

ATTACHMENT 1

PROPOSED BOARD ORDER NO. R3-2005-0100

**Item No. 27 Attachment No. 1
July 7-8, 2005 Meeting
Cowell So. Unit Timber Harvest**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California**

**Order No. R3-2005-0100
July 8, 2005**

**Conditional Waiver of Waste Discharge Requirements
Cowell South Unit (1-04-165 SCR)
Santa Cruz County**

WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (hereinafter Water Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Water Quality Control Board (Water Board) a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board.
2. The Water Board prescribes waste discharge requirements except where the Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest pursuant to CWC (Sections § 13267 and 13269).
3. CWC Section 13267 states:
 - (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.
4. CWC Section 13269 states:
 - (1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.

- (2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring, except as provided in paragraph (3) below. 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. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.
- (3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.
5. In accordance with CWC Section 13269, the discharge of waste associated with the proposed timber harvest activities (THP 1-04-165 SCR) shall be regulated by individual waiver conditions.
6. The Water Board has adopted the Water Quality Control Plan for the Central Coast Region (Basin Plan), that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Coast Region.
7. Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
- a. Agricultural Supply (AGR)
 - b. Aquaculture (AQUA)
 - c. Preservation of Biological Habitats of Special Significance (BIOL)
 - d. Cold Freshwater Habitat (COLD)
 - e. Commercial and Sportfishing (COMM)
 - f. Estuarine Habitat (EST)
 - g. Freshwater Replenishment (FRSH)
 - h. Ground Water Recharge (GWR)
 - i. Industrial Service Supply (IND)
 - j. Migration of Aquatic Organisms (MIGR)
 - k. Municipal and Domestic Supply (MUN)
 - l. Navigation (NAV)
 - m. Hydropower Generation (POW)
 - n. Industrial Process Supply (PRO)
 - o. Rare, Threatened, or Endangered Species (RARE)
 - p. Water Contact Recreation (REC-1)
 - q. Non-contact Water Recreation (REC-2)
 - r. Shellfish Harvesting (SHELL)
 - s. Spawning, Reproduction, and Development (SPWN)
 - t. Warm Freshwater Habitat (WARM)
 - u. Wildlife Habitat (WILD)
 - v. Inland Saline Water Habitat (SAL)

8. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. The factors in CWC Section 13241, including economic considerations, were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Order implement these previously developed water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above paragraph.
9. The California Department of Forestry and Fire Protection (CDF) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z'berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.).
10. In 1988, the State Water Board:
 - (a) Conditionally certified the "Water Quality Management Plan for Timber Operations on Nonfederal Lands" which included those California Forest Practice Rules selected as best management practices and the process by which those rules are administered
 - (b) Designated CDF and the BOF as joint Water Quality Management Agencies
 - (c) Executed a Management Agency Agreement with CDF and BOF for the purpose of implementing the certified plan and Water Quality Management Agency designations
11. The Management Agency Agreement between the State Water Board and CDF/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, that review has not occurred.
12. The USEPA has not approved the State Water Board's certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California.
13. The Secretary of the Resources Agency has certified that the CDF's timber harvest plan regulatory program can function as a substitute for an Environmental Impact Report or a negative declaration (CEQA Guidelines § 15251). Registered Professional Foresters submit either a timber harvest plan (THP) or Non-Industrial Timber Management Plan (NTMP) and CDF has the authority to grant discretionary approval for projects. CDF considers all the significant environmental effects of the project and makes a finding under CEQA Guidelines section 15091 for each significant effect. If CDF finds that the timber operations will not have a significant effect on the environment, a THP or NTMP can serve as a substitute negative declaration. CDF consults with the Water Board as each THP or NTMP is developed. The Discharger, as a condition of this waiver, must comply with all requirements of the THP. CDF considered all the potential significant environmental effects of the THP and made a finding that the timber operations identified in the THP will not have a significant effect on the environment. Therefore, the above-referenced THP serves as a substitute negative declaration for the proposed timber harvest. CDF consulted with the Water Board when it developed the Plan. The Water Board has considered the THP in the adoption of this Order.
14. The timber harvest plan regulatory program is regulated by the California Department of Forestry, and requires the Discharger to implement practices to control water quality impacts, including erosion and sedimentation. The conditions of this Order protect beneficial uses by:
 - (i) Prohibiting pollution, contamination or nuisance;
 - (ii) Requiring monitoring and compliance with applicable water quality control plans;
 - (iii) Requiring the Discharger to grant access to Water Board staff to perform inspections; and

- (iv) Requiring approval of the THP by the California Department of Forestry and Fire Protection.
15. Management practices are the most feasible treatment method to control the discharges. If a proposed timber harvest is conducted in the manner prescribed in the THP and the conditions of this Order, a waiver of waste discharge requirements is in the public interest and is consistent with applicable water quality control plans, including the Water Quality Control Plan, Central Coast Region.
 16. This entry into the Cowell-South Unit THP 1-04-165 SCR involves selective harvesting of 324 acres of land utilizing ground-based yarding. The proposed harvest covers 4.8% of the 7,530-acre watershed (Boulder Creek - CalWater 3041.20203). Approximately 13% of the watershed has been selectively harvested within the last 10 years.
 17. Water Board staff evaluated the proposed Cowell-South Unit THP harvest using our draft Eligibility Criteria (Attachment 3). The proposed Cowell-South Unit THP falls into Tier III. The harvest is proposed in a 303(d) listed watershed with a high cumulative effects ratio. The proposed THP area has a low drainage density index and the proposed activities will result in "medium soil disturbance factor" (as defined by the Criteria) if winter operations occur.
 18. The project proponent has agreed to Tier III requirements as a condition of Waiver approval and will include visual, photo, temperature and turbidity monitoring.
 19. The Water Board conducted a public hearing on July 8, 2005, in San Luis Obispo, California, and considered all testimony and evidence concerning this matter;

THEREFORE BE IT ORDERED:

1. In accordance with CWC Section 13269, the waste discharges related to timber harvest activities (THP 1-04-165 SCR) in the Central Coast Region shall be subject to the following conditions, and the requirement to obtain a waste discharge requirements order is hereby waived, subject to the following conditions:
 - a. The Discharger shall 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.
 - b. The Discharger shall conduct timber harvest activities in accordance with the approved THP and with all applicable sections of the Forest Practice Rules.
 - c. The Discharger shall not create a condition of pollution, contamination, or nuisance, as defined by CWC Section 13050.
 - d. The Discharger shall not discharge any waste not specifically regulated by individual conditional waiver conditions described herein, except in compliance with CWC Section 13264.
 - e. The Discharger shall not cause alteration in stream temperature that exceeds Basin Plan requirements.
 - f. Waste specifically regulated by individual conditional waiver conditions includes: earthen materials including soil, silt, sand, clay, rock; 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.
- g. The Discharger shall allow Water 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 individual conditional waiver requirements.
 - h. Pursuant to California Water Code Sections 13267 and 13269, the Discharger shall comply with Monitoring and Reporting Program No. R3-2005-0100. Water Board staff needs this information to verify that individual conditional waiver requirements are the appropriate regulatory tool for Timber Harvest activities for THP 1-04-165 SCR. Evidence that supports the need for this information was presented during Item No. 27 at the July 8, 2005 meeting of the Central Coast Regional Water Quality Control Board, the Staff Report for this item, and Monitoring and Reporting Plan No. R3-2005-0100.
 - i. This Waiver does not regulate point-source discharges that require an NPDES permit under the Clean Water Act, including but not limited to silvicultural point-source discharges as defined in 40 CFR Part 122.27.
 - j. The Discharger shall take immediate action to repair failed crossings, culverts, roads and other sources of sediment as soon as possible.
 - k. The Discharger shall maintain all erosion and sediment control devices, management measures and mitigations prescribed in the THP for the term of this Waiver.
2. The Water Board finds that the adoption of this Waiver will not have a significant impact on the environment and will be in the public interest provided that the Discharger:
 - (a) Complies with the conditions of this Order; and
 - (b) Complies with applicable State Water Board and Regional Water Board plans and policies and as those plans and policies may be amended from time to time through the amendment process;
 3. This waiver shall not create a vested right to discharge and all discharges are considered a privilege, as provided for in CWC Section 13263.
 4. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the CWC.
 5. The Executive Officer or Water Board may terminate the applicability of this Waiver to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the State.
 6. The Discharger shall comply with MRP No. R3-2005-0100.

7. This waiver shall become effective on July 8, 2005, and shall expire on July 8, 2010, unless terminated or renewed by the Water Board.
8. As provided by CWC Section 13350(a), any person who, in violation of any waiver condition, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative or civil liability for the violation.
9. Any person affected by this action of the Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 8, 2005.

Roger W. Briggs, Executive Officer

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