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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions
for Review of Resolution No.
78-4, of the California Regional
Water Quality Control Board, North
Coast Region, by the Citizens
Committee to Save Our Public Lands,
et al. Files Nos. A-199, A-199(a)
and A-199(b).

Order No. WQ 78-10

BY THE BOARD:

The Louisiana Pacific Corporation (discharger) pro-
poses to construct certain access roads and conduct logging opera-
tions near Hoxie Crossing adjacent to the Middle Fork of the Eel
River in Trinity County. On April 12, 1978, the Citizens Committee
to Save Our Public Lands (Committee) filed a petition with the
State Water Resources Control Board (State Board) for review of
Resolution No. 78-4 (Resolution) of the California Regional Water
Quality Control Board, ^{North Coast Region} (Regional Board) adopted by the Regional
Board on April 10, 1978. The Resolution constitutes the Regional
Board's acceptance of the "technical report" which Regional Board
Order No. 76-174 (as amended) requires the discharger to submit
prior to certain road construction and logging. The effect of the
Resolution is to permit the discharger to proceed with the road
construction necessary to commence immediate logging operations.

78-10

as approved on February 10, 1976, and amended on March 30, 1978. We find, as the Regional Board staff did, that this documentation does not adequately explore the potential water quality impacts of the project or possible mitigation measures, but we recognize our legal obligation to review it. Strictly speaking, according to the Resources Agency's approval of the THP process under Section 21080.5 of CEQA, the THP itself is the functional equivalent of an EIR; however, we have considered some additional documentation which supplements the THP.

We come now to a discussion of the Regional Board's failure to make the findings required by Section 21081 of CEQA. Section 21081 provides as follows:

"Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof unless such public agency makes one, or more, of the following findings:

(a) Changes or alterations have been required in, or incorporated into, such project which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and such changes have been adopted by such other agency, or can and should be adopted by such other agency.

(c) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report."¹³/₁₃

13. It should be noted that this section was enacted in 1976 and became effective on January 1, 1977. Order No. 76-174 (the original waste discharge requirements) preceded and was not affected by this provision.

As stated above, while this section directs responsible agencies to review EIRs prior to approving projects, this section must, logically, also apply to responsible agencies acting on a project approved by a lead agency using the functional equivalent EIR process.

As indicated at the conclusion of the first contention, the discharger in having opted for a lesser degree of pre-road geology and engineering work must accept a correspondingly larger obligation of continued responsibility to correct problems which may develop upon completion of logging activities. The existing waste discharge requirements are directed, principally, at minimizing certain water quality impacts resulting from actual road building and logging operations. Any obligations to minimize water quality impacts after completion of logging operations are not addressed clearly in the existing waste discharge requirements. (Although Provision No. 6 of Order No. 76-174 does indicate that a violation of the current rules for forest practice relating to erosion control or water quality protection may be considered a threatened violation of requirements and these rules do impose obligations on the discharger to take certain measures that will limit the impacts on water quality following completion of logging operations)^{14/} The most direct provision, adopted by Regional Board, imposing continuing obligations on the discharger

14. See Article 5, Section 915, et seq. ("Erosion Control") and Article 6, Section 916, et seq. ("Stream and Lake Protection"), Title 14, Cal. Adm. Code, Division 2, Chapter 2.

following logging operations is contained in the fourth condition attached to the acceptance of the technical report in Resolution 78-4. That condition provides:

"The Corporation shall be responsible for an erosion control program that will include maintenance of appropriate drainage facilities, staged revegetation and long term maintenance until slopes disturbed by activities of the Corporation are stabilized."

The discharger has also recognized that it has an obligation to correct problems arising from and subsequent to its road building and logging activities which threaten water quality. In fact, the discharger's counsel has represented that his client was prepared to correct water quality problems resulting from their operations as long as 20 years after the current logging operations.^{15/} We conclude that the waste discharge requirements should address, more specifically, the discharger's obligation to prevent water quality problems resulting from its operations. Condition 4 of Resolution No. 78-4 should be amended by the addition of the following:

(a) Order No. 76-174 and this Resolution shall remain in full force and effect until all soils and slopes destabilized by road building and logging operations have restabilized.

(b) The erosion control program for which the discharger is responsible shall include but not be limited to the following:

(1) Install and maintain sediment collection facilities up-stream from the Henthorne Lakes to collect sedimentation from any area subjected to overland yarding.

(2) Install and maintain energy dissipation structures (or other energy dissipation mechanisms) for all culverts and man-made channels and on all skid trails.

15. See remark made by Mr. Dedekam, Transcript of the April 10, 1978, Regional Board Hearing at Rohnert Park City Hall, pp. 55-59.

(3) Divert channelized or other concentrated water flow away from cut or fill slopes adjacent to logging roads.

(4) Install and maintain energy dissipating and/or flow diversion mechanisms for drainage to landing sites and sediment collection of energy dissipating mechanisms for flow away from landing sites.

(5) Revegetate all areas disturbed as a result of logging activities.

(6) Stabilize any earthen slides caused by road building or timber harvesting.

(c) A plan for the location and design of sediment collection facilities shall be submitted by July 30, 1978, to the Regional Board Executive Officer. A plan showing all stabilization and erosion control work already completed and work to be accomplished shall be submitted to the Regional Board Executive Officer not later than August 30, 1978, and all such work shall be completed by October 15, 1978.

(d) By May 1 of each subsequent year (or as soon thereafter as weather permits) the Regional Board's staff shall inspect all areas tributary to the Henthorne Lakes Basin and the Middle Fork of the Eel River and the Executive Officer shall notify the discharger of any problems requiring corrective action. By June 30 of each year the discharger shall submit a plan to the Executive Officer detailing what actions shall be taken to correct the problems identified and setting forth a detailed time schedule for correcting the problems and the problems shall be corrected prior to October 15 of each year.

(e) All planning and implementation of stabilization and erosion control measures shall be under the supervision of a registered engineering geologist. Implementation of minor erosion control measures conforming with an overall plan approved by a registered engineering geologist need not be supervised in the field by the engineering geologist.

In addition to the above amendments to Condition 4 of Resolution 78-4, the following statement should be added to the end of the Resolution:

Failure of the discharger to comply with any of the above conditions may be viewed as a threatened violation of the waste discharge requirements.

IV. ADDITIONAL FINDINGS

In reviewing the waste discharge requirements prescribed for this project we have had occasion to review the monitoring requirements prescribed by the Regional Board and find that they are inadequate in that for winter time sampling they permit the discharger, at its option, to either sample the Middle Fork of the Eel River or submit aerial stereo pairs of photographs of the area involved taken just after it is winterized, twice during the rainy season and once at the end of the rainy season. In our opinion, both photographic monitoring and water samples are necessary in the wintertime when the major impacts of this project would normally be anticipated. We realize that access to the area may be difficult in the winter but we feel that every reasonable effort should be made by the company to determine the actual impact of this project on water quality. We therefore adopt as a part of this order a provision requiring the Regional Board Executive Officer to amend the monitoring requirements to provide that the discharger shall obtain water quality samples on a monthly basis. If access to the sampling points is not possible, the company should be required to submit a statement under penalty of perjury stating specifically what attempts were made to gain access to the sampling points and the reason why access could not be gained. Further the discharger should be required to provide aerial stereo pairs during any month that water quality samples are not obtained. Finally, the monitoring program should require the discharger to submit 35mm aerial photos just after the area is winterized, twice during the rainy season and once at the end of the rainy season.

Finally, our review of Order No. 76-174 and Resolution No. 78-4 indicates that certain conditions either required of the discharger or recommended to the discharger should be made a part of Order No. 76-174. In the first instance, the Department of Forestry attached special conditions that will aid in the protection of water quality to the discharger's THP. These conditions should be incorporated in Provision C.5 of Order No. 76-174. We conclude, therefore, that Provision C.5 should be amended as follows:

"A violation of the special conditions made a part of THP 1-76-62T to protect water quality and/or of current rules for forest practice relating to erosion control or water quality protection by the discharger pursuant to regulations administered by the Division of Forestry, California Department of Conservation, may be considered a threatened violation of Order No. 76-174." (new language underlined)

Secondly, the technical report submitted by the discharger on December 22, 1978 (and as amended on March 31, 1978) contained important technical recommendations regarding how the discharger should control soils disturbed by road building and logging. We believe that the adoption of Resolution No. 78-4 was predicated on the understanding that the recommendations would be implemented by the discharger and conclude that this understanding should be explicitly set forth in the Resolution. Accordingly, the following statement should be added to the Resolution:

The discharger shall comply with the technical recommendations for the control of soils disturbed by road building and logging contained in the technical report as submitted and amended to the Regional Board.

V. CONCLUSIONS

After review of the record and for the reasons heretofore expressed, we have reached the following conclusions:

1. Substantial evidence exists within the record to support the Regional Board's acceptance of the discharger's technical report by the adoption of Resolution 78-4.

2. The Regional Board fulfilled its obligation pursuant to Resolution No. 68-16. The record indicates the Regional Board adopted mitigation measures proposed by the discharger, the Regional Board staff and Board members. With the implementation of these mitigation measures and the additional measures imposed by this Order, the alterations permitted in water quality by Order No. 76-174 are not violative of Resolution 68-16.

3. Review of the record of the Regional Board hearing on April 10, 1978, does not indicate that Mr. Wilson was precluded from introducing evidence of the costs of helicopter logging. Resolution 78-4 prohibits the discharge of waste by road or skid trail construction on active headscarp area and the mudflow area above the Henthorne Lakes and further prohibits the discharge of waste by road or skid trail construction at any point beyond EL on drawing No. 2 accompanying the discharger's technical report.

4. While the Regional Board was not required to prepare an EIR prior to the adoption of Resolution 78-4, it did err in not reviewing the environmental documentation prepared by the Department of Forestry. Having reviewed the Department's environmental documentation and with the conditions we have added to Resolution 78-4, we find that the changes required in the project will mitigate the adverse environmental water quality effects,

to the extent possible, within the legal jurisdiction of the Regional Board and State Boards.

5. Resolution No. 78-4 should be amended by the addition of the conditions and provisions we have set forth on pages 24, 25, and 27.

6. The monitoring requirements for Order 76-174 should be revised as discussed herein.

7. Provision C.5 of Order No. 76-174 should be modified as discussed herein.

VI. ORDER

IT IS, THEREFORE, ORDERED that the adoption of Resolution No. 78-4 as modified by this order is upheld and that Resolution No. 78-4 is amended by the addition of the conditions set forth on pages 24, 25, and 27 of this Order. Provision C.5 of Order No. 76-174 is amended as set forth herein. Further the Executive Officer of the Regional Board shall revise the monitoring requirements for Order No. 76-174 in conformance with this Order.

Dated: May 18, 1978

/s/ John E. Bryson
John E. Bryson, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice-Chairman

/s/ W. W. Adams
W. W. Adams, Member

The Forestry regulations require the Department to transmit a copy of a "filed" THP (one which is complete) to the appropriate California Regional Water Quality Control Board.¹⁰ Upon receipt of THP 1-76-62T from the discharger, the Department conducted an on-site inspection before accepting the application for approval of the THP as "filed" on January 13, 1976. A copy of the THP as filed was transmitted to the Regional Board. While not a formal legal requirement, the Department established a review team process for evaluating filed THPs prior to approval or denial. In the case of THP 1-76-62T, the review team included representatives of the Department, the Department of Fish and Game and the Regional Board. Although neither the Department of Fish and Game nor the Regional Board concurred in the approval of the THP, on February 10, 1976, the Department approved the THP for the area affected by waste discharge requirement Order No. 76-174. The THP was processed in accordance with the Department's procedures which fulfill the same purposes as the preparation of an EIR. Notwithstanding the fact that the Department's review of the THP included evaluation of feasible alternatives or mitigation measures to lessen water quality impacts, the Regional Board staff recommended that the Regional Board adopt waste discharge requirements providing additional protection to water quality. On August 26, 1976, Order No. 76-174 was adopted and on May 26, 1977, Order No. 77-86 amending Order No. 76-174 was adopted. As indicated earlier, the Regional Board has acted on August 4, 1977, and on April 10, 1978, to

10. Then Section 1037.1 (now 1037.3), Title 14, California Administrative Code, Subchapter 4.1, Chapter 2, Div. 2, Article 4.

adopt Resolutions Nos. 77-10 and 78-4 to implement Prohibition B.4 of Order No. 77-86.

Assuming the adoption of Resolution No. 78-4 was a "project," the Regional Board was not required to prepare an EIR. Further, when adopting Orders Nos. 76-174 and 77-86, the Regional Board was not required to prepare an EIR. It is only a lead agency that is required to prepare an EIR under CEQA and the lead agency's environmental documents are the environmental documents for all responsible agencies.^{11/} In this matter, the Department was the lead agency and it adopted the THP pursuant to its process that is the functional equivalent of an EIR. Pursuant to Section 21002.1 (as amended) of CEQA, the Regional Board should act as a responsible agency. The section provides, in part:

"(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so.

"(c) In the event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, such project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

"(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a public agency which is functioning as a lead agency shall differ from that of a public agency which is functioning as a responsible agency. A public agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A public agency functioning as a responsible agency shall have responsibility for

11. Section 15064, Title 14, California Administrative Code, Chapter 3, Article 6.

considering only the effects of those activities involved in a project, which it is required by law to carry out or approve." (Emphasis added.)

Neither CEQA nor the Guidelines promulgated by the Resources Agency address the responsibility of a public agency where a lead agency has proceeded with the EIR functional equivalent process. We believe, however, that where a lead agency has utilized the functional equivalent process, it would be contrary to the legislative intent evidenced in CEQA for another public agency to prepare environmental documents or to itself go through a second functional equivalent process. We conclude that when issuing waste discharge requirements covering a THP approved by the Department using its functional equivalent process the Regional Board should act as a responsible agency pursuant to Section 21002.1.

The alternative approach; that is, the approach which would require a non-lead agency to assume the role of a lead agency once the original lead agency qualifies for functional equivalent status would have certain illogical results which we are sure the Legislature did not intend.

First, it could have the result of placing an agency with very minor approval authority over a project in the position of having to prepare a full-scale EIR if its process does not qualify for functional equivalent treatment. Therefore, whereas this minor responsible agency might have complied with CEQA by simply considering a lead agency's EIR, the fact that the lead agency uses the functional equivalent process would tend to

lengthen rather than shorten the approval period and make the approval process more, rather than less, complex.

On the other hand, if the responsible agency did decide to use the functional equivalent process itself after the lead agency had qualified for use of the process, the consideration which it appears the non-lead agency would have to give to the impacts of the project would be much broader than the consideration it would have to give were a full-scale EIR prepared by the lead agency. This is also an anomalous result. It occurs because Section 21080.5 of CEQA, which provides for the functional equivalent process requires consideration of a broad range of environmental factors; not just those factors within the jurisdiction of the agency using the functional equivalent. Among other things, Section 21080.5 requires that an agency using the process have regulations which:

"Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." (Emphasis added.)

The functional equivalent regulations further require that:

"(3) The plan or written documentation required by the [functional equivalent] regulatory program shall:

(i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact." (Emphasis added.)

In contrast, a responsible agency reviewing a lead agency's EIR need consider "only the effects of those activities

involved in a project, which it is required by law to carry out or approve." (CEQA Section 21002.1, cited above.)

In summary, a conclusion that a responsible agency becomes a lead agency when the original lead agency qualifies for a functional equivalent approval would result in the replacement of the EIR process with what would in many cases be a more complex and lengthy process, a result which in our view the Legislature did not intend.

On the other hand, we are also certain that the Legislature did not intend in creating the functional equivalent process that responsible agencies would escape the mandates of CEQA altogether when the lead agency qualified to use the process. CEQA Section 21080.5(c) states that "A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) of this division."

Clearly, the Legislature intended that the policy provisions of CEQA continue to apply to regulatory programs even where full-scale compliance with the provisions dealing with production of environmental documents was not required. The most reasonable method for accomplishing this with respect to responsible agencies appears to be for those agencies to treat the documentation prepared by the lead agency under a functional equivalent process in the same way as they would treat an EIR had an EIR been prepared. This means a responsible agency in this situation must review the documentation prepared by the lead agency, consider the effects of the activities involved in the project which it is required by law to approve (CEQA Section 21002.1(d)), mitigate or avoid the significant effects on the environment of a project it approves whenever it is feasible to

do so (CEQA Section 21002.1(b)), and make one or more of the findings required by Section 21081 of CEQA (set forth below).

Following this analogy one step further, a responsible agency which disagrees with the extent or accuracy of environmental documentation prepared by a lead agency in a functional equivalent program may exercise its option to challenge the adequacy of the written documentation in court under Section 21080.5(f) of CEQA.

In this case, the Regional Board staff did not concur in the adoption of the timber harvest plan by the Department but also did not decide to challenge approval of the plan. Nor did any of the petitioners in this case challenge that approval. The statutorily prescribed 30-day time period for such a challenge has long since passed.

Rather than challenging what it felt was an inadequate timber harvest plan in terms of water pollution control, the Regional Board proceeded to develop its own data regarding the potential impacts of the project in question on water quality. In doing so, the Regional Board plainly fulfilled its responsibility under Section 21002.1 to the extent that it has considered those effects of the proposed activity that it is required by law to regulate and it has adopted extensive mitigation measures.

However, there were some shortcomings in the Board's CEQA compliance in that (1) it is not clear that the Board itself (as opposed to its staff) considered the Department's CEQA

documentation^{12/}, (2) the Board did not comply with Section 21081 of CEQA which requires that a public agency approving a project make certain findings discussed more fully below and (3) the Board made a finding that the project involved was exempt from the requirements of CEQA under Section 15108 of the Resources Agency Regulations for Implementation of CEQA (the exemption for "Regulatory Actions for Protection of the Environment") even though the regulations clearly state that construction projects cannot be considered exempt under Section 15108.

In order to remedy the first of these shortcomings in the Regional Board's approval process, we have obtained and considered the timber harvest plan and other environmental documentation used by the Department in its approval process including: the Department of Fish and Game's preharvest inspection memorandum of January 22, 1976; the Division of Mines and Geology preharvest inspection memorandum of January 25, 1976; the Department of Forestry's memorandum explaining the reasons for recommending approval over objections of other review team members of January 30, 1976 and the response to significant environmental points raised during the evaluation process of February 17, 1976; and THP 2-76-62T

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12. Review of the Regional Board's files indicate that a copy of the THP was transmitted to the Board members prior to adopting Resolution 78-4, (see memo of March 13, 1978, from David C. Joseph to the Regional Board members). There is no indication in the record, however, that the Regional Board understood its obligation to review the THP as a part of the CEQA process.

Additional petitions were filed on April 19, 1978, by Mr. Richard Wilson and on April 20, 1978, a joint petition was filed by three petitioners: Clean Water Action, Friends of the River and California Trout (Allied Petitioners). On May 10, 1978, the Allied Petitioners filed an amended petition with the State Board.

I. RELATED PROCEEDINGS

On August 5, 1976, the Regional Board accepted the discharger's report of waste discharge as complete and on August 26, 1976, the Regional Board adopted Order No. 76-174 providing waste discharge requirements for the proposed operation. Responding to a petition by the Committee, on April 21, 1977, the State Board adopted Order No. WQ 77-9 remanding Order No. 76-174 to the Regional Board for consideration of additional information which was submitted as a part of the State Board's hearing, for consideration of further additional information which was to be submitted by the dischargers, for the delineation of geologically sensitive areas, and for inclusion of requirements to protect the North Fork of the Eel River.

Pursuant to Order No. WQ 77-9, the Regional Board on May 26, 1977, adopted Order No. 77-86 amending Order No. 76-174. Among other matters, Prohibition B.4 of Order No. 77-86 provided that technical reports delineating mudflow areas, headscarp areas and other geologically sensitive areas and prescribing engineering

designs and mitigation measures for operation in these areas must precede road construction: (1) across lands managed by the Bureau of Land Management (BLM); and (2) within the area to be logged.^{1/} The discharger's technical report regarding road construction across BLM land was submitted on July 19, 1977, and on August 4, 1977, the Regional Board adopted Resolution No. 77-10 accepting the discharger's technical report for road construction across BLM land and providing that the discharger would submit certain information to the Executive Officer for review and approval prior to actual road construction. On September 9, 1977, the Committee requested the State Board to review Resolution No. 77-10 and on December 15, 1977, the State Board adopted Order No. WQ 77-31. Finding that, while the delegation of certain review functions to the Executive Officer was not improper with respect to construction of the road across BLM land, Order No. WQ 77-31 concluded, nevertheless, that ". . . the Regional Board itself should further involve itself in the reviewing of proposed mitigation measures in the future regarding the remainder of this project . . ." (i.e., in the area which will actually be logged). On December 22, 1977, the discharger submitted its technical report regarding the area to be logged and on March 30, 1978, the discharger submitted an addendum thereto. On April 10, 1978, the Regional Board adopted Resolution No. 78-4 accepting the discharger's technical report for road construction within the area to be logged subject to certain conditions which will be more fully discussed later in this Order.

1. See page 6 for the complete language of Prohibition B.4.

II. BACKGROUND

The discharger has a renewable option to harvest timber on land owned by Richard Wilson. The Timber Harvest Plan (THP 1-76-62-T) was approved by the Division of Forestry on February 10, 1976, despite the nonconcurrence of the representatives of the California Department of Fish and Game and the Regional Board. The THP covers an area of approximately 2,600 acres of which about one-half is tributary to the Middle Fork of the Eel River.

The following findings contained in Order No. 76-174 characterize the physical setting and identify salient environmental considerations of this controversial project:

* * *

11. The proposed logging operation is adjacent to the Middle Fork Eel River in a mixed conifer forest of Douglas fir, White fir, Ponderosa pine, and Sugar pine along with smaller stands of hardwoods. A significant portion of the area proposed for logging or road construction is on steep slopes underlain by thin, highly erosive soils, with numerous active and dormant slumps, slides, and other types of earth movement. Average 24 hours rainfall in a storm

with a recurrence interval of 25 years is approximately 9.0 inches. The large scale harvesting of commercial timber and construction of roads in the unstable areas severely threaten to remove the cohesive force of tree roots and to destabilize the already unstable slopes. If the logging operation activates or accelerates further movement of the unstable slopes, then increased siltation of the Middle Fork Eel River and the Henthorne Lakes would be expected to occur, deleteriously affecting the beneficial uses of Henthorne Lakes and the Middle Fork Eel River.

- "12. The Middle Fork Eel River, which is adjacent to this logging operation, was designated for protection in 1972 in SB 197, the Wild and Scenic Rivers Act. This Act requires that the designated rivers and their immediate environment are to be preserved in their free-flowing state for the benefit and enjoyment of the people of the State of California (Section 5093.30).
- "13. The beneficial uses of the Middle Fork Eel River and its tributaries are:
- a. agricultural supply
 - b. industrial service supply
 - c. groundwater recharge
 - d. water contact recreation
 - e. noncontact water recreation
 - f. cold freshwater habitat
 - g. wildlife habitat
 - h. preservation of rare and endangered species
 - i. fish migration
 - j. fish spawning
- "14. Of particular importance is a unique summer steelhead population of the Middle Fork Eel River which presently accounts for approximately two-thirds of the State of California's extraordinary resource.
- "15. The beneficial uses of Henthorne Lakes include:
- a. water contact recreation
 - b. noncontact water recreation
 - c. cold freshwater habitat
 - d. wildlife habitat
- "16. This operation is within an extensive de facto wilderness area and within one-half mile of the Yolla Bolla-Middle Fork Eel River Wilderness Area. Castle Peaks, a roadless area, is one-quarter mile south of this operation."

As amended by Provision B.4 of Order No. 77-86, the waste discharge requirements contained in Order No. 76-174 include the following provision:

"The discharger shall not discharge any waste from the subject property until a complete technical report is submitted to and approved by the Regional Board at a public hearing, and any necessary changes to these waste discharge requirements are adopted. The technical report shall be prepared by a licensed engineering geologist and shall contain a topographical map of the areas covered by these requirements, drawn to a scale of 1" = 400' with a contour interval of 20 feet, and shall delineate mudflow areas, headscarp areas, and other geologically-sensitive areas which may result in surficial erosion or landsliding when disturbed by road construction or logging activities. The technical report shall also contain plot maps drawn to a scale of 1" = 50' with a contour interval of 10 feet which prescribe specific engineering design and mitigation measures for the railroad car stream crossings, the spring area above Henthorne Lakes, and any additional geologically-sensitive areas found by the consulting geologist while investigating the logging plan area. However, the part of this technical report regarding the road construction through Bureau of Land Management-managed land may be submitted and approved separately from the rest of the technical report."

In order to comply with this provision, the discharger submitted the technical report titled: "Geologic Appraisal of Henthorne Lakes Area" to the Regional Board on December 22, 1977. On March 15, 1978, the Regional Board staff, a State Board geologist, the discharger, and other interested persons, conducted a joint field inspection of the Henthorne Lakes area in order to assess the adequacy of the discharger's technical report. On April 10, 1978, the Regional Board held a special public hearing lasting some eight hours to receive and consider comment on the adequacy of the technical report. At the conclusion of the hearing, the Regional Board adopted the Resolution accepting the report subject to certain additional mitigating measures.

III. CONTENTIONS AND FINDINGS

The contentions of the petitioners and our findings relative thereto are as follows:

1. Contention: The Committee contends that by adopting the Resolution, the Regional Board has permitted the discharger to proceed with road building and logging operations in a manner which will result in violation of the Regional Board's waste discharge requirements contained in Order No. 76-174. More specifically, the Committee believes that Discharge Specification A.1 will be violated.^{2/} This requirement provides that the discharge of waste from the property shall not cause turbidity to be increased more than 20 percent above naturally occurring background levels. Mr. Wilson makes two related contentions; that is, (1) the discharger did not submit a complete technical report, and (2) prior road construction has resulted in violations of Discharge Specification A.1.

Findings: We do not concur with the Committee's and Mr. Wilson's contentions. The crux of this contention is the question of how much pre-road geological and engineering work must precede construction of a logging road in an area having unstable soil conditions, high precipitation and adjacent to a fishery having the last remaining summer steelhead populations of significance in the State. (It should be noted that in absolute

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2. Discharge Specification A.1 provides: "Discharge from the subject property shall not cause the turbidity of the Middle Fork Eel Rivers or its tributaries or Henthorne Lakes or its tributaries to be increased more than 20 percent above naturally occurring background levels."

numbers the population is very small.) After hearing and considering a large volume of technical and nontechnical information, the Regional Board concluded that the technical report (as amended on March 30, 1978) submitted by the discharger was sufficient for its purposes and satisfied the requirements of Prohibition B.4. The information considered by the Regional Board at its April 10, 1978, hearing included the technical report (as amended) submitted by the discharger, criticisms of the technical report by Doctors Donald Gray, Clyde Wahrhaftig and by Gil Torres, State Board geologist, and the Regional Board's staff report critiquing the record on this matter. Our review of the extensive record in the matter persuades us that there is substantial evidence in the record to support the Regional Board's judgment.

This conclusion is reached notwithstanding the fact there may have been incidental violations of Order No. 76-174 resulting from past road construction activities of the discharger. The violations do lend emphasis to the petitioners' concern with the discharger's proposal to further extend its roads into areas having unstable soils. However, it appears that the road plan developed by the discharger in its technical report and as approved by the Regional Board in Resolution No. 78-4 provides the best practicable control under the circumstances. Nevertheless, the violations illustrate the considerable importance of continued control efforts by the discharger following completion of all road building and logging activities in the area affected by Order No. 76-174. The discharger,

having opted for a lesser degree of pre-road construction geology and engineering work, must accept a corresponding larger obligation of continued responsibility to correct problems which may develop. We will address this concern in more detail at a subsequent point.

2. Contention: The Committee contends that the Regional Board is required by State Board Resolution No. 68-16 to amend Order No. 76-174 to preclude any waste discharge from the logging and road building activity or, in the alternative, find that degradation of the Middle Fork of the Eel River is "consistent with the maximum benefit to the people of the State."

Findings: Resolution No. 68-16 ("Statement of Policy with Respect to Maintaining High Quality Waters in California") is the State Board's nondegradation policy. The issue of compliance with the nondegradation policy was raised by the Committee in its petition to the State Board on September 6, 1977, challenging the propriety of the earlier resolution of the Regional Board (Resolution No. 77-10) accepting the discharger's technical report for the road crossing certain land under the control of the BLM. Responding to the same contention raised herein, the State Board in Order No. WQ 77-31 stated that the contention relates ". . . primarily to the appropriateness and propriety of the particular numerical criteria and prohibitions contained in the subject discharge requirements and not to the action of the Regional Board in adopting Resolution No. 77-10 allowing the discharger to proceed To the extent that the challenge . . . is to the original

adoption of requirements and not to the Board's action in subsequently adopting Resolution No. 77-10, the contentions are not timely (see Water Code Section 13320) and will not be addressed further in this Order." This language is equally applicable to the same contention raised in this petition.

Even if the contention regarding the nondegradation policy were timely, we conclude that the Regional Board has complied with the Committee's demand. The nondegradation policy provides, in part:

"Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies."

The nondegradation statement is incorporated in the Water Quality Objectives portion of the North Coast Basin Plan^{3/} as are other water quality objectives which are reflected in the waste discharge requirements, i.e., water quality objectives relating to suspended solids, settleable material, sediment and turbidity. While not using the identical language contained in the Water Quality Control Plan Report with respect to these water quality objectives, Order No. 76-174 contains numerous provisions implementing these objectives^{4/} and contains a finding that the requirements implement the Basin Plan^{5/}

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3. Water Quality Control Plan Report, North Coast Basin (1B), Chapter 4.
 4. See Order No. 76-174 Discharge Specifications A.1, 2, 5, 6, and Prohibition B.1 and 2.
 5. See Order No. 76-174, Finding No. 17.

Recognizing that Discharge Specification A.1 permits a 20 percent increase in turbidity above naturally-occurring background levels and Discharge Specification A.2 permits a 10 percent increase in suspended sediment above naturally-occurring background levels, the nondegradation policy is plainly at issue. Nevertheless, our review of the record leads us to conclude that the Regional Board fulfilled its obligations pursuant to the nondegradation policy. When considering the findings and requirements contained in Order No. 76-174 (as amended) and in Resolution 78-4 and the extensive hearings which have been held and record which has been developed on this matter, it is clear that the Regional Board decision to issue waste discharge requirements in this matter included the type of evaluations called for by the nondegradation policy.

Further, any failure of the Regional Board to make proper findings regarding the nondegradation policy may be cured by this Board's making the appropriate findings. The record in this case indicates that the Regional Board adopted mitigation measures proposed by the discharger, additional mitigation measures proposed by the Regional Board staff, and further mitigation measures suggested by Board members as a result of the Board's April 10, 1978 hearing. We find that with the implementation of the additional mitigation measures prescribed by this Order, the changes in water quality permitted by the Regional Board's requirements are not violative of the nondegradation policy.

3. Contention: Mr. Wilson also contends that the Regional Board should have amended its waste discharge requirements to prohibit any discharge of waste into the Henthorne Lakes Basin and to require that the entire Basin be helicopter logged and

requested a hearing in order to submit additional evidence regarding the costs of helicopter logging.

Findings: The Regional Board reviewed extensive evidence and testimony with respect to the discharger's proposed operation, adopted a finding that it had considered feasible alternatives for mitigation measures (Finding 8, Resolution 78-4) and adopted mitigation measures dealing specifically with the Henthorne Lakes area in Condition 2 of its Resolution 78-4. Condition 2 prohibits the discharge of waste by road or skid trail construction on the active headscarp area and the mudflow area above Henthorne Lakes and further prohibits the discharge of waste by road or skid trail construction at any point beyond point EL as designated on drawing No. 2 accompanying the discharger's technical report. This, in effect, means that the timber located in a substantial portion (roughly one-third) of the Henthorne Lakes Basin, including all of the steepest areas, must be yarded by helicopter. We find that the actions of the Regional Board in imposing these limitations were appropriate and proper and that further requirements for helicopter logging in this area are not appropriate.

With respect to his request for a further hearing, Mr. Wilson's petition alleges:

"Additional evidence is available that was not presented to the Regional Board consisting of proof that the costs of logging by helicopter is economically feasible and that the logging by helicopter would not create discharge or waste... . Further that the additional helicopter logging costs are justifiable with respect to the substantial decrease in soil erosion...."

Section 2050(b), Subchapter 6, Chapter 3, Title 23, California Administrative Code provides:

"(b) If petitioner requests a hearing for the purpose of presenting additional evidence, the petition shall include a statement that additional evidence is available that was not presented to the regional board. If evidence was not presented to the regional board the reason it was not presented shall be explained. A general statement of the nature of the evidence and of the facts to be proved shall also be included."

Mr. Wilson's request for a hearing does not meet the foregoing standards in that he offers no explanation for his failure to introduce this evidence before the Regional Board. Further, review of the record of the Regional hearing indicates that some evidence of the cost of helicopter logging was in fact presented by Mr. Wilson and that Mr. Wilson was not improperly excluded from presenting evidence to the Regional Board. While the Regional Board did interrupt Mr. Wilson and Mr. Dedekam (counsel for discharger) in a dispute regarding the costs of helicopter logging during a response to a Regional Board Member's question toward the end of the hearing, Mr. Wilson and others on his behalf had ample opportunity to make their views known to the Regional Board during the period set aside for Mr. Wilson's direct testimony earlier in the hearing. For these reasons Mr. Wilson's request for a further hearing by the State Board was not accepted.

4. Contention: The Committee and the Allied Petitioners contend that when adopting Resolution 78-4, the Regional Board failed to comply with the California Environmental Quality Control Act (CEQA).^{6/} The Committee assumes that the Regional Board is exempt from the necessity of preparing an

6. Section 21000, et seq., Public Resources Code.

Environmental Impact Report (EIR) or Negative Declaration pursuant to Section 13389, California Water Code, but contends that the Regional Board must consider feasible alternatives to the proposed project that will mitigate or avoid significant environmental effects.^{7/} The Allied Petitioners contend that the Regional Board did not consider an EIR or its functional equivalent prior to the adoption of Resolution 78-4.^{8/}

Findings: On January 6, 1976, the Secretary of the Resources Agency, Claire Dedrick, certified that the California Division of Forestry's (now Department) regulations for timber harvest operations met the requirements of Section 21080.5 of CEQA. In the judgment of the Secretary, the Department's approval of timber harvest plans (THPs) included review procedures that fulfilled the same purpose as the preparation of an EIR. In order to qualify for the alternate environmental process, an agency's rules and regulations must require the agency to consult with other agencies having legal jurisdiction with respect to the activity involved.^{9/}

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7. Section 13389, California Water Code, provides:
"Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) to Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto."
 8. See amended petition of Allied Petitioners filed May 10, 1978.
 9. Public Resources Code, Section 21080.5(d) (2) (iii).