

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

STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004

Prepared on June 17, 2004

ITEM: 24

**SUBJECT: WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR THE JENNINGS
TIMBER HARVEST PLAN, THP NO. 1-03-239 SCR, SANTA CRUZ COUNTY
ORDER NO. R3-2004-0075**

SUMMARY: Type - Timber Harvest Plan
Size - 50 Acres
Water Courses - Two Class II Streams and Nine Class III Streams
Watershed - Soquel Creek
Forester - Gary Paul
Land Owner - M. Anne Jennings

DISCUSSION

On March 15, 2004, Regional Board staff received a request from Gary Paul, Registered Professional Forester (RPF), for Water Quality regulation of the Jennings Timber Harvest Plan (THP). The THP involves selective harvesting of 50 acres of land utilizing ground based yarding techniques. The timber harvest area is about 0.006% of the Soquel Creek Watershed area. In the last 10 years about 9% of the Watershed area has been selectively harvested. The erosion hazard rating for this THP is high with topography ranging from moderate to steep (20 to 65%). Moderately sloped areas would technically be considered moderate erosion hazard, but the entire THP has been designated high to simplify the regulatory requirements. The harvest intensity is estimated at 30% to 35% of trees greater than 18" in diameter. The area was last harvested in 1991.

Regional Board staff was not able to attend the February 20, 2004 preharvest inspection due to higher priority workload. The preharvest inspection participants included representatives of the California Department of Forestry and Fire Protection, California Geological Survey, Santa Cruz County, the forester and the licensed timber operator. The Review Team has raised no issues of concern for the proposed project. Based on information submitted to this office, Regional

Board staff finds the THP to pose moderate risk to water quality and appropriate to receive a waiver of waste discharge requirements if conducted in the manner proposed. Regional Board staff plans to inspect the THP prior to the July 9, 2004 Regional Board meeting.

Conditions

The proposed project will be conducted as prescribed in Timber Harvest Plan 1-03-239 SCR with the following additional 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 for 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 waivers 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; and 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. The discharger shall implement Monitoring & Reporting Program No. R3-2004-0075
7. 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 1-03-239 SCR and the conditions above will be in the public interest. This waiver is conditional and can be terminated at any time. This waiver expires on July 1, 2009.

Risk to Water Quality

This THP is considered a “moderate risk” to water quality. Regional Board staff considered the following when assessing the risk of this plan to water quality.

1. Soquel Creek is listed on the 303d list of Impaired Water Bodies for sedimentation, pathogens and nutrients.
2. Steelhead are not present immediately adjacent to the THP, but are present in Bates and Soquel Creeks downstream. The THP as proposed does not pose a significant threat to fish habitat. All of

the threatened and impaired rules in the Forest Practice Rules are applicable to this THP.

3. There are no new roads or landings proposed. Two new skids trails totaling 150 feet are proposed.
4. The THP is small in size (i.e., 50 acres).
5. Gary Paul has an established history of good land management.
6. Two landslides, which are within this THP, are not expected to be adversely affected by this THP.
7. Monitoring will be implemented in a manner such that erosion problems that might occur will be addressed as soon as practical.
8. This THP will be executed primarily during the dry season and should be completed within one harvest season.

Monitoring & Reporting

The forester and/or landowner of this THP will be required to implement visual monitoring of watercourses, unstable areas, roads, landings and skid trails. Proposed photo-point monitoring includes crossings, select confluences and unstable areas. Reporting is required on an annual basis with additional reporting when significant erosion events are observed. If a water quality impact or a violation of the THP that could lead to a water quality impact is observed, the RPF is required to report this event to the Regional Board within forty-eight (48) hours. Log books of field inspections will be maintained by Gary Paul. As of April 9, the forester for this THP was conceptually in agreement with the proposed Monitoring & Reporting Program.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The above-referenced Timber Harvest Plan (Plan) was submitted by Gary Paul, a Registered Professional Forester, and was granted discretionary approval by the California Department of Forestry and Fire Protection (CDF). The Secretary of the Resources Agency has certified that CDF's timber harvest plan regulatory program can function as a substitute for an Environmental Impact Report or a negative declaration. (CEQA Guidelines § 15251.) CDF considered all the potential significant environmental effects of the Plan and made a finding that the timber operations will not have a significant effect on the environment. Therefore the above-referenced Timber Harvest Plan serves as a substitute negative declaration for the proposed timber harvest. CDF consulted with the Regional Board when it developed the Plan. The Regional Board has considered the Plan and has required the Plan proponent or their authorized representative (Discharger), as a condition of this waiver, to comply with all requirements of the Plan.

COMMENTS

The following comments may be paraphrased. Ms. Frediani's comments and staff responses are the same for all conditional waivers proposed for the July 2004 Board Meeting.

Jodi Frediani, Director of CRFM, submitted comments dated May 12, 2004.

1. **Public Review Process:** As members of the public, we have not been granted the opportunity to review these waivers relative to the final CEQA document on which the waivers are, or *should be* based, as required by law. For that matter, there is no THP document in any form for us to review for five of the seven projects. To submit comments based on the limited timber harvest fact sheet would be pointless.

STAFF RESPONSE: The current waiver development process is appropriate because all relevant information is reviewed and considered prior to the Board's decision whether to approve

a particular waiver. However, staff agrees that improvements to the process could be incorporated to address this concern. Currently, staff is developing a revised individual waiver development process and schedule. At this point, staff will require submittal of the timber harvest plan as accepted for filing by CDF, as part of the THP Information Package. This change would address the concern raised in this comment. No changes were made as a result of this comment.

2. **THP Information Package:** We recommend that all Forms and Fact Sheets be checked for completeness and accuracy prior to development of a proposed waiver. Any that are incomplete or contain incorrect, contradictory or misleading information should be returned for correction and re-submission. We also recommend that all Timber Harvest Information Form and Fact Sheets have the THP number listed on the front page.

STAFF RESPONSE: Staff reviews the forms and fact sheets as they are submitted. All information necessary to draft the proposed waiver is obtained from the forester. All THP Information Packages will have the THP number included.

3. **Stream Classification:** We have noted previously, but would like to bring to your attention again, that the *number* of various category streams in a plan area is irrelevant information by itself. More useful, is the *number of feet* of Class I, II and III streams to be found within the plan acreage.

STAFF RESPONSE: Staff agrees. However, this information can usually be obtained from the site plan submitted as part of the THP Information Package. No changes were made as a result of this comment.

4. **CEQA:** California Code of Regulations 15253 concerns the use of an EIR substitute by a responsible agency. It provides that a substitute document (authorized under CEQA equivalency

certification, i.e. an approved THP) may be used by the responsible agency if certain conditions are met.¹ In this case the Regional Water Board is the responsible agency. If these conditions are not met, the substitute document may not be used by other agencies in the place of an EIR or Negative Declaration, and any other permitting agencies must comply with CEQA in the normal manner.

STAFF RESPONSE: The conditions of CCR 15253 will be met before the Regional Board approves the waiver.

5. Public Review Period: We contend that that substitute document (approved THP) must be made available to the public at least 45 days before the hearing and close of public comment.

STAFF RESPONSE: Requiring this THP document to be in final approved form 45 days prior to the Board Meeting is not justified or legally required. The Board must have the final THP document prior to taking discretionary action as a responsible agency. The Board does not need to impose an additional 45-day public review period following finalization of the THP and prior to waiver approval.

6. Turbidity Monitoring: We continue to contend that scientifically defensible, turbidity monitoring should be included for the majority of timber harvest plans and all NTMPs in Santa Cruz County. We refer you to the May 15, 2004 letter submitted on our behalf by Dennis Jackson for more details on how this may be accomplished.

STAFF RESPONSE: Regional Board staff will continue to consider turbidity monitoring of timber harvest plans on a case-by-case basis.

7. Photo Point Monitoring: We continue to assert that Photo Point documentation take place PRIOR to the first rains each winter season to establish a base-line record. Taking the first photos after the first significant storm event may miss some of the most significant changes and fail to identify sediment sources.

STAFF RESPONSE: Photo point monitoring is intended to document slow change over long periods of time. Rapid changes, such as significant erosion and landslides, can be adequately addressed by visual monitoring. Slow changes such as a slowly moving landslide or a slowly changing stream geomorphology may require photo documentation to detect these changes over time. For any "slowly changing" condition there will not be a significant difference between taking the photos before or after the first storm event. Also, the foresters are already in the field inspecting the site after the first significant storm event, so post storm event monitoring is more cost effective. No changes were made as a result of this comment.

8. WDRs: As stated in earlier letters, we believe the Board should be issuing waste discharge requirements (WDRs), not waivers for most timber harvest activities in the Central Coast Region. We recommend, once more, that your Board discontinue the process of issuing individual timber waivers and replace them with Watershed Wide WDRs.

STAFF RESPONSE: The Regional Board cannot efficiently issue watershed-wide WDRs, but could issue a General WDRs order in which individual THP operators could enroll. The concern with watershed wide WDRs is that each watershed would require its own general order and environmental document. This would require a substantial amount of resources. In other regions of California, we understand that watershed wide WDRs are utilized because a single landowner owns most of the watershed. Also, the requirements of the General WDRs would not necessarily be any different than the waiver conditions.

ATTACHMENTS

¹ CCR 15253 (b) "The certified agency exercised the powers of a Lead Agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect."

1. Proposed Board Resolution No. R3-2004-0075
2. Proposed Monitoring & Reporting Program R3-2004-0075
3. Timber Harvest Information Package
4. Site Plan

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