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4 June 2004

Mr. William R. Massey, Chairman
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, Ca. 95403

RE: ORDER NO. R1-2004-0030 General Waste Discharge Requirements For Discharges
Related To Timber Harvest Activities on Non-Federal Lands In The North Coast Region.

Dear Chairman Massey and Members of the Board:

The California Licensed Foresters Association (CLFA) appreciates this opportunity to provide some important input to the Board on this matter. CLFA is opposed to ORDER R1-2004-0030 as proposed. After reviewing the draft version of this Order, CLFA believes that the Waste Discharge Requirement (WDR) process is not appropriate for the vast majority of timber harvesting activities. The better alternative is a Categorical Waiver that provides coverage for the vast majority of timber harvesting activities while providing a relatively efficient and effective mechanism to address and protect water quality. Our comments are as follows:

Premise

The current Order appears to be based on the premise that current Forest Practices do not protect water quality. CLFA is not aware of any peer reviewed scientific research that has concluded that current practices result in significant adverse effects to water quality.

Section II-Structure of the Order and Application Procedures

From the available fee schedule, it appears that most THP's would be subject to annual fees of \$ 1,800 to \$8,650 per annum plus the initial filing fees. This alone would have a significant impact on small projects. This, in conjunction with the other significant costs associated with coverage under the proposed General WDRs, will produce a regulatory cost structure that will likely be infeasible for many landowners.

The current waiver process utilizes the existing THP/NTMP timelines and does not result in additional project approval delays. The application procedures associated with the WDR process are unclear concerning the length of time allowed for the Board to review and consider an application. Substantial time delays currently exist within the approval process, and harvest timing is often sensitive and limited by other constraints. Given the significant existing constraints on winter operations and seasonal operating restrictions to protect wildlife, it is possible that an entire operating season could be lost which would likely cause significant undue financial burden to a landowner. A ninety-day default waiting period mandated for the

application review process could have similar effect. This process needs to correspond to the timelines in the CEQA equivalent THP review process on which it relies. The unnecessary delay of fuel reduction, and similar non-discretionary permits could constitute a significant threat to health, safety and property.

Section III-General Waste Discharge Requirements

The proposed Erosion Control Plan (ECP) will require the generation of a document that, in some cases, would be comparable to the THP document itself. The ECP would essentially require the applicant to locate, assess, describe, quantify, map and potentially mitigate all natural and anthropogenic sources of sediment on the project.

This additional information will be generated at considerable cost, with no assurance that it will aid in the reduction in delivered sediment depending on the sources, and their controllability. It is foreseeable that a landowner practicing good forest management could have very little actual sediment potentially generated from the project, but will need to produce this expensive document to describe how these non-sources will not be a threat to water quality standards. It seems unreasonable to require landowners to pay for this type of analysis.

This type of analysis is one of the many functions of the Review Team Process, and is done for each THP/NTMP. Trained professionals review site-specific conditions and mitigations to determine threats to water quality and beneficial uses.

Section V-Termination of Coverage

Some of the items listed in A.5 have no logical connection to water quality standards, and therefore should not be conditions for allowing the Executive Officer to rescind the waiver. For example, the proximity of a project to Parks, has no bearing on water quality, or adherence to water quality standards. As written, applicability for the categorical waiver could be rescinded for any item that presents a “unique” condition in any watershed. For this very reason, the THP/NTMP review process is constructed to review and address site specific conditions.

Excessive Financial Burden

The proposed order will cause an excessive financial burden to landowners without adequate justification of need. Section 13267 of the California Water Code requires the Board justify the burden of cost for reports and /or monitoring and that those costs will have a reasonable relationship to the project. *§13267 CWC “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.”*

Coverage under this Order would pose a significant burden in the form of filing fees and annual fees and the generation of technical reports. This is well beyond the scope of reasonable expectations for a single project, and has questionable value for increasing the protections for water quality beyond that of the existing Forest Practice Rules. Current Forest Practices already assess threats to water quality from unstable areas, road construction and re-construction, maintenance, yarding methods and harvesting practices as well as numerous other site-specific issues that are addressed in the THP/NTMP document or in the review process.

The level of analysis and mitigation required would cause significant financial burden to landowners, making many projects infeasible. In such cases, the consequence of this could be

the shift away from forestland toward more alternative uses that pose truly significant risks to the quality and beneficial uses of water. There are competent and cost effective methods of monitoring and assessing harvest operations, to ensure compliance with Forest Practice Rules and Basin Plan Requirements.

Public Interest

The public interest, as it applies to this Board, is the protection of water quality and beneficial uses. We do not see that the public interest is necessarily being served by the proposed Order, which essentially doubles paperwork for review by North Coast Regional Water Quality Control Board (NCRWQCB) staff. This paperwork is costly for landowners to generate, and will reduce the time available to NCRWQCB staff for field reviews and inspections.

Duplication of Regulation

This proposed action will create a great deal of duplication of regulatory effort. Under the current process, NCRWQCB staff have full access to the THP/NTMP review process. This provides for the incorporation of site-specific mitigations and oversight by NCRWQCB staff. The current waiver can be withdrawn for harvest plans that pose a significant threat to water quality, and Waste Discharge Requirements imposed. NCRWQCB staff can also call upon their authority to compel CDF to not approve a THP with significant unresolved issues. In addition, Title 14 of the California Code of Regulations Section 898.2(h) requires that the Director of the California Department of Forestry and Fire Protection disapprove any plan (THP, NTMP, etc.) if “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 significant increase in cost to the public and the landowner do not appear necessary to achieve the stated goals of the proposed Order.

Summary

Our interpretation indicates that the proposed Order would have a profound detrimental impact on a large number of forest landowners. Timelines for operations would be increased, as would costs. There would also be a reduction in net revenues, which could reduce available funds for mitigations and infrastructure improvements.

The overall impact of the proposed Order could remove viability of small projects that produce only marginal financial returns but have other long-term benefits, or force timberland into alternative uses.

The current process allows for NCRWQCB staff input and oversight without undue increases in costs or timelines.

After reviewing the draft version of this Order, CLFA believes that the WDR process is not appropriate for the vast majority of timber harvesting activities. CLFA supports the continuation of a Categorical Waiver that provides coverage for the vast majority of timber harvesting activities while providing a relatively efficient and effective mechanism to address and protect water quality. This is the direction that the Lahontan and Central Valley Regional Water Quality Control Boards have taken with regards to timber harvesting activities and we encourage the NCRWQCB to go down a similar path by broadening coverage under the Waiver proposed in Order R1-2004-0016.

Very truly yours,

Chris Quirnbach, RPF #2623
President, CLFA

The California Licensed Foresters Association, with approximately 800 members, represents the common interests of Registered Professional Foresters in the State of California. The Association provides opportunities for continuing education and public outreach to its membership, which includes diverse professionals affiliated with public agencies, private timber companies, consultants and the academic community. Governed by an elected Board of Directors, CLFA was established in 1980 after the passage of the landmark California Professional Foresters Law.