CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA

RESOLUTION NO. R3-2004-0079

Waiver of Waste Discharge Requirements

For

COWELL-SOUTH UNIT TIMBER HARVEST PLAN
(THP No. Pending)
Santa Cruz County

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

1. California Water Code 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 Board a report of the discharge ("report of waste discharge" or "ROWD") or other report containing such information and data as may be required by the Regional Board.

2. The Regional Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Board finds that a waiver of waste discharge requirements for a specific type of discharge is consistent with applicable water quality control plans and is in the public interest pursuant to California Water Code Section 13269.

3. The California Department of Forestry and Fire Protection has approved the above-referenced Timber Harvest Plan.

4. California Water Code Section 13269 provides that effective January 1, 2003, all waivers of waste discharge requirements must be conditional, may not exceed five years in duration, and may be terminated at any time by the Regional Board.

5. The above-referenced Timber Harvest Plan (Plan) was submitted by David Van Lennep, a Registered Professional Forester, and was granted discretionary approval by the California Department of Forestry and Fire Protection (CDF). The Secretary of the Resources Agency has certified that CDF's timber harvest plan regulatory program can function as a substitute for an Environmental Impact Report or a negative declaration. (CEQA Guidelines § 15251.) CDF considered all the potential significant environmental effects of the Plan and made a finding that the timber operations will not have a significant effect on the environment. Therefore the above-referenced Timber Harvest Plan serves as a substitute negative declaration for the proposed timber harvest. CDF consulted with Regional Board staff when it developed the Plan. The Regional Board has considered the Plan and has required the Plan proponent or their authorized representative (Discharger), as a condition of this waiver, to comply with all requirements of the Plan.

6. Relevant factors in determining whether a waiver is in the public interest include the following:

   - Whether the discharge is already regulated by another governmental entity;
   - Whether the discharger will observe reasonable practices to minimize the deleterious effects of the discharge;
   - Whether a feasible treatment method exists to control the pollutants in the discharge; and

- Whether conditionally waiving ROWDs and/or waste discharge requirements will adequately protect beneficial uses while allowing the Regional Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement.

The timber harvest plan 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; and
(iii) Requiring the Discharger to grant access to Regional Board staff to perform inspections.

Management practices are the most feasible treatment method to control the discharges. If the proposed timber harvest is conducted in the manner prescribed in the Plan, and the conditions of this Order, a waiver of the ROWD and 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.

7. The Regional Board conducted a public hearing on July 9, 2004 in Watsonville, California, and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED:

1. In accordance with CWC Section 13269, waste discharge requirements for the proposed timber harvest are 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 Timber Harvest Plan and with all applicable sections for the Forest Practice Rules;

   c. The Discharger shall not create a condition of pollution, contamination, or condition of nuisance, as defined by CWC Section 13050;

   d. The Discharger shall not discharge any waste not specifically regulated by the waivers described herein and shall not cause alteration in stream temperature which exceeds Basin Plan requirements. Waste specifically regulated under this waiver includes: earthen materials (including soil, silt, sand, clay, and rock), and organic materials (including slash, sawdust, and bark). Examples of waste not specifically regulated by this waiver include petroleum products, hazardous materials, or human wastes;

   e. The Discharger shall allow Regional 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 waiver conditions;

   f. 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 Chapter 1 Part 122.27;

   g. Pursuant to California Water Code Section 13267, the discharger shall comply with Monitoring and Reporting Program No. R3-2004-0079. Regional Board staff needs this information to verify

that a conditional waiver of waste discharge requirements is the appropriate regulatory tool for this Timber Harvest. Evidence that supports the need for this information was presented during Item 28 at the May 16, 2003 meeting of the Central Coast Regional Water Quality Control Board.

2. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.

3. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for this Plan: (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 Regional Board from administering enforcement remedies (including civil liability) pursuant to the CWC.

4. The Executive Officer or Regional Board may terminate the applicability of the Waiver described herein at any time when such termination is in the public interest and/or the timber harvest activities could adversely affect the quality or beneficial uses of the waters of the State.

5. This Waiver shall become effective on **July 9, 2004**, and shall expire on **July 1, 2009.**

6. As provided by CWC Section 13350(a), any person may be civilly liable if that person is in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.

7. Any person affected by this action of the Regional 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 petition must be received by the State Board within 30 days of the date of this Resolution. 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 Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 9, 2004.

Roger W. Briggs, Executive Officer