



California Regional Water Quality Control Board

North Coast Region

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February 4, 2003

William Snyder
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135 Ridgeway Avenue
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Subject: Non-concurrence with Second Review Team Chairman's Recommendation of Approval
for Timber Harvest Plan 1-02-258 HUM

Dear Mr. Snyder:

Second Review for Timber Harvest Plan 1-02-258 HUM (THP) was originally conducted on January 24, 2003, postponed, and completed on January 30, 2003. Representatives from the California Department of Forestry and Fire Protection (CDF), Humboldt County State Parks, and the Pacific Lumber Company (PALCO) were present for all or portions of both meetings, while the North Coast Regional Water Quality Control Board (Regional Water Board) staff participated by telephone.

The Regional Water Board staff disagrees with the second review team chairman's recommendation for approval because, among other things, the Regional Water Board staff pre-harvest inspection (PHI) recommendations were not included in this THP. Our concerns regarding this THP's role in meeting the goals of the Forest Practices Act and the requirements of PALCO's Sustained Yield Plan (SYP) is explained below.

This THP Cannot Be Approved Because it Will Contribute To a Violation of Basin Plan Water Quality Objectives

The approval of this THP would be inconsistent with the Forest Practice Rules (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: [9] . . . [9] (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 following discussion demonstrates that the approval of this THP would contribute to existing violations of water quality objectives in the Van Duzen watershed. Thus, approval of this THP will violate FPR 898.2.

California Environmental Protection Agency

For clarification, this THP proposes to violate Prohibition #1 of the Action Plan for Logging, Construction, and Associated Activities. The prohibition states:

The discharge of soil, slit, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

This plan proposes to discharge 27 cubic yards of sediment from the timber units and 150 cubic yards of sediment from roads (3 cubic yards per year for fifty years, which is the next time the clearcut stands will be harvested commercially). This amount should be considered a minimum because it assumes all mitigations will work perfectly, an assumption known to be false. Although sediment “savings” sites will reduce sediment inputs from other locations in the watershed, they do not prevent sediment from this THP from reaching the watercourse and therefore the sediment delivered from this plan adds to, in deleterious amounts, the cumulative impacts in the Van Duzen River.

CDF contends that the sediment production of harvest units is offset with appropriate sediment savings sites. However, the sediment savings calculation is inaccurate and misleading. The sediment production estimate is only for surface erosion from the timber harvest units and one year’s worth of erosion from the roads, and it ignores sediment delivery from known sources other than surface erosion as well as from the sediment savings site itself. Madej (2001) found that watercourse crossing removal and road decommissioning does contribute sediment to watercourses at an average of 50 m³ per site. As discovered during previous PHIs in the Van Duzen watershed, not all mitigations work perfectly (Regional Water Board PHI report for 1-01-387 HUM). Roadwork completed for recent THPs in the Hely Creek Planning Watershed was inadequate and greatly increased the sediment delivery, beyond that which was “saved” in those THPs. Furthermore, the sediment savings sites are unlikely to “save” the sediment during the same time frame in which the surface erosion will occur. This offsetting mitigation alone is not protective of water quality and is one reason why activity limitations (i.e., harvest rate), in conjunction with best management practices and offsetting mitigations, are necessary to protect the beneficial uses.

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.” Controllable factors include silvicultural, yarding, and site preparation methods; road construction, maintenance, and abandonment activities; and rate of harvest. The silvicultural method proposed in this plan, clearcutting, and the proposed rate of harvest by this method in excess of the SYP projections in the Van Duzen WAA are both controllable factors that will cause further degradation of water quality. This Basin Plan provision provides evidence that this THP violates the Basin Plan.

**It is Unwise to Approve the THP under Option C
To Avoid the Court Ordered Stay on Option B**

Considering the Regional Water Board staff concerns for this watershed for Option B (FPR 913.11(b)), PALCO's SYP, we believe it is inappropriate to approve this plan under Option C (FPR 913.11(c)). Regional Water Board staff concerns about the manner in which the SYP is being implemented in the Van Duzen watershed are listed below

**CDF Must Amend The SYP Before It Considers
Whether To Approve This THP**

Regional Water Board staff's PHI Recommendation #7 was not included in the review team chairman's recommendation for THP approval. It states:

“Prior to THP approval an amendment to the landowner's SYP shall be submitted to and approved by the CDF Director following the same procedures as for approving an SYP initially, per 14 CCR 1091.13.”

Just prior to second review, the plan submitter changed this plan from Option B to Option C. The timing of this change has not allowed Regional Water Board staff to analyze its full implications, nor has it allowed adequate time to request further information to make this plan compliant with Option C. In light of the Regional Water Board staff's ongoing disagreement with the recommendation for approval for plans in the Van Duzen watershed under the SYP, this letter reiterates the rationale for our position. As explained in detail below, this THP triggers the need to amend the SYP. Further, the approval of this THP, as presently constituted, would exacerbate noncompliance with water quality objectives in the Regional Water Board's water quality control plan and would therefore violate FPR 898.2 (h).

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:

“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. This THP 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 this THP does 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, this THP amounts to a substantial deviation under test.

Significant Change In Timber Operations

Regional Water Board staff previously asserted that this THP’s 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 (4 years into the SYP) have harvested 1,775 acres, 655 by clearcutting. Instead, approximately

4,289 acres have been approved for harvest, 2,220 by clearcutting (modified from THP 1-02-258 HUM). Those harvest rates significantly exceed the SYP projections, particularly for clearcutting. More fundamentally, approval of this THP would allow more clearcutting in the Van Duzen WAA than projected in the SYP for the entire ten year period. The approval of this THP, which proposes another 140 acres of clearcutting, would bring total clearcutting in the Van Duzen WAA to 2,360 acres. That amount exceeds the acreage planned for clearcutting in the SYP projections by 722 acres, or approximately 44%.¹

Thus, the approval of this THP would continue a trend away from the proportion of timber harvesting methodology required by the SYP. At this point in the SYP, PALCO has been approved to harvest 582 more acres by clearcutting than projected by the SYP, an exceedance of 36 percent. This THP would do more than exacerbate that trend. It 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 THPs that exceeded the clearcut acreage 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:

“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:

¹ Notably, there are additional PALCO THPs undergoing review that will exacerbate the disproportionate amount of clearcutting in the Van Duzen WAA. These THPs would add 175 acres of clearcutting, which, if approved, would bring the total clearcut area in the Van Duzen WAA to 2,535 acres. With that additional acreage, PALCO will have exceeded the clearcut area allowed by the SYP by 897 acres, or 55 percent.

“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. However, 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.

Mr. Lucke states “that the current level of harvest does not constitute a significant adverse effect to watershed or wild life values provided the measures of 6.11.2.1 of the HCP are complied with.” Section 6.11 of the HCP prescribes measures to conserve habitat diversity and structural

components. Section 6.11.2.1 describes minimal seral stage distributions for each hydrologic unit. Clearly, this section is not designed to protect watershed values and therefore it is not appropriate to use this section to determine significant effects on water quality.

Bill Snyder of CDF explained in a December 19, 2001 letter that “the triggering mechanism developed to deal with watershed impacts is linked to calculation of a Disturbance Index (DI) value... The DI is the threshold which the Department considers critical in terms of requiring changes in silviculture or yarding systems.” However, the DI is not a water quality objective, nor is it protective of the beneficial uses of water. The DI was tested to determine if the DI could assess watershed impairment by seeing if the DI was correlated with percent fines (Draft HCP/SYP). Percent fines is an important habitat indicator in which the percentage of fine grained sediments has been correlated with reduced salmonid embryo survival and fry emergence (Chapman, 1988; Reiser and White, 1988; Young et al., 1991). Therefore, percent fines is used as an indicator to determine the health of a watershed (US EPA, 1999). The DI correlation with percent fines <0.85 mm and <4.7 mm had a coefficient of determination (R^2) values of 0.01 and 0.006 respectively (Draft HCP/SYP). The very low R^2 values indicate a strong non-correlation between the DI and sediment impacts. In other words, the DI can not be used to determine significant adverse watershed impacts. Although minor changes were made to the DI in the approved HCP, these changes did not address the need for calibrating the DI so that it could be used as an indicator of sediment impacts. Nevertheless, once again, 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 this THP 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. Use of process based models (e.g. WEPP) or empirical models (e.g. universal soil loss equation) shows that clearcutting increases surface erosion compared to other silvicultural methods due to the loss of cover (Brady and Weil, 1999). Clearcutting also increases sediment delivery due to mass wasting. The Van Duzen TMDL (US EPA, 1999) indicated that there was an order of magnitude increase in sediment delivery from clearcuts when compared to partial cuts that occurred in the lower portion of the Van Duzen watershed basin. Furthermore, watershed analysis conducted for PALCO for the Van Duzen indicates that mass wasting from clearcuts resulted in approximately 2.8 times more sediment per acre delivered to streams than partial cut hillslopes (Tetra Tech, Inc, 2001). The rise in clearcutting inherent in this THP, therefore, could cause significant adverse impacts on watershed values.

In response to our non-concurrences for THPs in the Van Duzen WAA that exceeded the clearcut projections, Mr. Snyder acknowledged that there is the potential for clearcuts to deliver more

sediment to watercourses. But, Mr. Snyder noted various provisions of the Forest Practice Rules that limit the disturbance of even-aged management and other provisions that are intended to limit sediment delivery. Mr. Snyder noted that “the rules are designed to describe a set of best management practices which in conjunction with the THP review process will adequately deal with non-point sediment sources in compliance with the Basin Plan.” First, it should be noted that the FPRs have not been certified by the U.S. EPA as Best Management Practices because, in part, their effectiveness has not been tested and proven through water quality monitoring. Second, two recent reviews of the FPRs (Scientific Review Panel (SRP), 1999 and University of California Committee on Cumulative Watershed Effects (UC CWE), 2001) both criticize the rules for being inadequate in addressing cumulative effects, in part, because the rules do not address an appropriate activity level (i.e. rate of harvest). Furthermore, the California Senate Office of Research (2002) report states the rules fail to adequately address water quality and endangered species. The SYP is intended to limit activity levels (i.e. rate of harvest) to a sustainable level of harvest.

Mr. Snyder also cites other provisions of the HCP that are designed to reduce sediment delivery beyond the requirements of the FPRs. These include the avoidance of Mass Wasting Areas of Concern, enhanced riparian protection measures, additional limits on winter operations, sediment assessments, stormproofing of roads and landings, road maintenance, and wet weather road use restrictions. Similarly, the HCP requires instream effectiveness monitoring of the interim prescriptions. To date, PALCO has not conducted instream effectiveness monitoring that could demonstrate the effectiveness of the HCP interim prescriptions. Furthermore, sediment mitigations, as noted above, are inaccurate and misleading.

We anticipate that activities proposed under this THP will result in sediment discharges which violate the Basin Plan objectives for fine sediment. The high rate of harvest proposed within the Van Duzen River watershed at this time is likely to result in a significant cumulative adverse impact due to the sediment discharges from the numerous plans throughout the watershed conducted over a short period of time. We believe that a strategy to avoid and minimize further sediment discharges rather than to attempt to mitigate new sediment discharges is necessary in this watershed at this time. Therefore, we reiterate our recommendation to amend the SYP prior to THP approval.

In conclusion, the Regional Water Board staff acknowledge that the HCP has many prescriptions that are more protective than the FPRs. Sediment delivered under these practices will likely be less than that delivered under practices that would be allowed under the FPRs. However, the FPRs call for an amendment to the SYP when a THP proposes a substantial deviation from the SYP. The above arguments show that this THP proposes a substantial deviation. Amending the SYP would allow an opportunity to clarify the potential errors in SYP projections, evaluate the status of watershed improvements, allow for further comment and review, and provide additional mitigations. It is clear that the FPRs require this evaluation prior to approval of more THPs.

**CDF Must Require Further Information to Analyze
Cumulative Effects in the Hely Creek Watershed**

Since it appears that CDF intends to approve this plan under Option C, CDF must require further information prior to its determination that this plan will not contribute to significant environmental effects (FPRs section 898.2(c)). As noted above, Hely Creek watershed, as part of the 303(d) listed Van Duzen watershed, is sediment impaired. For the last four years, CDF has approved 22 plans and 1,422 acres in this watershed. Neither CDF, nor the plan submitter, has documented evidence that an impaired watershed can recover its Beneficial Uses under such a harvest scenario. Therefore, further information about watershed wide sediment discharge, restoration projects and monitoring must be collected and analyzed before CDF can determine that this plan will not contribute to significant environmental effects.

Considering the above discussions, should the recommendations provided herein remain unresolved at the time of the THP approval, Regional Water Board staff will recommend the revocation of the Waiver for Waste Discharge Requirements for this THP under the Regional Water Board's Approved Interim Waiver Policy Order R1-2002-0109.

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 1-02-258 HUM. If you have any questions, please feel free to contact me.

Respectfully submitted,

Original signed by

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cc:

Nathan Quarles, Division Chief
Susan Warner, Executive Officer
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