



May 29, 2009

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Attn: Julia Dyer and Lisa McCann

Subject: Review of the Timber Waiver Program for the July 10 Meeting of the Regional Board: "Modifications to the Regulation of Timber Harvest Activities..."

Greetings Board and Staff:

The following is a quote from the May 18, 2009 letter to the Timber Harvest Program Interested Parties List: "Staff found that timber harvest operations are generally not or only minimally impacting water quality. Additionally, Water Board staff incurred budget cuts in 2008 requiring a reduction of staff efforts on lower priority activities."

This statement contains a remarkable conclusion effecting water quality regulation over the most important terrain in Santa Cruz County for water supply. Timber Production (TP) zoned land covers one quarter of the entire land area of the county. These areas are mountainous landscapes too steep for heavy housing development but supporting forests available for timber production. These TP parcels are often headwaters areas for the many stream systems that supply water for county residents and ecosystems.

Your conclusion that "timber harvest operations are generally not or only minimally impacting water quality" contradicts an extensive public record, simple informed logic about land disturbance, and your Regional Board's own San Lorenzo River sediment TMDL. This TMDL recommends increased inspections and regulation of forestry by your Board as a means to bring this river back to health. If Timber Harvest is not a substantial source of erosion, than how do you explain your own Agency record?

The issue of budget cuts is an entirely separate matter. If logging occurred throughout Region Three, instead of only on its northern end, your Board would never use the budget as justification for this change. Region One is also modifying its Timber Waiver, but it is not relegating it to such a tiny fraction of its staff time. Sedimentation is not as politically charged or as toxic a pollutant as perclorate, MTBE or pesticides.

Sedimentation is nonetheless a major issue for water quality in Santa Cruz County. Coupled with water diversion, it is demolishing our aquatic wildlife.

I have never argued that soil erosion is solely a problem of timber operations. It is the effect of numerous actions. If it were true that logging has no or only minimal impact, then by this same "logic", I would expect your agency to say the same for development, agriculture and every other source of sedimentation. At which point the Regional Board would be led to the conclusion that elevated soil erosion and sedimentation were actually not occurring at all, despite a huge record of evidence to the contrary, evidence that your agency has cited in many instances.

Geologic Conditions

It is widely recognized in every report describing conditions in the Santa Cruz Mountains that elevated rates of soil erosion are a major problem for wildlife and water quality. These are core beneficial uses. It is not hard to understand this problem if one understands the geology of this mountain range. The soils are sandy and uncohesive; the rock is structurally weak and highly fractured by tectonic movement. These mountains are comprised of young uplifted ocean sediments. Over-steepened slopes are common, leading to continuing land-sliding. I have personally witnessed incisions of a meter in depth into a streambed during a single two-week storm series. These conditions combine with periodically intense rainfall to produce high levels of sediment discharge. Rainfall rates of 10 inches or more within 24 hours re-occur every few years, especially on higher terrain. Human use of this terrain accelerates erosion through various mechanisms. These include road construction, repair and grading for any reason, vegetation removal or conversion for development, logging, mining, animal keeping and agriculture. Hydromodification in this instance applies to how road systems, grading, and other landform modifications will change water flow patterns. Water flows concentrate in locations where they never did before the landscape was altered. All road cuts do this including the logging roads that most people never see. The effect can be reduced by careful planning but it cannot be eliminated.

Your Regional Board's TMDL estimate of sediment discharge from the 138 square mile San Lorenzo River watershed is 168,000 tons per year. This sand and silt is coming from somewhere. In a heavy rainfall year this number can increase by ten fold. The extensive roads and tractor skid trails that crisscross logging sites are a substantial source of sediments to streams. Fine sediments can travel long distances during rain to reach stream channels. These sediments are mobilized by any surface disturbance and do not need an apparent landslide to cause a problem. Road segments often become drainage channels, in part because they collect both surface and sub-surface water moving down slope. Road cuts interrupt sub-surface flow and spill it out onto the road. The "hydrologic disconnection" sometimes discussed in the regulation of forestry roads actually means (in part) removing the road segment where it crosses a watercourse so that the road itself does not become a watercourse.

Of course using track mounted excavators and the other heavy equipment necessary to do this has its own erosion consequences and these roads will be re-established for the next logging entry.

After rain stops, sediment transport may leave only small traces in a landscape during a single year. This is especially true during a drought like the one we have experienced for the last three years. In my experience only very knowledgeable people notice these effects. This is the essence of a non-point source of water pollution. Roads will also leave obvious “traces” such as cut-bank landslides. These slides continue to occur for centuries after a road is first cut in steep terrain. Virtually every logging plan ever written discusses the necessity of repairing road systems. These continuous repairs would not be necessary if these roads were as stable as your agency seems to think they are.

The problems with roads occur everywhere and are certainly not limited to clear-cuts. On terrain too steep for roads, the sensitivity to erosion is so intense that timber extraction by helicopter or highline cable still causes soil erosion. This is a poorly understood problem that receives little attention.

There are fundamental reasons why logging is a problem for sediment pollution. When one considers the large area upon which logging occurs in this mountain range, and the huge number of logging roads, tractor trails (skid roads) etc., it is ridiculous to assert, “that timber harvest operations are generally not or only minimally impacting water quality”. It is likely that there have been improvements over the years in forest practice. One would certainly hope so. I have seen blatant neglect of the requirements to limit soil erosion, but trespass laws make filing a complaint very difficult.

General Conditional Waiver Enrollment

Regarding changes to waiver enrollment, your staff report includes this following statement.

“This process yields small amounts of water quality protection in proportion to the amount of time staff spends on the task of reviewing all plans. Therefore, to more efficiently use Water Board staff’s time, staff recommends that instead staff review only the highest priority plans as they are submitted to Cal Fire. Plans categorized by the Discharger as Tier IV by the Eligibility Criteria and / or plans located within water bodies that are listed on the Clean Water Acts Section 303(d) list or identified as impaired for sediment or temperature in an established TMDL will be considered highest priority.”

There are significant problems with this suggestion. It is very unlikely that any Discharger will voluntarily categorize their own THP or NTMP as Tier 4. The simplistic idea that a forester or landowner would voluntarily subject themselves to Tier 4 monitoring requirements is foolish. Another part of the staff report states that all the information in the MRP is in the logging plan (THP).

This is true, however the analysis can take a couple of hours at least. It is not easily apparent what risk tier is involved. Also some of this is still subjective and needs to be done by the Regulatory Agency not the Discharger. Errors in assessment, whether intentional or not, will not be subjected to sanction. This is a thoroughly unenforceable provision that undermines the already lax enforcement stance of your agency. Secondly the other criteria for review including 303(d) listing can represent many

more logging plans than the “3 to 5” loosely indicated in the following paragraph of the staff report. Currently there are about 18 logging plans in some stage of review or operation in the Coast Southern Sub-District. There appear to be an increasing number of logging plans in this area, as sites that were logged 10 to 14 years ago, during the logging boom of the 1990’s, have become available to log again. It is unrealistic to assume the “3 to 5” plans will cover the obligations of your Regional Board in any one year.

Monitoring and Reporting Program

Please remember that I and some associates including Jodi Frediani, Dennis Jackson, an attorney for the Ocean Conservancy, and others, spent up to two and a half years reviewing and commenting on this program. Two of us filed an appeal with the State Water Board challenging the final decision.

The proposal for changes to this program defines an extent of self-monitoring and self-enforcement that is astonishing. The following quote from your own staff letter seems to acknowledge this problem.

“A majority of Road Management Programs submitted to the Water Board do not include specific triggers for when the Dischargers should inspect the timber harvest areas during the years two through five monitoring period. Instead the Dischargers have asked Water Board staff to rely on the Discharger’s best professional judgment for visual inspection frequency. This means that a Discharger may not inspect the harvest area even once during a given monitoring year.”

It should be basic training for Regional Board employees, that regulated industries will nearly always resent the requirements imposed upon them by you. They will seek to evade or otherwise reject the requirements, especially when they are first imposed. This is human nature. I recall a news report from the 1980’s San Francisco Chronicle that described how Chevron Corporation was substituting containers of tap water for effluent samples from their oil refinery. Chevron was obligated to supply these samples to the San Francisco Bay Regional Board and they faked it according to this story. I remember that the fine imposed was too small to be an effective deterrent. This is history. Will this history be repeated forever? Is this concept of self-monitoring somehow sacrosanct despite all the evidence that it does not work?

I have reviewed substantial parts of the monitoring records your agency has collected. I appreciate the responsiveness of Julie Dyer in sending the requested information to me. This letter is not the place for a thorough analysis of this data but I would like to make a few comments. The photo monitoring records are quite interesting. Some foresters approached this requirement as if it was some kind of game and sent in images that had nothing to do with the Waiver program. Over time it seems that there was an improvement in the records. However none of the photo point records that I reviewed conform to the defined protocols.

It is not entirely clear whether the absence of necessary information is related to the transfer of these images to a digital record, but what I could see did not have adequate information to be useful. Photos are not properly identified or “shot” from the same

vantage point. The photo points themselves are not identified in most cases, so that when reviewing this record, there is often no way to determine what location the images show. The records are very incomplete even for plans that should be in the final monitoring year or closed out. The package of documents for this agenda item contains an oddly selective analysis of these records. It is as if the Regional Board had no real expectation of collecting legitimate photo monitoring records and just piled them up for safe keeping. The temperature and turbidity records are also confused in several cases, but generally not to the extent of the photos. This type of monitoring is really the job of trained scientists, not foresters, and certainly not foresters who have reason to make use of this program to make an essentially political point. This point seems to be "Don't bug us for this, it's a waste of time." From a reading of the proposed changes, apparently the Discharges have convinced your agency to comply, instead of them!

Your agency should exercise more discretion in using this "data" to draw important conclusions. I have just read a letter to you from the CA Dept. of Fish and Game and the National Marine Fisheries Service commenting specifically on the temperature monitoring. This wildlife agency joint letter should be fundamental to any conclusions you might reach regarding this program. The Regional Board is not a biological sciences agency.

Visual Monitoring

The following quote is from the staff report:

"The revised MRP replaces the need for the Discharger to develop a Road Management Program by specifying the visual inspection locations and frequency for years two through five. The Discharger, under the revised MRP, will be required to inspect all existing and newly constructed infrastructure."

Following:

"This revision provides the Dischargers with specific visual monitoring intervals, guarantees that the Dischargers will inspect the plans areas at least once a year, and alleviates Water Board staff from the intensive and time consuming requirement to review and provide written approval for individual Road Management Programs which have been consistently inadequate."

This form of visual monitoring is impossible to verify and hence completely discretionary in every practical sense. It takes self-monitoring to an extreme of implausibility while at the same time noting that the existing Road Management Plans have been "consistently inadequate"!

The staff report states that Regional Board staff have not found the time to provide written confirmation to Dischargers that they may proceed to year two monitoring but then asserts that the staff will "conduct such site inspections as necessary and appropriate". This statement is unconvincing from the point of view of the public and leaves one with the expectation that few such inspections will occur.

Photo Monitoring-Response

The following quote is from the staff report:

"Each of the 300 photos depicts optimal field conditions. This type of categorical requirement has never resulted in Water Board staff identifying failed management practices or field conditions that could indicate a negative impact to water quality."

As I stated above, some of these photo sets are clearly a joke, others are more legitimate but none of these records I reviewed included information necessary to identify their location and also determine the date of the photo. I could not tell if this information might be available elsewhere, but it would need to be included in the record I had access to for that record itself to have any use. This form of uncorroborated self-monitoring is thoroughly unreliable. It was not combined with a verification process. It is akin to expecting drivers to report their moving violations to the highway patrol. Your Regional Board is proposing to abandon "storm event based photo monitoring" and to replace it with protocols that are even more amorphous and unverifiable.

Water Column Monitoring

The discussion of turbidity monitoring in the staff report is bizarre. It uses circular logic to reach the conclusion that completely unverifiable visual monitoring is a preferable substitute. The Lompico Watershed Conservancy and its associates were always skeptical of the turbidity monitoring requirements adopted by the Board, in some cases for the same reasons described in the staff report (these comments are part of the record). This peculiar discussion ends with a statement that I take to mean that such monitoring is being terminated though the report does not specifically state this. Some clarity and directness would be appreciated.

Temperature Monitoring

The discussion of temperature monitoring misses major points about effects upon stream temperature. Various watersheds in the Santa Cruz Mountains have quite different stream temperature conditions. Watersheds like San Vicente or Scott Creek are entirely within the coastal areas and not subject to the heat effecting more inland watersheds. Nonetheless the joint NOAA-DFG letter points out water temperature problems for coho salmon in Scott Creek, a thoroughly coastal watershed. The upper watersheds of streams like Soquel Creek and the San Lorenzo River are many miles from the coast and can have air temperatures that are consistently warmer by 15F.

These very different areas should be evaluated differently. Secondly, temperature is usually not a problem in headwaters streams but becomes a problem in lower main-stems and lagoons. The cumulative effect of warmer water flowing down to these areas is the real problem, not the specific temperature at the headwaters creek location. In other words warming in the upper watershed may not be destructive there, but it affects conditions downstream where temperature does become a problem.

Priorities For the Regional Board

The events surrounding THP 1-08-159 SCR are useful to this evaluation. This THP was reviewed by CDF and the Review Team. It proposed tractor yarding and log hauling throughout the winter. Both Santa Cruz County and the CA Dept of Fish and Game issued non-concurrence letters. Extensive negotiations ensued and the matter was brought to the Santa Cruz County Board of Supervisors. Eventually the forester withdrew these winter operations. All this controversy was essentially a water quality dispute but the Regional Board was nowhere to be seen. Your agency does not participate in THP review. This is where the operational details of a logging plan are worked out. Something is fundamentally wrong when the Regional Board takes no part in these affairs. I have consistently argued that your agency needs to play its role as a member of the Review Team. Considering the current condition of the Timber Waiver Program this situation should be obvious.

Region One North Coast is the expert in the review of this type of permit. They collect fees to use in the administration of the program. Many logging plans in this region are selection though clear-cutting is still common. Region One is doing CEQA review of its updated waiver. I fail to understand how your agency came to the conclusion that it is unnecessary. A CEQA process would provide the format for a thorough discussion of this matter.

Solution

Your agency needs to participate effectively in CDF review. Monitoring itself is not the real goal and your program is disintegrating upon this dilemma. The goal is to prevent harm to water quality and to enforce the law. Harm in this case is a function of logging conduct. The decisions about how a logging plan will be carried out have already been made at the Review Team level before monitoring even takes place. The events of THP 1-08-159 make this obvious.

I watched as these monitoring protocols were worked out years ago. With the best of intentions, your agency attempted to establish monitoring that is inherently complex and difficult to administer. Your plan relied heavily upon a level of cooperation from the Industry that was unrealistic and when you did not get adequate cooperation with your monitoring plans, your response is to withdraw the requirements for this monitoring. This is not a solution if you have any intention of fulfilling your legal mandate.

Your Regional Board should base this program upon active inspections and monitoring by you as the regulatory agency, not upon an unenforced expectation of compliance. I recommend a fee schedule for permits. The costs to the Industry may really be the same. Self-monitoring, even if invalid, still takes time and money from the regulated industry. Why is the issue of fees so toxic? Inspections and enforcement are a much simpler, more reliable process.

Your agency is legally obligated to follow the CA Environmental Quality Act and conduct the analysis necessary under this law to evaluate the impact of your proposed changes. This matter has been difficult to resolve. The changes you have proposed merely reduce the involvement of your agency and define more self-regulation for the Timber Industry. These changes certainly do not protect water quality. I strongly object to both your conclusions and your proposed changes. **A completely new proposal is necessary to effectively administer this program.**

Regards,

Kevin Collins