



"Growing Redwoods for the Future"

January 22, 2004

California Regional Water Quality Control Board
Central Coast Region
ATTN: Bill Arkfeld
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Smelt-Locatelli THP (1-04-008 SCR) - Proposed Waiver of Waste Discharge Requirements. Order # R3-2004-0011

Dear Mr. Arkfeld,

I appreciate the consideration the board and staff have given to the Smelt-Locatelli THP. I agree that the project poses a "low risk to water quality and is appropriate to receive a Waiver of Waste Discharge Requirements". However, the landowners, Dave Smelt, John and Gina Locatelli, and myself are deeply concerned about the "draft" Monitoring and Reporting program No. R3-2004-0011.

In summary, R3-2004-0011 requests the following:

1. Visual monitoring of all roads, watercourse crossings, landings, skid trails, water diversions, watercourse confluences, and all mitigation sites within 24 hours of each storm event of 2" or greater.
2. Photo-point monitoring above and below L1, L2, L3, L4, L5, L6, L7, L8, L9, R1, R2, R3, S1, S2, A, B, C, D, E, F, and G twice a year.
3. Up and down stream turbidity monitoring of all Class I and II stream crossings by roads within 24 hours of each storm event of 2" or greater.
4. Up and down stream monitoring of the timber harvest area shall be monitored for turbidity and temperature within 24 hours of each storm event of 2" or greater at points.
5. A logbook shall be kept to record all visual, photo-point, and water analysis data.
6. A summary of each inspection shall also be completed and submitted within 30 days after each storm event of 2" or greater.
7. If at least one cubic yard of soil is released to a waterway due to natural or anthropogenic causes a report shall be submitted to the board within 48 hours.
8. If a violation of the Forest Practice Rules occurs which is related to water quality that it shall be reported to the Regional Board within 24 hours.
9. An annual report shall be submitted to the Regional Board by August 15 that summarizes harvest activities, wet weather problems, erosion control practices, wet weather recommendations for next year, water quality monitoring performed, and recommendations for improving monitoring and reporting.
10. All of the above shall occur till September 1, 2008, or in essence, five years.

The above Monitoring and Reporting requirements are excessive for a project size of 41 acres. The Brown's Creek Watershed is listed as 4,865 acres. In essence, the project area encompasses 8/10ths of 1% of the total watershed area. An estimate of costs is provided below that compares the cost of the Waiver Application and the "draft" Monitoring and Reporting Requirements against the project value to the landowner.

Item No. 15 Attachment No. 6
March 19, 2004 Meeting
Smelt/Locatelli Timber Harvest

BIG CREEK LUMBER CO. 3564 Highway 1, Davenport, CA 95017

**ESTIMATE OF COSTS FOR WAIVER APPLICATION:
SMELT-LOCATELLI THP**

Description	Hours	Rate \$	Total \$
Application process	16.0	65.00	1040.00
Meetings with landowners	4.0	65.00	260.00
Official Response	8.0	65.00	520.00
Attend Board Meeting	8.0	65.00	520.00
TOTAL	36.0		2340.00

**ESTIMATE OF COSTS FOR WATER QUALITY WAIVER COMPLIANCE
SMELT-LOCATELLI THP**

Based on one year of monitoring

Description	Hours	Rate \$	Total \$
6, 2" rain events, @ 5 hours per visit	30.0	65.00	1950.00
Turbidity Monitoring 8 samples/visit @15 min/sample	12.0	65.00	780.00
Data processing for Turbidity	12.0	65.00	780.00
Temperature Monitoring and data processing	8.0	65.00	520.00
Travel Time to and from @ 1hour per visit	6.0	65.00	390.00
Photos: 42 photos @ 10 min per photo*2 photo sets/year	14.0	65.00	910.00
Log Book	12.0	65.00	780.00
Summary reports after each event	24.0	65.00	1560.00
Sediment release reports	0.0	65.00	0.00
Violation reporting	0.0	65.00	0.00
Annual Report	80.0	65.00	5200.00

198 12870.00

TOTAL FOR FIVE YEARS IN \$ 64350.00

GRAND TOTAL IN \$ 66690.00

**Estimated Net Return to Landowner
from Sale of Timber (Based on Current Market Value) in \$ 100000.00**

Net Return After Waiver Process in \$ 33310.00
** does not include fees for Timber Tax or Capital Gains Tax*

Percent of Net Return Reduced by Waiver Compliance 67%

It is our understanding that the Regional Board must take economics into consideration. Approximately 67% of the net return to the landowner would be paid out to comply with the Regional Board's proposed Waiver Application process. This does not include Timber Yield Tax or Income from Capital Gains tax. It is also important to point out that net return must be averaged over 10 years, as the minimum harvest re-entry period is 10 years.

Considering the relevant factors associated with the Smelt-Locatelli THP listed below, there is insignificant risk to the beneficial uses of water:

1. The THP has a harvest area of 41 acres.
2. No trees shall be removed in the first 75 feet of the Class I Watercourse and Lake Protection Zone (WLPZ) and approximately 5-10 trees will be removed in the last 10 feet of the 150 foot Class I WLPZ.

3. Temperature data provided in the THP proves that no impact to stream temperature has occurred due to previous harvest operations.
4. The project will be conducted on approximately 100% existing infrastructure.
5. The condition of the existing infrastructure is excellent and has withstood several large storm events since the last two harvest entries.
6. The property will be selectively harvested.
7. All winterization shall be completed by October 15, the start of the Winter Period.

Please consider the following proposal:

1. Visual monitoring of all roads, watercourse crossings, landings, skid trails, water diversions, watercourse confluences, and all mitigation sites within 24 hours of each storm event of 2" or greater shall occur for the first Winter Period following operations. Erosion control structures not functioning properly shall be fixed as soon as possible and continually monitored during each following visit. If all erosion control structures have functioned properly during the first Winter Period, then one inspection of the property shall occur by the RPF or his supervised designee each Winter Period until September 1, 2008.
2. Photo-point monitoring above and below A, C, E, F and G at the beginning and end of the first Winter Period following operations. Photo-points shall also be taken at the locations described above during the yearly inspection by the RPF or his supervised designee. Photo-points shall be made available to the Regional Board upon request.
3. Functionality of erosion control structures will be monitored under the Big Creek Road Inventory Program for the first Winter Period following operations. Big Creek Road Inventory forms shall be made available to the Regional Board on request.
4. Summary inspection reports will be completed and filed under the Big Creek Road Inventory Program for the first Winter Period following operations. Big Creek Road Inventory forms shall be made available to the Regional Board on request.
5. If at least ten cubic yards of soil is released to a Class I, II or III watercourse due to natural or anthropogenic causes a report shall be submitted to the board within 48 hours of detection.
6. If a violation of the Forest Practice Rules occurs which is related to water quality, it shall be reported to the Regional Board within 24 hours.
7. An annual report shall be submitted by August 15 to the Regional Board following each Winter Period. The report will summarize the previous year's harvest activities, wet weather problems, erosion control practices, wet weather recommendations for the next year, water quality monitoring performed, and recommendations for improving monitoring and reporting. A copy of each annual report shall also be given to the landowner.
8. These are site-specific Monitoring and Reporting Requirements solely intended for the Smelt-Locatelli THP and should not be used to establish site-specific requirements for any other project.

Approximately 5-10 trees will be removed in the entire Class I WLPZ. These 5-10 trees are in the last 10 feet of the 150-foot WLPZ. Extensive temperature data is provided in the THP to substantiate the fact that no temperature issue exists in the Class I watercourse. Turbidity and temperature monitoring are unnecessary for the Smelt-Locatelli THP in relation to the insignificant amount of operations that will occur in the Class I WLPZ.

The most effective and efficient way to insure that the beneficial use of water is maintained is through monitoring erosion control structures as they are functioning in the first Winter Period. There is no substitute for being on-site during the first storm events, with a shovel, fine-tuning erosion control structures. During the next Winter Period, the RPF or his supervised designee will assess the erosion control structures to confirm that they are functioning properly. Photos of the key sites in the plan area will again be documented and an annual report will be filed with the Regional Board. The landowner will be provided with this annual report

to inform them of problems that might exist. The RPF or his supervised designee will prescribe corrective actions to be carried out by the landowner to insure Waiver Compliance.

It's quite simple really, landowners can spend their money on expensive monitoring and reporting (the necessity and utility of which has yet to be demonstrated by the Regional Board) or they can spend their money where it will have the greatest effect, physically controlling potential sediment sources. The proposal, stated above, is the most reasonable solution and insures compliance with the Regional Board's water quality control plan.

The following table is an estimate of costs for the Proposal of Monitoring and Reporting Requirements listed above:

ESTIMATE OF COSTS FOR WAIVER APPLICATION, VERSION 2 SMELT-LOCATELLI THP			
Description	Hours	Rate \$	Total \$
Application process	16.0	65.00	1040.00
Meetings with landowners	4.0	65.00	260.00
Official Response	8.0	65.00	520.00
Attend Board Meeting	8.0	65.00	520.00
TOTAL	36.0		2340.00

ESTIMATE OF COSTS FOR WATER QUALITY WAIVER COMPLIANCE SMELT-LOCATELLI THP			
Description	Hours	Rate \$	Total \$
6, 2" rain events, @ 5 hours per visit	30.0	65.00	1950.00
Travel Time to and from @ 1hour per visit	10.0	65.00	650.00
Photos: 10 photos @ 10 min per photo	10.0	65.00	650.00
Big Creek Road Inventory Program	6.0	65.00	390.00
Sediment release reports	0.0	65.00	0.00
Violation Reporting	0.0	65.00	0.00
Annual Report for 5 Years	80.0	65.00	5200.00
GRAND TOTAL	136.0		11180.00
Estimated Net Return to Landowner from Sale of Timber (Based on Current Market Value) in \$			100000.00
Net Return After Waiver Process in \$			88820.00
<i>* does not include fees for Timber Tax or Capital Gains Tax</i>			
Percent of Net Return Paid for RWQCB Waiver Compliance			11%

In conclusion, the costs of the "draft" Waiver Application and the Monitoring and Reporting Requirements are prohibitive. It is highly questionable whether landowners Smelt and Locatelli could continue the CDF project.

Other reasonable solutions to this situation are:

1. The Regional Board should strongly consider returning to a General Waiver of Waste Discharge Requirements since the board has the authority to order denial of any THP under SB 810.
2. As part of the General Waiver process, the Regional Board should strongly consider using the THP process and timeline with THP denial authority, and as part of the inter-disciplinary review team, the

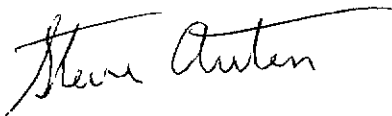
board also retains the ability to non-concur on the few, if any, plans that are not 303(d) listed for sediment.

3. A General Waiver would significantly reduce the costs associated with board and staff review, including costly individual public hearings for each Individual Waiver of Waste Discharge Requirements.
4. The Regional Board has the ability to make the General Waiver conditional with SB 810 authority. The board also has the ability to non-concur on a proposed project where the Regional Board determines that the beneficial uses of water quality would be adversely affected.

The above solutions provide alternatives to the inherent shortcomings of the current process. The landowner and I are making every effort to work with Regional Board's water quality control plan, but the current waiver process is severely restricting landowners from continuing to manage their lands as economically viable forests. These forests are investments for landowners and when investments experience reduced returns, the landowners are forced to alternative means to produce incomes from their property. Since many of these islands of managed forests act as the only filtration system between development and stream systems, it is imperative that they remain economically viable.

If you have any questions, please contact me at (831) 457-6387.

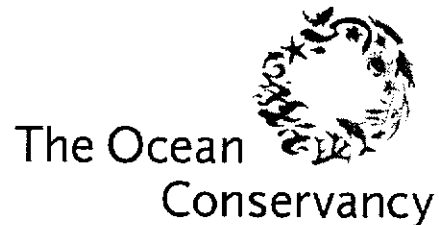
Sincerely,



Steve Auten
RPF#2734

January 30, 2004

Mr. Bruce Daniels, Chairman
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401



VIA FACSIMILE

Re: Comments on the Proposed Waivers of Waste Discharge Requirements for the RMC Timber Harvest (THP No. 1-03-082 SCR), the Smelt-Locatelli Timber Harvest (THP No. 1-04-008 SCR), and the Bartlebaugh Timber Harvest (THP No. 1-03-071 SCR).

Dear Mr. Daniels and Members of the Board:

The undersigned, representing The Ocean Conservancy, Citizens for Responsible Forest Management, Sierra Club – Santa Cruz Group and the Lompico Watershed Conservancy, submit the following comments on the proposed waivers of waste discharge requirements (proposed waivers) for the RMC Timber Harvest (THP No. 1-03-082 SCR), the Smelt-Locatelli Timber Harvest (THP No. 1-04-008 SCR), and the Bartlebaugh Timber Harvest (THP No. 1-03-071 SCR). We appreciate the time and effort you and your staff have put into the preparation of the draft waivers, and are grateful for the opportunity to provide these comments.

We urge you to reject the proposed waivers for several reasons. First, the monitoring proposed in the draft waivers is inadequate and fails to meet the statutory requirements for monitoring pursuant to waivers under recent amendments to the Porter-Cologne Water Quality Control Act. Second, the efficacy of prospective waivers of waste discharge requirements for timber operations is highly questionable given recent legal developments, including SB 810 and the Court's opinions in the ongoing EPIC v. Pacific Lumber lawsuit. Third, the Board must adopt a coordinated approach to regulating timber discharges consistent with its obligation to protect water quality, and subject to environmental review under CEQA. Fourth, the waivers are not in the public interest. Finally, we request that before the Board takes action on timber harvest activities in the future, it allow a longer period for public review.

1. 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.”¹ Accordingly, monitoring must be able to verify that the waiver’s conditions are consistent with the Basin Plan.²

Currently, no systematic water quality monitoring occurs to assess the water quality impacts of timber harvesting throughout the State.³ In general, approved plans are monitored only at the individual site level, and then only to check internal compliance with FPRs and BMPs.⁴ It is widely acknowledged that this THP-level monitoring is inadequate to gauge the effectiveness of BMPs at meeting basin plan standards.⁵ Consequently, under most monitoring regimes, “the actual water quality impact of silvicultural activities conducted under the current THP process is unknown for most watersheds.”⁶

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, instream 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.

2. 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.

EPIC v. Pacific Lumber Company, et al.

¹ *Id.* at § 13269(a)(2).

² California Water Code § 13269(a)(1) (“[waste discharge requirements] may be waived . . . if the state board or regional board determines . . . that the waiver is consistent with any applicable state or regional water quality control plan”)

³ Dunne Report at 27.

⁴ *Id.*

⁵ *Id.*

⁶ Central Valley Regional Water Quality Control Board Staff Report: “Timber Harvesting and Water Quality report (December 2002), attached to CVRWQCB January 2003 Public Meeting Notice and Staff Report.

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:

It its complaint, EPIC alleges that many of the pollution sources in the Bear Creek area are "point sources," discharging both stormwater 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 . . ."⁷ Accordingly, the Board must do more than simply note that: "[t]his waiver does not regulate point-

⁷ California Water Code § 13225.

source discharges that require an NPDES permit under the Clean Water Act”⁸ 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

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 nonconurrence – an action that has few practical implications – if it determines that the plan “does not adequately protect water resources.”⁹ 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 waterbodies that are listed as impaired for sediment, there are 35 such impaired waterbodies 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,”¹⁰ 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.

3. The Board Must Adopt a Comprehensive Timber Harvest Policy, with Public Notice and 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 CDF¹¹, to protect the quality of the waters of the Central Coast Region.¹² 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

⁸ California Regional Water Quality Control Board – Central Coast Region, Proposed Order No. R3-2004-0010, Waiver of Waste Discharge Requirements for Bartlebaugh Timber Harvest Plan (1-03-071 Santa Cruz County) at 1(f).

⁹ 14 CCR § 1037.5(e).

¹⁰ California Water Code § 13225.

¹¹ Management Agency Agreement Between the Water Resources Control Board, the Board of Forestry, and the Department of Forestry and Fire Protection, State of California.

¹² California Water Code § 13000 *et seq.*

effectiveness of Best Management Practices (BMPs) in protecting water quality and beneficial uses.¹³ Similarly, it is widely recognized that BMPs, even if perfectly implemented, are simply not designed to eliminate water quality impacts from logging activities.¹⁴ 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"¹⁵ and "an internal staff guidance tool."¹⁶

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.

4. 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. Although the THPs themselves pose threats of varying magnitudes, the points above apply equally to all

¹³ Letter from EPA to SWRCB (July 29, 2988) (deciding not to certify BMPs); Dunne, Thomas, et al., "A Scientific Basis for the Prediction of Cumulative Watershed Effects" (June 2001) (Dunne Report); Reid, Leslie M., "Forest Practice Rules and Cumulative Watershed Impacts in California" (attached to letter to Hon. Fred Keeley, May 24, 1999); Little Hoover Commission Report (July 1994); Ligon, Frank, et al., Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, prepared for The Resources Agency of California and NMFS (June 1999).

¹⁴ Dunne Report at 24

¹⁵ Central Coast Regional Water Quality Control Board – Central Coast Region, Minutes of Regular Meeting (Friday, September 12, 2003) at item 14.

¹⁶ Central Coast Regional Water Quality Control Board – Central Coast Region, Staff Report for Regular Meeting of December 5, 2003 (November 5, 2003) at 5.

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.

5. 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, 2003. 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.

The Smelt plan is another story altogether. Under staff's own Timber Harvest Decision Model, waiver development begins with the receipt of the approved THP. According to the Timber Harvest Framework, staff's review is based upon a Timber Harvest Information Package, a component of which is a CDF-approved THP. As alluded to above, in the case of the Smelt plan, no THP has been approved to date. The 130-page THP was not even filed until January 22, 2004. We are mystified as to how staff has not only completed its review but also written a waiver that purports to be in the public interest when a THP has not been approved, pre-harvest inspection has not occurred, and review team meetings have not been conducted. Even if staff has been able to accomplish this miraculous feat, it is unreasonable to expect the public to do the same. Consideration of the Smelt Plan should be deferred to the April meeting, at the earliest.

* * * * *

In sum, we request that the Board decline to approve the proposed waivers, and cease consideration of prospective waivers until the legal deficiencies identified above have been remedied.

Thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to call.

Sincerely,

Sarah G. Newkirk

Sarah G. Newkirk
Consultant
The Ocean Conservancy



Jodi Frediani
Executive Director
Citizens for Responsible Forest Management



Kevin Collins,
Board President
Lompico Watershed Conservancy

Betsy Herbert

Betsy Herbert
Forestry Task Force
Sierra Club, Santa Cruz Group

David Smelt
P.O. 1536
(3094 Lake Drive, Apt. D3)
Marina, CA 93933

February 4, 2004

Roger Briggs, Executive Officer
Regional Water Quality Control
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, Ca. 93401-7906

Mr. Briggs:

My name is David Smelt and I am the forest landowner of record for a proposed timber harvest adjacent to Brown's Creek near Corralitos, CA (THP # 1-04-008SCR). My wife and I have been informed by our Registered Professional Forester, Steve Auten, of your agency's draft water quality monitoring requirements associated with a waiver of waste discharge requirements for our timber harvest.

Mr. Auten has developed an estimate of what the monitoring proposed by Central Coast Regional Water Quality Board (CCRWQCB) staff will cost my family and I must tell you that my wife and I are shocked and appalled. The proposed monitoring will virtually destroy the marginal economic return my wife and I expected to see from this harvest.

The Porter-Cologne Water Quality Act contains the following code section:

*13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region. (b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. **The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.** (emphasis added)*

*(2) (e) As used in this section, "evidence" means **any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,** (emphasis added) regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in a civil action.*

Pursuant to the above referenced government code, my wife and I request that you provide any and all peer-reviewed scientific documentation, including data collected by staff, that associates legally conducted single-tree selective timber harvesting (within CCRWQCB jurisdiction) with the following:

1. Environmental harm or degradation of water quality.
2. Water temperature problems.
3. Turbidity or sedimentation problems in watercourses.

I would also be interested in receiving any and all peer-reviewed scientific documentation that establishes background sedimentation rates and baseline water temperature for forested watersheds within your jurisdiction. This information is important to help my wife and I understand any potential effects our timber harvest may have. It will also help all of us to understand whether the data collected during the proposed monitoring will have any scientific relevance.

Can you tell me what CCRWQCB and staff intend to do with any monitoring data you receive from my specific monitoring and how you intend to differentiate the data from all other potential waste discharge sources within my watershed?

Mr. Auten has determined that our timber harvest constitutes eight-tenths-of-one percent (0.8%) of the total land area of the watershed I live in. The timber harvest will be active for approximately two months. Under state law, my wife and I cannot conduct another state-approved timber harvest for at least ten years. Can you please tell me what, if any, water quality monitoring requirements have been required for other land uses within the remaining 99.2% of my watershed?

You are proposing water quality monitoring that will impose devastating economic hardship on my family. Government Code §13267. (a). requires that your proposal bear a reasonable relationship to the asserted need for the data. You are also obligated to consider the economic burden this proposal will create. Moreover, not only does the water code require this, but the Board, in its statements made at the September 2003 public hearing, directed staff to do precisely this. Obviously there must be significant evidence supporting the necessity for the proposed monitoring requirements, otherwise your proposed requirements would be in direct violation of the Porter-Cologne Water Quality Act.

The forestry practices within your jurisdiction are arguably the most restrictive and protective in the world. Given these circumstances, I am formally requesting a detailed, written explanation, including all relevant evidence and scientific documentation, that supports the need for this monitoring. I also request that you explain in detail the relationship between the need for this monitoring and the benefits you expect to obtain from the monitoring.

The proposed monitoring will eliminate nearly three-quarters of the net proceeds of our timber harvest. I am requesting an economic analysis of this proposal and an explanation of why gathering data on 0.8% of a watershed, for an activity that will only last two months, justifies the tremendous burden these requirements would visit upon my family.

Sincerely,



David Smelt