



California Regional Water Quality Control Board

North Coast Region

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December 11, 2001

William Snyder
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Subject: Non-concurrence with Second Review Team Chairman's Recommendation of Approval for Timber Harvest Plans 1-01-318 HUM, 1-01-345 HUM, and 1-01-363 HUM

Dear Mr. Snyder:

Second Review for Timber Harvest Plans 1-01-318 HUM, 1-01-345 HUM and 1-01-363 HUM (THPs) was conducted on December 6, 2001. Representatives from the California Department of Forestry and Fire Protection (CDF), the North Coast Regional Water Quality Control Board (the Regional Water Board) and the Pacific Lumber Company (PALCO) were present.

The Regional Water Board staff disagree with the second review team chairman's recommendation of approval because, among other things, one of the Regional Water Board staff recommendations was not included in the THPs. That recommendation was that PALCO:

“Change the proposed silvicultural method in this plan to a method to be consistent with the SYP [Sustained Yield Plan] projections for the Van Duzen WAA [Watershed Assessment Area] or amend the SYP.”

In light of the Regional Water Board's disagreement with the approval recommendation, this letter reiterates the rationale for the Regional Water Board's position. As explained in detail below, the THPs trigger the need to amend the SYP. Further, the approval of the THPs, as presently constituted, would exacerbate noncompliance with water quality objectives in the Regional Water Board's water quality control plan and would therefore violate the Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1 et seq.) (FPRs).

CDF Must Amend The SYP Before It Considers Whether To Approve The THPs

As the Regional Water Board staff have previously stated, a THP that substantially deviates from a SYP must be preceded by a SYP amendment except in an emergency. The governing section of the FPRs provides:

California Environmental Protection Agency

“1091.13 Amendments

Except under emergency circumstances, substantial deviations from the SYP shall not be undertaken in the THPs unless an amendment has been submitted to and approved by the Director following the same procedures as for approving an SYP initially. No THPs may be approved which rely upon a substantial deviation proposed in an amendment to a SYP until such a deviation is approved by the Director.

- (a) **Substantial Deviations.** For purposes of the sustained timber production portion of any SYP, any deviation from the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events, shall be considered a substantial deviation. For purposes of watershed and fish and wildlife issues, any deviation from the plan which could result in a significant change in timber operations and could result in significant adverse effects to watershed or fish and wildlife values shall be considered a substantial deviation.
- (b) **Minor deviations shall be reported to the Director immediately in writing but shall not require amendment of the plan.”**

Section 1091.13(a) provides a two-part test for determining whether a deviation from a SYP is substantial. The first prong provides that any deviation from average harvesting projections in any ten-year period that exceeds 10 percent is substantial. As Dean Lucke of CDF explained in a December 5, 2001 letter (Lucke Letter), the sustained timber production portion of the SYP sets harvest targets for PALCO’s entire ownership and does not take into account watershed-specific changes in harvest volume. The THPs would not cause 10-year projected harvest volumes over PALCO’s entire ownership to deviate more than 10 percent. Thus, we agree with CDF that the THPs do not amount to a substantial deviation under the harvest volume measure.

Instead of looking to harvest volume for determining whether a deviation is substantial, the second prong of section 1091.13(a) focuses on the resulting environmental effects. Under that prong, a deviation is substantial if it could: (1) result in a “significant change in timber operations” that (2) could result in significant adverse effects on watershed or fish and wildlife values. As explained in detail below, the THPs amount to a substantial deviation under test.

Significant Change In Timber Operations

Regional Water Board staff previously asserted that the THPs’ contribution to the disproportionate amount of clearcutting in the Van Duzen WAA amounts to a significant change in timber operations. The Lucke Letter responded to this concern and others. Notably, the Lucke Letter does not dispute that the THPs would amount to a significant change in timber operations. We therefore assume that CDF agrees with the Regional Water Board on this point. Regardless, we have reiterated below the basis for our argument.

A SYP must include certain key information as required by FPRs section 1091.6(c)(2), which states, in relevant part:

“For the initial ten year period, for all planning watersheds in which harvesting will take place, descriptions shall include as appropriate: [¶] . . . [¶] (B) Estimate of the SYP submitter' s ownership acres of forest types to be harvested by silvicultural method and yarding method, and the location of submitter' s approved and submitted THPs and presently projected future timber operations.”

For PALCO's SYP, this requirement was satisfied by providing the number of acres harvested by silvicultural methods in the Watershed Assessment Areas (WAAs). For the period from 1999 to 2009, the SYP calls for harvesting of 4,437 acres in the Van Duzen WAA, 1,638 of them by clearcutting. Taken over 10 years, then, harvest acreage in the Van Duzen WAA should average 443.7 acres per year, 163.8 by clearcutting. Based on those rates, PALCO should at this point (2.75 years into the SYP) have harvested 1,220 acres, 450 by clearcutting. Instead, approximately 2,597 acres have been harvested, 1,604 by clearcutting. Those harvest rates significantly exceed the SYP projections, particularly for clearcutting. More fundamentally, approval of the THPs would allow more clearcutting in the Van Duzen WAA than projected in the SYP. Since approval of the SYP in 1999, 1,604 acres have been accepted for clearcutting in the Van Duzen WAA. The acceptance of the THPs, which propose another 194 acres of clearcutting, would bring total clearcutting in the Van Duzen WAA to 1,798 acres. That amount exceeds the acreage planned for clearcutting in the SYP projections by 160 acres, or approximately 10%.¹

Thus, the approval of the THPs would continue a trend away from the proportion of timber harvesting methodology required by the SYP. At this point in the SYP, PALCO has harvested 1154 more acres by clearcutting than projected by the SYP, an exceedance of 250 percent. These THPs would do more than exacerbate that trend. They would allow clearcutting on more acreage in the Van Duzen WAA than was supposed to occur by 2009. This drastic shift in methodology to clearcutting constitutes a significant change in the timber operations contemplated by the SYP.

Significant Adverse Effects on Watershed Values

Regional Water Board staff previously asserted that the significant change in timber operations proposed by the THPs threatens to cause significant adverse effects on Van Duzen watershed values. Mr. Lucke argues that the thresholds of significance applicable to the SYP do not support that conclusion:

¹ Notably, there are four additional PALCO THPs undergoing review that will exacerbate the disproportionate amount of clearcutting in the Van Duzen WAA. These THPs would add 183 acres of clearcutting, which, if approved, would bring the total clearcut area in the Van Duzen WAA to 1,981 acres. With that additional acreage, PALCO will have exceeded the clearcut area allowed by the SYP by 343 acres, or 21 percent.

“The Palco SYP has associated with it an FEIS/EIR and a HCP. The FEIS/EIR has established ‘Thresholds of Significance’ for both aquatic and terrestrial species. Discussions with the signatory agencies to the HCP indicate that the current level of harvest does not constitute a significant adverse effect to watershed or wildlife values provided the measures of 6.11.2.1 of the HCP are complied with” (Lucke Letter, p. 2.)

For several reasons, Mr. Lucke is incorrect.

First, Mr. Lucke cites discussions with “signatory agencies to the HCP” as a basis for concluding that impacts of the THPs are less than significant. He thus implies that these agencies possess plenary authority to determine the significance of timber harvesting impacts. To the contrary, the Management Agency Agreement between the State Water Resources Control Board (State Water Board), Board of Forestry and CDF (MAA) provides a special role for the State and Regional Water Boards in reviewing the effects of silvicultural activities on nonfederal lands:

“The [State] Water [Resources Control] Board and the Regional Water Quality Control Boards . . . have the authority and responsibility, pursuant to the State Porter-Cologne Act and the Federal Clean Water Act (as amended), to promulgate Water Quality Management (WQM) plans and water quality control plans (Basin Plans) which set forth objectives for restoring, enhancing, and maintaining the quality and beneficial uses of the State’s waters, to promulgate regulations and policies to attain these objectives, and to administer these regulations and policies to ensure that waste discharges, including those from silvicultural activities, do not degrade the quality and beneficial uses of the State’s waters.” (MAA, p. 1.)

The undisclosed discussions with HCP signatory agencies cited by Mr. Lucke may support CDF’s conclusion that effects on wildlife and fish values are insignificant. Still, the determination of whether watershed values could be significantly affected is, per the MAA, the province of the Regional Water Board.

Second, Mr. Lucke’s citation to the thresholds of significance applicable to this determination is incomplete. In addition to the thresholds he alludes to for “aquatic and terrestrial species,” the FEIS/EIR identifies thresholds for water quality:

“The effects on water quality will be evaluated based upon the likelihood that land management parameters would exceed thresholds of significance for different water quality objectives. The thresholds of significance for water quality objectives set forth by the [Regional Water Board] Basin Plan Several, but not all, of the water quality objectives would be affected by the management of PALCO lands. These include temperature, dissolved oxygen, water color, sediment, turbidity, floating material, settleable material, biostimulatory substances, pesticides/herbicides, and fecal coliform.

The Basin Plan states that when other factors result in the degradation of water quality beyond the levels or limits established by the NCRWQCB, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions or conditions, or circumstances resulting from management activities that may influence the quality of the waters of the state and may be reasonably controlled. The controllable management activities that affect the water quality objectives of concern include timber harvest methods, maintenance and construction of roads, burning, grazing, and herbicide application.”

Thus, as the above thresholds demonstrate, the appropriate focus for determining whether effects on watershed values are significant is the effects on water quality objectives and beneficial uses.

Third, based on the appropriate thresholds, the effects of the THPs on watershed values is significant. Applicable water quality objectives include suspended material, settleable material, and sediment. The Van Duzen watershed appears on the Clean Water Act section 303(d) list as sediment impaired. That means that on a watershed wide basis, the Van Duzen already does not meet water quality objectives for sediment. Any further sediment delivery due to timber harvesting activities would, therefore, exacerbate that noncompliance and would impede the recovery of the watershed.

Clearcutting, beyond other forms of silvicultural methods, increases sediment delivery. The Scientific Review Panel (SRP) has commented on harvest rate limitations in its review of the Forest Practice Rules (1999). The SRP recommends that the Board of Forestry consider whether a harvest limitation based on percent of watershed area is warranted and that that percentage would function as a red flag rather than a moratorium. The SRP stated that a likely value would range from 30% to 50% per decade, but would depend on numerous factors including geology, harvest prescriptions, past disturbance, etc. A review of all the plans approved and submitted since the SYP indicates that PALCO has proposed to harvest 12% of its ownership in the Van Duzen watershed in three years. If this rate continues, over 40% of the PALCO's ownership in this watershed will be harvested in a decade. It is interesting to note that, in terms of the three factors mentioned in the SRP's report, the Van Duzen watershed is highly susceptible to landsliding, the harvest prescriptions (clearcutting) are the most intensive harvest prescriptions and the watershed is already water quality impaired due to past disturbance. This would indicate that an appropriate rate of harvest for the watershed should be towards (or less than) the lower end of the range suggested by the SRP.

The University of California Committee on Cumulative Watershed Effects (UC CWE) has commented in their report that cumulative effects are not adequately addressed in the THP review process (2001). Furthermore, the UC CWE states, “the current SYP process will generally fall short of the mark in assessing cumulative effects.”

As shown by the above expert reports, the amount of timber harvesting corresponds to water quality impacts in the form of increased sedimentation, flooding and mass wasting. The rise in

clearcutting inherent in the THPs, therefore, could cause significant adverse impacts on watershed values.

The Basin Plan also contains an additional provision calling for the restriction of “controllable factors.” It specifically states: “[w]hen other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality.” Timber harvesting proposed in these THPs, which propose to harvest at an unsustainable rate as indicated by exceeding the SYP projections in the Van Duzen WAA, is a controllable factor that will cause further degradation of water quality.

The THPs Cannot Be Approved Because They Will Contribute to a Violation of Basin Plan Water Quality Objectives

The approval of the THPs would be inconsistent with the FPRs. FPR 898.2 requires that “[t]he Director shall disapprove a plan as not conforming to the rules of the Board if any one of the following conditions exist: [¶] . . . [¶] (h) Implementation of the plan as proposed would cause a violation of any requirement of an applicable water quality control plan adopted or approved by the State Water Resources Control Board.” The above discussion demonstrates that the approval of the THPs would contribute to existing violations of water quality objectives in the Van Duzen watershed. Thus, approval of the THPs will violate FPR 898.2

Conclusion

As explained above, the approval of the THPs is inconsistent with the FPRs. The Regional Water Board staff raised the need for a SYP amendment as a Forest Practices Rule violation with the submission of their Pre-Harvest Inspection report for THP 1-01-318 HUM on October 26, 2001.

Subsequently, a meeting apparently occurred among the agencies to discuss the issue, and to which our agency was not invited. We would have appreciated the opportunity to provide input and details as to our position in this matter, and we regret that we were unable to do so. Our Executive Officer has requested a meeting of the Liaison committee established under the Management Agency Agreement to address communication issues, including a better dispute resolution process. I believe if our agency had been allowed the opportunity to meet with the other agencies, we might have avoided the need for this non-concurrence. I believe it is always beneficial to allow the agency with a concern to discuss the details of the matter in a good faith attempt to resolve the issue.

The above recommendations and comments are provided pursuant to the statutory authority contained in the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), the Water Quality Control Plan for the North Coast Region (Basin Plan), and the Z’Berg Nejedly Forest Practice Act (California Public Resources Code section 1037.5).

We trust the information presented herein provides guidance that will be helpful in protecting the beneficial uses of waters of the State of California. Please include this letter in the official files for

THP 1-01-318 HUM, 1-01-345 HUM, and 1-01-363 HUM. If you have any questions, please contact Matthew Buffleben of my staff at (707) 576-2499.

Respectfully submitted,

Original signed by

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cc:

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References:

1. California Forest Practice Rules, dated 2001.
2. Timber Harvest Plans, 1-01-318 HUM, 1-01-345 HUM, and 1-01-363 HUM
3. North Coast Regional Water Quality Control Board, Water Quality Control Plan (Basin Plan), dated February 26, 1997.
4. North Coast Regional Water Quality Control Board. Pre-harvest inspection report for timber harvest plan 1-01-318 HUM, "Flanigan's Wake", dated October 26, 2001, 1-01-345 HUM, "Cummings 35", dated November 27, 2001 and 1-01-363 HUM, "Fox 29", dated November 28, 2001.
5. Scientific Review Panel. June 1999. *Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat*. Prepared for The Resources Agency of Californian and the National Marine Fisheries Service.
6. University of California Committee on Cumulative Watershed Effects. June 2001. *A Scientific Basis for the Prediction of Cumulative Watershed Effects*. University of California Wildland Resource Center Report No. 46
7. Dean Lucke. December 5, 2001 letter concerning THPs in the review process for the Van Duzen WAA

8. Management Agency Agreement between the Water Resources Control Board, the Board of Forestry, and the Department of Forestry and Fire Protection, State of California. 1988.