

Humboldt Watershed Council

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August 8, 2008

PETITION TO THE STATE WATER RESOURCES CONTROL BOARD

Humboldt Watershed Council,

Petitioners,

In the Matter Re: In the Matter Re: Petition for appeal and immediate stay of action by California Regional Water Quality Control Board – North Coast Region, on July 9, 2008, regarding approval of Monitoring and Reporting Program, Order R1-2008-0071, and any subsequent enrollment of THPs under the MRP.

**PETITION FOR
APPEAL AND
IMMEDIATE STAY OF
MONITORING AND
REPORTING ORDER
R1-2008-0071 AND
ANY SUBSEQUENT
THP ENROLLMENTS**

Summary

The Humboldt Watershed Council (HWC) hereby petitions for appeal and immediate stay of an improper action by the Executive Officer of the North Coast Regional Water Quality Control Board (NCRWQCB) to approve a Monitoring and Reporting Program (MRP) for Pacific Lumber Company timber operations in the Freshwater Creek and Elk River watersheds in Humboldt County, Order R1-2008-0071, and the subsequent enrollment of any THPs or individual THP units under that MRP.

This petition raised the following issues:

- A) The MRP contains no identifiable criteria, relying instead on the absolute discretion of staff.
- B) In signing the MRP, the Executive Officer assumed sweeping and absolute discretionary powers which are rightly reserved for the Board, and which can not legally be delegated to staff.
- C) The MRP improperly modifies and changes requirements set by the WWDR.

These issues are raised pursuant to and in compliance with Paragraph N of the MRP, which reads, in part:

"Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water 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 petition must be received by the State Water Board within 30 days of the date of this Order."

Petitioner HWC has filed this petition in a timely manner, and in accordance with the rules set forth in Section 13320 of the California Water Code and Title 23 of the California Code of Regulations, Section 2050.

(1) Name, address, telephone number and email address of the petitioner:

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(2) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition:

Petitioner specifically requests an immediate review of action by the Executive Officer of the North Coast Regional Water Quality Control Board on July 9, 2008, to approve a Monitoring and Reporting Program, Order R1-2008-0071, and subsequent enrollment of any THPs for Pacific Lumber Company timber operations in Freshwater Creek and Elk River watersheds, Humboldt County.

(3) The date on which the regional board acted or refused to act or on which the regional board was requested to act:

Monitoring and Reporting Program order R1-2008-0071 was approved by the Executive Officer of the North Coast Regional Water Quality Control Board on July 9, 2008 at the office of the NCRWQCB in Santa Rosa.

Petitioner understands that there are additional THP enrollments pending. Petitioner asks that these and any other enrollments be stayed pending resolution of this appeal.

(4) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.

A) The MRP contains no identifiable criteria, relying instead on the absolute discretion of staff.

Petitioner Humboldt Watershed Council has repeatedly provided comments to the Regional Board as to the necessity of having clear criteria by which staff, and the affected public, may determine whether THP units meet the requirements of the MRP. The MRP contains no identifiable criteria, other than the discretionary belief of staff that a given THP unit will not cause any harvest-related landsliding. Without any criteria for making such judgement, the discretionary thought process of staff is left a mystery.

- B) In signing the MRP, the Executive Officer assumed sweeping and absolute discretionary powers which are rightly reserved for the Board, and which can not legally be delegated to staff.

Lacking any clear criteria, the MRP can only rely upon the absolute discretion of staff to determine whether or not any particular unit shall be enrolled. This is an abuse of the role of staff, and puts staff in the position of determining and setting policy for the Board.

- C) The MRP improperly modifies and changes requirements set by the WWDR.

The pertinent requirement from the WWDR, page 5, is (emphasis added) –

For Timber Harvesting Plan Activities in excess of the harvest acreage associated with this receiving water limitation, the Regional Water Board adopts a zero discharge effluent standard for sediment from harvest-related landsliding. The Discharger will become eligible to exceed the harvest acreage associated with this receiving water limitation only upon receiving written approval by the Executive Officer of an enforceable monitoring program to prove that no discharge has occurred.

Further, the WWDR gives this definition on page 19 (emphasis added) –

“Timber Harvesting Plan Activities” or “THP Activities” means the cutting or removal of both timber or other solid wood forest products from timberland for commercial purposes, together with all the work incidental thereto, including but not limited to, construction, reconstruction, use and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, and site preparation.

This clearly states that the zero discharge effluent standard applies to all landslides that originate from Timber Harvesting Plan Activities and defines those activities as, essentially, all activities required to move timber from stump to mill.

However, the MRP, which is an inspection document rather than a requirements document, improperly attempts to change the WWDR’s requirements. Rather than the broad range of harvesting activities subject to the zero discharge effluent standard for sediment, the MRP attempts to improperly severely limit and recast the requirement as only applying to a very specific small geographic area as stated on page 2 of the MRP –

The objective of the program is to: a) provide an enforceable monitoring plan to ensure that no discharge has occurred from harvest-related landslides occurring in and downslope of the THP units enrolled as “Tier 2” areas of the WWDRs.

(Note that the Discharger refers to THP units enrolled for harvest under the WWDR by virtue of the MRP as “Tier 2” areas.)

In summary, the Executive Officer’s approval of MRP R1-2008-0071 was improper in that the MRP clearly does not meet the requirements imposed on it by the WWDR.

(6) The specific action by the state or regional board which petitioner requests:

Petitioner HWC is requesting that the State Water Board rescind the MRP and all current and pending enrollments under the MRP.

(7) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing:

The points and authorities to support the legal issues raised herein have all been discussed in detail under Section 4, above. Documents and transcripts referenced have all been footnoted. Applicable code sections which are violated by the actions of the Board and the EO include, but are not limited to:

- Government Code Section 65040.12
- Public Resources Code Section 72000
- Water Quality Control Plan For The North Coast Region (Basin Plan), June 28, 2001
- Multiple sections of the Porter-Cologne Clean Water Act, including, but not limited to Sections 13050(m), 13301, 13304, 13308, 13350, 13351, 13376, 13377, 13381, 13382, 13384, 13387
- Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.)
- SWRCB Water Quality Enforcement Policy, February 19, 2002

(8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner:

This petition has been sent concurrently to the following persons via E-Mail:

Theodore A. Cobb, Esq.
State Water Resources Control Board
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Executive Officer
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(9) A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these substantive issues or objections before the regional board.

The issues raised herein have been raised previously and repeatedly to the Regional Board in a Petition for Reconsideration, and a petition to the State Water Resources Control Board.

I hereby declare that the foregoing is true and correct to the best of my knowledge.

DATED: August 7, 2008 in Eureka, California.

Respectfully submitted,

Mark Lovelace
Humboldt Watershed Council