste Discharge Requirements Order No. R1-2004-0030 (General Order) until the total acreage enrolled in the Freshwater Creek and Elk River drainages equaled 75% of the acreage in the THPs that had been previously approved by the Department of Forestry. On March 22, 2005, the Humboldt Watershed Council filed a timely petition with the State Water Resources Control Board (State Water Board) on behalf of itself and the Environmental Protection Information Center<sup>1</sup> contesting the validity of the directive and asking the State Water Board to stay the effective date of any enrollments until the petition could be addressed on its merits. The Request for Stay was granted. (Order WQ 2005-0001.)

On June 16, 2005, the State Water Board heard the matter on its merits and issued Order WQ 2005-0009, which invalidated the enrollment of the challenged THPs under the General Order. PALCO sought a writ of mandate from the Superior Court in Humboldt County to overturn the Order WQ 2005-0009. On April 26, 2006, the court issued its ruling finding that the State Water Board had not fully justified its decision, disagreeing with the State Water Board's interpretation of the California Environmental Quality Act's applicability to the

---

<sup>1</sup> The Sierra Club was later added as a petitioning party at the request of the Humboldt Watershed Council.

enrollments, and remanding the matter to the State Water Board for further considerations.<sup>2</sup> Pending the State Water Board's consideration of the remand, the court's ruling stays PALCO's timber activities under the subject THPs, provided the State Water Board, no later than May 15, 2006, holds a hearing to determine whether a stay should continue. The judge's ruling also notes that the matter might be trumped (i.e., rendered moot) if the North Coast Water Board were to adopt watershed-wide waste discharge requirements covering the disputed THPs.

On May 8, 2006, the North Coast Water Board adopted watershed-wide waste discharge requirements (WWDRs) for Freshwater Creek and the Elk River. The WWDRs specifically addressed the enrollments that were the subject of Order WQ 2005-0009. The North Coast Water Board stated: "To continue operations on those THPs, the Discharger [PALCO] must now enroll those THPs into these watershed-wide WDRs." This echoes conditions the North Coast Water Board's Executive Officer placed in her enrollment letters for those sites. Each of those enrollment letters stated that "interim coverage for the THP under the General WDRs is temporary, and will expire when the WWDRs are in place." In addition, the court's ruling also indicates that he believed the adoption of the WWDRs "would trump the issues in this case."

The State Water Board scheduled a hearing for May 15, 2006, on the issue of whether the stay should remain in effect. A supplemental notice was provided to all parties and interested persons indicating that State Water Board legal staff had concluded that the matter was moot, that the Petitioners did not intend to present any evidence in support of a request for stay, and that the North Coast Water Board was not planning to present any evidence concerning the stay request. PALCO declined to agree that the matter was moot and, in light of the possibility that the judge's decision could be interpreted to require a hearing even if the issues were "trumped," the State Water Board held a hearing.

### **SUMMARY AND CONCLUSIONS**

The record and the evidence before the State Water Board leads to only one conclusion: with the adoption of the WWDRs by the North Coast Water Board, PALCO has no legal authority to discharge waste from logging under the General Order and there is no issue now pending before the State Water Board with regard to the enrollment of the PALCO THPs in the Freshwater Creek and Elk River drainages under that General Order. Whether or not the State Water Board issues a stay, the result is the same: PALCO cannot presently harvest

---

<sup>2</sup> To date, the court has not reduced its ruling to judgment or issued a writ of mandate. Therefore, the matter has not yet been remanded and the State Water Board does not have renewed jurisdiction over the merits of the petition.

under the THPs in these two watersheds. There is no controversy concerning the issuance of a stay and no party is advocating a stay. Likewise, there is no proof of substantial harm if a stay is not granted because PALCO will not be able to harvest. (See Cal. Code Regs., tit. 23, § 2053, subd. (a)(1).) Continuing the court's stay is a moot issue.

The language in the enrollment letters, the language of the WWDRs, and the court's analysis of the issue all point to the conclusion that the matter is moot. The law is clear that no stay can be issued when a matter is moot. (*Environmental Protection Information Center v. MAXXAM Corporation* (1992) 4 Cal.App.4th 1373 [6 Cal.Rptr.2d 665]; *Finne v. Tiburon* (1988) 199 Cal.App.3d 1 [244 Cal.Rptr.581].) The State Water Board applies principles of mootness when considering petitions. (See, e.g., Order WQ 2001-06 at 17 and Order WQ 1994-8 at 7.) Therefore, the State Water Board dismisses the request for stay.

**ORDER**

IT IS HEREBY ORDERED that the stay of the enrollment of the additional THPs under General Order No. R1-2004-0030 is dismissed as moot.

This decision is nonprecedential.

**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 15, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

**DRAFT**

---

Song Her  
Clerk to the Board