

Clint E. Snyder
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
364 Knollcrest Drive, Suite 205
Redding, CA 96002

November 20, 2014

Re.: Tentative Order to Adopt Time Schedule Order, Collins Pine Company, Chester Sawmill, Waste Discharge Requirements Order R5-2009-0015 (NPDES Permit CA0004391) Chester, Plumas County

Dear Mr. Snyder:

This letter is submitted on behalf of Collins Pine Company ("Collins"). On 22 October 2014, the Central Valley Regional Water Quality Control Board ("Regional Board") released a tentative Time Schedule Order, Order R5-2014-XXXX ("TSO"), regarding Collins's Chester Sawmill and scheduled the public hearing regarding the adoption of the TSO on 4 or 5 December 2014. In addition to the testimony that may be presented at the hearing, this letter serves as Collins's comments regarding the TSO.

Collins hereby requests that the Regional Board grant the TSO retroactive to 24 September 2013, when Collins first made its request to enter into a time schedule order in pursuit of compliance with the Waste Discharge Requirements Order R5-2009-0015 ("WDR"). Collins has been actively pursuing a time schedule order from the Regional Board since 24 September 2013, much earlier than the 7 January 2014 date referenced in the TSO. (TSO, p. 2 ¶ 8.) The Water Code does not necessarily prohibit the retroactive application of a time schedule order. Therefore, Collins respectfully requests that the Regional Board grant the TSO based on the date Collins first made its request for additional time on 24 September 2013.

After Collins initial request to enter into a time schedule order to comply with the WDR on 24 September 2013, Collins has continued to engage in discussions with the Regional Board including its ongoing request for a time schedule order until notice of the December hearing was provided on 22 October 2014. Included in these discussions are three separate requests and justification for additional time to comply with the WDR, submitted to the Regional Board on 7 January 2014, 3 March 2014, and 16 June 2014.

These three separate requests included documentation that (1) Collins has been making diligent progress in adjusting its operations to comply with the requirements under the WDR

and (2) that the two year extension for compliance requested through a time schedule order is the shortest amount of time practicable to bring the discharge into compliance with the WDR. Under Water Code section 13385(j)(3)(C) subdivisions (i) and (ii)(II), these are the elements necessary to grant a time schedule order to a requesting party. Despite this showing, no time schedule order was pursued by the Regional Board.

On 8 October 2014, Collins was provided with a draft TSO. Collins had less than one week to respond to that draft. Despite the limited opportunity to review and respond to the draft TSO, Collins spoke with Regional Board staff and submitted written comments regarding the draft TSO. The comments Collins provided included the first date Collins sought a time schedule order, 23 September 2013.

The Regional Board issued notice that it would hold a public hearing to determine whether to adopt the TSO regarding Collins's compliance with the WDR on 22 October 2014. The TSO will not be adopted until the public hearing which is scheduled for 4 or 5 December 2014, well over a year from the time Collins first made the request to enter into a time schedule order with the Regional Board. During that time, Collins has been subject to several Notices of Violation ("NOV") of the WDR which have resulted in mandatory minimum penalties ("MMPs").

The TSO, once adopted, will operate as a permit shield, protecting Collins from continued NOVs. The Order will not be adopted until at least 4 or 5 December 2014, after the noticed public hearing is held; however, Collins has been and will continue to be subject to MMPs if it is found to exceed effluent and receiving water limitations under the WDR. The NOVs and resulting MMPs could have been avoided if the Regional Board had addressed Collins request for a time schedule order when it was first made on 24 September 2013 or if the Regional Board adopts the TSO retroactively to 24 September 2013.

The Regional Board's decision to delay entering into a time schedule order with Collins is counter to the purpose of the water quality monitoring system established in California under the Porter-Cologne Act ("Act"). "One purpose of the monitoring requirements is to avoid the necessity of lengthy ... negotiations at the time of enforcement." *City of Brentwood v. Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 723 (*Brentwood*). While *Brentwood* focuses on the interpretation of the portions of Water Code section 13385 that impose MMPs on entities that violate the Act, the decision to enter into a time schedule order is directly related to the MMP process. Time schedule orders provide entities that are seeking to comply with discharge requirements with a shield to NOVs while they pursue compliance.

Collins has been attempting to engage with the Regional Board to enter into a time schedule order to find a way to comply with the requirements under the WDR, not to avoid its

requirements. The purpose of MMPs is to provide an incentive for entities to comply with discharge requirements promptly as the "Clean Water Act [implemented in California by the Porter-Cologne Act] is a strict liability statute." *Brentwood*, 123 Cal.App.4th at 723. Collins has been attempting to comply with all requirements imposed through the WDR, but it has not been met with a willing regulatory partner in that process. The TSO ensures that Collins can focus all of its resources on complying with the requirements of the WDR in a timely manner while avoiding additional penalties in its efforts to achieve compliance. The purpose of the MMPs is not served where an entity is working toward compliance but requires more time in achieving that goal.

For these reasons, Collins respectfully requests that the Regional Board amend the TSO to establish a shield from all the NOV's and resulting MMPs that were issued after Collins' first contacted the Regional Board to establish a time schedule order on 24 September 2013, in addition to any new NOV that may be issued prior to adoption of the TSO.

Kind regards,

Churchwell **White** LLP



Barbara A. Brenner

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