

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

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF SEPTEMBER 10, 2004
Prepared on September 2, 2004

ITEM: 24

SUPPLEMENTAL SHEET – COMMENTS - FILICE TIMBER HARVEST PLAN, THP
NO. 1-04-115 SCR, SANTA CRUZ COUNTY, BOARD RESOLUTION NO. R3-2004-
0128

This supplemental sheet addresses comments received after the close of the comment period. The comment letter is attached:

approved CEQA document. (see below: Necessity for Approved CEQA Document Prior to Public Review)

COMMENTS

The following comments may be paraphrased.

Jodi Frediani, Director of CRFM, submitted comments on behalf of Citizens for Responsible Forest Management (CRFM), the Lompico Watershed Conservancy (LWC), the Sierra Club-Santa Cruz Group, and The Ocean Conservancy (TOC) dated August 20, 2004.

1. Public Review Process: We are trying to conform as closely as possible to your August 16, 2004 Key Dates Policy date for comment submission (i.e., comment deadline), hence this letter. However, as of this writing, neither of these THPs (i.e., the two waivers on the Sept. Board Meeting) has been approved by the California Department of Forestry. In fact, responses to the Review Team recommendations by the RPF for the Filice THP (1-04-115SCR) are still outstanding. Therefore, we find it difficult to comment specifically regarding these individual THPs at this time. Furthermore, we understand that in a best-case scenario, the Filice THP may be approved by CDF on September 7, 2004, just three days prior to the waiver hearing. This is inadequate time for full public review of the final

STAFF RESPONSE: On June 9, 2004, Regional Board staff shared an internal guidance document with the parties on our Interested Parties List for Timber regulation. The email describes certain deadlines which staff should try to meet to stay on track for a specific board Meeting (Key Dates). Regional Board staff do not make policy. We shared this guidance with the IPL in a further attempt to make the process of timber harvest regulation run more smoothly.

Minor changes during the 30-day public comment period are normal and expected. If the final THP is substantially changed then postponement of waiver consideration may be appropriate. Regional Board staff will monitor the CDF approval process and revise our recommendations as appropriate. Challenges to the THP itself or to CDF's CEQA document must be brought before CDF.

The Filice THP was approved by CDF on August 31, 2004, with no significant comments.

2. Monitoring Adequacy: First, as with previous waivers, the monitoring programs associated with these proposed waivers are not adequate to evaluate compliance with basin plan requirements, as required by 13269(a)(2). ("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.") We have commented on this issue extensively in the past, and incorporate by reference our comments dated January 30, 2004, and April 27, 2004, regarding waivers adopted by the Board at its March 19, 2004, and May 14, 2004 meetings, respectively.

STAFF RESPONSE: In addition to the monitoring required of the Discharger, we will utilize available information, forensic monitoring of individual THPs by CDF and Regional Board staff, watershed studies (Little Creek and possibly Soquel Demonstration Forest), and other monitoring data from the Santa Cruz mountains to verify the adequacy and effectiveness of the waiver conditions. This approach satisfies Water Code section 13269 (a)(2).

3. **Fishery Impacts:** Second, both plans scheduled for review on September 10 propose timber operations in Coho and/or steelhead watersheds. Coho are state listed as endangered, federally listed as threatened with a NOAA recommendation to upgrade that listing to endangered. Steelhead is state listed as threatened.

STAFF RESPONSE: The presence of salmonids in the Scott Creek watershed was considered when evaluating the risk to water quality. The conditions of the proposed waiver adequately protect the beneficial uses of the Scott Creek watershed.

4. **THP Fact Sheets:** We recommend that all Timber Harvest Information Form and Fact Sheets have the THP number listed on the front page. Now that staff has determined that a plan must first be filed with CDF prior to requesting a waiver, there is no excuse for the absence of this information. Also, 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. As noted in the staff report re the Castro Valley THP waiver in response to our May 2004 letter, we are told that the length of streams will be included in the staff report. This information should be required in the THP Fact Sheet and is absent from the Filice Fact Sheet.

STAFF RESPONSE: Future Timber Harvest Information Form and Fact Sheets will be required to have a THP number at the time they are submitted to Regional Board staff.

Regional Board staff estimated total stream lengths for the plans on the September agenda from the THP maps, as noted in the staff report.

5. Necessity for Approved CEQA Document Prior to Public Review: CCR 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. 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. Once the substitute document has been produced, it must be released for public comment.

The courts have articulated, and the CEQA Guidelines have restated, six separate policy grounds justifying the requirement that lead agencies must seek and respond to public comments: (1) sharing expertise; (2) disclosing agency analysis; (3) checking for accuracy; (4) detecting omissions; (5)

discovering public concerns; and (6) soliciting counterproposals.¹ In the case of EIR-equivalent documents, a 30-day public comment period applies.² Consequently, the Board should not make waiver decisions premised on THPs that have not been approved or have been available to the public for fewer than 30 days

THPs invariably undergo significant change through the review process. The plan that is submitted is not necessarily the same as the document ultimately accepted for filing, and in our experience, always undergoes some revision, often major, prior to approval. It is this CDF approved document that we need to review in order to comment in an informed manner. Certainly, it is the document that staff should be basing their waivers on.

Staff continues to spend valuable time on preparation of Waiver Monitoring and Reporting Programs, staff reports, public noticing and document preparation for posting on-line, for timber harvest plans that have been accepted for filing by CDF, but have not been approved and then are not ready for waivers at the designated hearing date. Two such plans were removed from your posted September agenda.

STAFF RESPONSE: CDF's THP approval process does include a 30-day public comment period. Changes during the public review process are usually not significant enough to trigger an additional 30-day public review process. However, Regional Board staff does review approved THPs for substantial changes prior to the Board Meeting. When justified, a waiver will be pulled from the Board's agenda and postponed until the subject changes can be incorporated into the waiver as appropriate.

¹ CEQA Guidelines, § 15200.

² Ultramar, Inc. v. South Coast Air Quality Management District, 17 Cal. App.4th 689, 700 (2d Dist. 1993).

6. Monitoring Deficiencies: 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. This comment does not address why turbidity monitoring should be required in this case.

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. We do not agree with staff that visual monitoring is sufficient or takes place of baseline Photo Point documentation.

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. No changes are proposed as a result of this comment.

8. Need for WDRs: As stated in earlier letters, we believe the Board should be issuing WDRs, not waivers for most timber harvest activities in the Central Coast Region. We hereby

incorporate by reference comments on proposed timber waivers submitted by the undersigned, dated January 30, 2004, and April 27, 2004.

STAFF RESPONSE: We reiterate that the conditions of General WDRs would not necessarily be any different than the current waiver conditions. We encourage the

commenters to provide comments on the specifics of the proposed Waivers.

Attachment

- 1) August 20, 2004 Letter from The Ocean Conservancy and others

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PO Box 167, Boulder Creek, CA 95006 Ph/Fax (831)426-1697 JodiFred@aol.com

August 20, 2004

Jeffrey Young, Board Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Comments on the Proposed Waivers of Waste Discharge Requirements for the Filice Timber Harvest Plan (THP 1-04-1115 SCR) and the Castro Valley Timber Harvest Plan (THP 1-04-127 SCL).

Dear Chairperson Young,

I am writing to you on behalf of Citizens for Responsible Forest Management (CRFM), the Lompico Watershed Conservancy (LWC), the Sierra Club-Santa Cruz Group, and The Ocean Conservancy (TOC) with comments regarding waivers for THP 1-04-115 SCR and THP 1-04-127 SCL to be heard by your Board at the September 10, 2004 hearing.

We are trying to conform as closely as possible to your August 16, 2004 Key Dates Policy date for comment submission, hence this letter. However, as of this writing, neither of these THPs has been approved by the California Department of Forestry. In fact, responses to the Review Team recommendations by the RPF for the Filice THP (1-04-115SCR) are still outstanding. Therefore, we find it difficult to comment specifically regarding these individual THPs at this time. Furthermore, we understand that in a best case scenario, the Filice THP may be approved by CDF on September 7, 2004, just three days prior to the waiver hearing. This is inadequate time for full public review of the final approved CEQA document. (see below: Necessity for Approved CEQA Document Prior to Public Review).

General Comments on THP Waivers

Item No. 24 Supplemental Sheet
Attachment No. 1
September 10, 2004 Meeting
Filice THP

First, as with previous waivers, the monitoring programs associated with these proposed waivers are not adequate to evaluate compliance with basin plan requirements, as required by 13269(a)(2). ("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.") We have commented on this issue extensively in the past, and incorporate by reference our comments dated January 30, 2004, and April 27, 2004, regarding waivers adopted by the Board at its March 19, 2004, and May 14, 2004 meetings, respectively.

Second, both plans scheduled for review on September 10 propose timber operations in coho and/or steelhead watersheds. Coho are state listed as endangered, federally listed as threatened with a NOAA recommendation to upgrade that listing to endangered. Steelhead are state listed as threatened. In addition, the Pajaro River is 303(d) listed as impaired for sediment. The Castro Valley THP is in the Pajaro River watershed and includes some 30 watercourse crossings, plus 15.9 miles of roads and 4 miles of skid roads and trails. We do not consider this to be a "moderate risk" THP.

Incomplete or Deficient Timber Harvest Fact Sheets

We recommend that all Timber Harvest Information Form and Fact Sheets have the THP number listed on the front page. Now that staff has determined that a plan must first be filed with CDF prior to requesting a waiver, there is no excuse for the absence of this information.

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. As noted in the staff report re the Castro Valley THP waiver in response to our May 2004 letter, we are told that the length of streams will be included in the staff report. This information should be required in the THP Fact Sheet and is absent from the Filice Fact Sheet.

Necessity for Approved CEQA Document Prior to Public Review

CCR 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. 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. Once the substitute document has been produced, it must be released for public comment.

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separate policy grounds justifying the requirement that lead agencies must seek and respond to public comments: (1) sharing expertise; (2) disclosing agency analysis; (3) checking for accuracy; (4) detecting omissions; (5) discovering public concerns; and (6) soliciting counterproposals.¹ In the case of EIR-equivalent documents, a 30-day public comment period applies.² Consequently, the Board should not make waiver decisions premised on THPs that have not been approved or have been available to the public for fewer than 30 days

THPs invariably undergo significant change through the review process. The plan that is submitted is not necessarily the same as the document ultimately accepted for filing, and in our experience, always undergoes some revision, often major, prior to approval. It is this CDF approved document that we need to review in order to comment in an informed manner. Certainly, it is the document that staff should be basing their waivers on.

Staff continues to spend valuable time on preparation of Waiver Monitoring and Reporting Programs, staff reports, public noticing and document preparation for posting on-line, for timber harvest plans that have been accepted for filing by CDF, but have not been approved and then are not ready for waivers at the designated hearing date. Two such plans were removed from your posted September agenda.

Monitoring Deficiencies

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.

In addition, 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. We do not agree with staff that visual monitoring is sufficient or takes place of baseline Photo Point documentation.

Need for WDRs

As stated in earlier letters, we believe the Board should be issuing WDRs, not waivers for most timber harvest activities in the Central Coast Region. We hereby incorporate by reference comments on proposed timber waivers submitted by the undersigned, dated January 30, 2004, and April 27, 2004.

Several reputable sources support this argument:

*Although the California Forest Practice Rules purport to mandate

¹ CEQA Guidelines, § 15200.

² Ultramar, Inc. v. South Coast Air Quality Management District, 17 Cal. App.4th 689, 700 (2d Dist. 1993).

protection of sensitive resources such as anadromous salmonids, *the Rules, their implementation and enforcement do not accomplish this objective (emphasis added).*"

--Joe Blum, recently deceased NOAA Fisheries Coho Point Person in California, from a sworn statement dated 21 June 2000

"The Scientific Review Panel concluded that the Forest Practice Rules (FPRs), including their implementation (the "THP process") do not ensure protection of anadromous salmonid populations. The primary deficiency of the FPRs is the *lack of a watershed analysis approach capable of assessing cumulative effects attributable to timber harvesting and other non-forestry activities on a watershed scale. . . .* (emphasis added). Also, specific rules governing onsite operations and road maintenance need stronger enforcement and/or modification to further minimize sediment production, improve stream habitat, and guarantee unrestricted passage by migrating juvenile and adult salmonids."

-- portions of the Executive Summary of the Scientific Review Panel Report of June 1999

"The Governor and the Legislature should enact legislation to require the completion of master protection plans for watersheds containing productive forests."

-- Recommendation #4 of the Little Hoover Commission Report, "Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs" -- June 1994, Report #126

* * * * *

In conclusion, CRFM, LWC, Sierra Club, and TOC recommend, once more, that your Board discontinue the process of issuing individual timber waivers and replace them with Watershed Wide WDRs.

We thank you for this opportunity to comment.

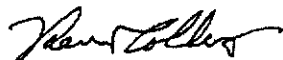
Sincerely,



Jodi Frediani
Executive Director
Citizens For Responsible Forest Management

Betsy Herbert (by JF)

Betsy Herbert
Sierra Club Forestry Task Force Chair
Sierra Club-Santa Cruz Group, Ventana Chapter



Kevin Collins
Board President
Lompico Watershed Conservancy



Sarah Newkirk
California Water Quality Programs Manager
The Ocean Conservancy