CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

ORDER R1-2011-0011
~~Order R1-2010-0090~~

In the matter of:	)	
HUMBOLDT REDWOOD COMPANY, LLC	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER (PROPOSED)**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the North Coast Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff"), and the Humboldt Redwood Company, LLC (collectively "Parties") and is presented to the Regional Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

1. RECITALS

WHEREAS on April 2, 2004, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028 ("Cleanup Order No. R1-2004-0028") to Scotia Pacific Company LLC, Salmon Creek Corporation, and the Pacific Lumber Company (collectively referred to as "PALCO") requiring PALCO to assess, treat and monitor existing and threatened discharges of sediment to the South Fork and Mainstem Elk River watersheds from its timberland holdings in these watersheds.

WHEREAS on April 10, 2006, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2006-0046 ("Cleanup Order No. R1-2006-0046") to PALCO, requiring PALCO to assess, treat and monitor existing and threatened discharges of sediment to the Freshwater Creek watershed from its timberland holdings in this watershed.

WHEREAS on May 5, 2006, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2006-0055 ("Cleanup Order No. R1-2006-0055") to PALCO requiring PALCO to assess, treat and monitor existing and threatened discharges of sediment to the North Fork Elk River watershed from its timberland holdings in this watershed.

WHEREAS the Prosecution Staff alleges that PALCO failed to comply with Cleanup Order No. R1-2004-0028, Cleanup Order No. R1-2006-0046, and Cleanup Order No. R1-2006-0055 (together "the Cleanup Orders"). The specific alleged violations are described in Exhibit A, attached hereto;

WHEREAS on January 18, 2007, PALCO filed for Chapter 11 bankruptcy in Corpus Christi, Texas. The Regional Water Board timely filed a Proof of Claim with the bankruptcy court for potential liabilities associated with PALCO's failure to

comply with the Cleanup Orders. On July 8, 2008, the bankruptcy court issued its Judgment and Order confirming a reorganization plan proposed by Marathon Bank Structured Finance Fund L.L ("Marathon") and Mendocino Redwood Company, LLC ("MRC").

WHEREAS on July 30, 2008, MRC/Marathon took legal possession of the Scotia sawmill and approximately 210,000 acres of commercial timberlands operations in Humboldt County and renamed the new timber company, Humboldt Redwood Company, LLC ("HRC"). HRC is the entity that will conduct timber operations and other activities previously regulated by permits issued to PALCO.

WHEREAS HRC has committed to protect remaining old growth, to sharply reduce logging levels, and to ensure a heightened level of transparency in planning and watershed protection. The Prosecution Staff appreciates HRC's commitment to sustainable harvesting and to maintaining high standards of environmental stewardship. The Prosecution Team recognizes that HRC has only derivative liability for PALCO's acts. Nevertheless, HRC knowingly accepted this potential liability by way of the bankruptcy and the Prosecution Staff believes that enforcement is appropriate in order to send a consistent message to the regulated community that violations will not be tolerated.

WHEREAS the Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Exhibit A, except as provided in the Stipulated Order, and that this Stipulated Order is in the best interest of the public.

2. JURISDICTION

The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. SETTLEMENT AND DISPUTED CLAIMS

Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. Because HRC has only derivative liability for the alleged violations, this Order may not be used as evidence of a prior

enforcement action in any future actions by the State Water Board or by the Regional Water Board against HRC.

4. ADMINISTRATIVE CIVIL LIABILITY AND COSTS OF ENFORCEMENT

A. Total Civil Liability

Upon issuance of this Stipulated Order, HRC shall be liable for a total of THREE HUNDRED THIRTY THOUSAND DOLLARS ($330,000) in administrative civil liability, as set forth in paragraph 4.B below.

B. Payment and Costs

Within thirty (30) days of issuance of this Stipulated Order, HRC shall remit, by check, THREE HUNDRED THIRTY THOUSAND DOLLARS ($330,000) payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Payment shall be submitted to the State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Luis G. Rivera, Assistant Executive Officer, North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403-1072, and David Boyers, Staff Counsel III Supervisor, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

The Regional Water Board encourages the State Water Board to use this money, at its discretion, to fund or to supplement funding for a feasibility study related to the restoration of the lower Elk River.

5. MATTERS COVERED BY THIS STIPULATED ORDER

Upon adoption by the Regional Water Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against HRC as of the effective date of this Stipulated Order.

The Prosecution Staff recognizes that the violations alleged in paragraphs 49, 50, 64 and 65 of Exhibit A related to the inventory of sediment source sites in the Freshwater Creek and North Fork Elk River watersheds are continuing. It is the intent of the Prosecution Staff that this Stipulated Order will resolve any violation associated with the production of these sediment source inventories, in the past and into the future. The Prosecution Staff agrees to recommend to the Regional Water Board that it amend Cleanup Order No. R1-2006-0046 and Cleanup Order No. R1-2006-0055 to address the difficulties associated with producing complete sediment source inventories.

6. COVENANT NOT TO SUE

Upon the effective date of this Stipulated Order, HRC shall and does release, discharge and covenant not to sue or pursue and civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

7. PUBLIC NOTICE

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. HRC agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

8. PROCEDURE

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

9. WAIVERS

In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

10. APPEALS

HRC hereby waives it right to appeal this Stipulated Order to the State Water Board, a California Superior Court and/or any California appellate level court or any other judicial body.

11. EFFECT OF STIPULATED ORDER

Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

12. WATER BOARDS NOT LIABLE

Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by HRC, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by HRC, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

13. NO WAIVER OF RIGHT TO ENFORCE

The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated

Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.

14. REGULATORY CHANGES

Nothing in this Stipulated Order shall excuse HRC from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. AUTHORITY TO ENTER STIPULATED ORDER

Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

16. INTEGRATION

This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

17. MODIFICATION OF STIPULATED ORDER

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Water Board or its Executive Officer.

18. INTERPRETATION

This Stipulated Order shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

19. COUNTERTPART SIGNATURES

This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

20. INCORPORATION OF EXHIBITS

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

By: _____ Oct. 14, 2010
Luis G. Rivera, Assistant Executive Officer — Date
Regional Water Board Prosecution Staff

By: Michael E. Jani _____ 10/14/2010
Mike Jani, President — Date
Humboldt Redwood Company, LLC

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD FINDS THAT:

21. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

22. In adopting this Stipulated Order, the Regional Water Board has considered all the factors prescribed in Water Code section 13327. The Regional Water Board's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

23. Because the material terms of settlement in this matter were agreed to by the Parties prior to the May 20, 2010 effective date of the State Water Board's Water Quality Enforcement Policy (Policy), the Policy is not applicable to this Stipulated Order.

PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, **IT IS HEREBY ORDERED** ON BEHALF OF THE REGIONAL WATER BOARD.

_____ _____
Catherine Kuhlman — Date
Executive Officer

EXHIBIT A - ALLEGATIONS

PART I: Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028, Item 2(c) (Summary Report)

1. On April 2, 2004, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028 (Cleanup Order No. R1-2004-0028) to Scotia Pacific Company LLC, Salmon Creek Corporation, and the Pacific Lumber Company (Hereafter "Dischargers"), requiring Dischargers to assess, treat and monitor existing and threatened discharges of sediment to the South Fork and Mainstem Elk River watersheds from its timberland holdings in these watersheds.

2. Item 2(c) of Cleanup Order No. R1-2004-0028 requires the Dischargers to submit, among other things, a summary report and associated documentation to the Regional Water Board by **October 15, 2004** for treatment work conducted in 2004 on previously inventoried sediment source sites.

3. In a letter dated October 14, 2004, the Dischargers indicated that some sediment treatment work had been completed, but work was still being conducted. At the same time, the Dischargers requested an extension of the October 15, 2004 due date for the summary report required pursuant to Item 2(c) of Cleanup Order No. R1-2004-0028 to November 15, 2004. The Executive Officer did not grant the Dischargers' request for an extension of the October 15, 2004 deadline for submission of the summary report.

4. In a letter dated October 4, 2005, the Chief of the Regional Water Board's Timber Harvest Division issued a Notice of Violation (NOV) to Dischargers. The NOV stated, in part, that Dischargers were in violation of Cleanup Order No. R1-2004-0028 because a summary report of treatment activities conducted in 2004 had not been submitted.

5. On January 4, 2008, the Dischargers submitted a summary report in compliance with the requirements of Item 2(c) of Cleanup Order No. R1-2004-0028.

PART II: Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028, Item 3 (Sediment Inventory and Master Treatment Schedule)

6. Item 3(a) of Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028 (Cleanup Order No. R1-2004-0028) requires the Dischargers to submit, by **December 1, 2004**, a sediment source inventory and sediment reduction plan for the Dischargers' ownership in the South Fork and Mainstem Elk River watersheds.

7. Item 3(b) of Cleanup Order No. R1-2004-0028 requires the Discharger to submit, by **December 1, 2004**, a master treatment schedule for the Discharger's ownership in the South Fork and Mainstem Elk River watersheds.

8. On December 14, 2004, the Regional Water Board received documentation from the Dischargers that was intended to satisfy the requirements in Items 3(a) and 3(b) of Cleanup Order No. R1-2004-0028. The submittal was deficient for the following reasons:

   - The submittal did not contain a master treatment schedule;
   - The submittal was not fully compatible with the Sediment Source Inventory and Sediment Reduction Plan for the North Fork Elk River Watershed, Humboldt County, California ([PWA Report], July 1998.);
   - The submittal did not include adequate documentation associated with the investigation, assessment, and characterization of sediment sources; and
   - The submittal did not include a description of the areas or methods used to conduct the inventory.

9. On January 25, 2005, the Regional Water Board Executive Officer issued a Notice of Violation (NOV) to the Dischargers for failing to comply with Item 3 of Cleanup Order No. R1-2004-0028. The NOV informed the Dischargers that the failure to meet the deadlines in Cleanup Order No. R1-2004-0028 subjects the Dischargers to potential administrative civil penalties.

10. On October 4, 2005, the Chief of the Regional Water Board's Timber Harvest Division issued an NOV to the Dischargers for failure to comply with numerous provisions of Cleanup Order No. R1-2004-0028, including the continued failure to comply with Item 3.

11. In a letter dated December 8, 2005 the Dischargers requested that the due date for the sediment inventory and master treatment schedule be extended to March 1, 2006.

12. In a letter dated December 21, 2005, Regional Water Board Staff granted the Discharger's request to extend the due date for the sediment inventory required under item 3(a) to March 1, 2006. The letter stated, "be aware that this date will be a final due date by which we expect a complete inventory as specified under the provisions of the Order."

13. Regional Water Board Staff extended the deadline for submission of the master treatment schedule required under item 3(b) to March 15, 2006.

14. On February 28, 2006, the Dischargers submitted information related to a landslide inventory specific to the South Fork Elk River and planned logging and road work across their entire ownership. In the cover letter, the Dischargers indicate the sediment inventory information would not be completed by March 1, but rather the end of March 2006. No extension request was made by the Dischargers nor was any extension to the already extended due dates given by the Regional Water Board.

15. The Dischargers failed to meet the extended March 1, 2006 deadline for the submission of a complete sediment source inventory and sediment reduction plan.

16. In a letter dated March 10, 2006, Regional Water Board staff notified the Dischargers of their failure to submit a complete and adequate sediment inventory by March 1, 2006.

17. Dischargers failed to meet the extended March 15, 2006 deadline for the submission of a complete master treatment schedule.

18. On March 21, 2006, the Dischargers submitted a letter requesting an extension to the March 2006 deadlines. The letter states, in part, that the Dischargers anticipated having a complete sediment source inventory for submittal by May 15, 2006 and the master treatment schedule by June 15, 2006.

19. In a letter dated April 10, 2006, the Regional Water Board Executive Officer denied the Discharger's request for extensions described above in Paragraph 22.

20. On May 15, 2006, the Dischargers submitted a sediment inventory titled as "preliminary data" with a caveat that quality assurance work was still needed to make it final. This submittal was not offered as, and was not sufficient to constitute, a complete sediment inventory.

This submittal was incomplete and did not meet the requirements of Cleanup Order No. R1-2004-0028 as these data failed to provide all the information required. Specifically, this submittal did not contain a complete list of known sediment sites, a sediment reduction plan, or a scaled map.

21. On November 27, 2006, Dischargers submitted an inventory of known sediment sources that are feasible to treat, a master treatment schedule and a sediment reduction plan. The submittal included sufficient information to meet the requirements of Items 3(a) and 3(b).

PART III: Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028, Items #4(c) and 5 (Monitoring Plan and Documentation)

22. Items 4 and 5 of Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2004-0028 (Cleanup Order No. R1-2004-0028) require the Dischargers to treat controllable sediment sources previously inventoried by the Dischargers in the South Fork and Mainstem Elk River Watersheds, and to, among other things, submit a monitoring plan and associated documentation and monitoring reports to the Regional Water Board by **October 15**, on an annual basis.

23. In letter dated October 5, 2005, the Dischargers requested an extension of the October 15, 2005 due date for the monitoring plan.

24. In letter dated October 7, 2006, the senior of the Regional Water Board's Humboldt Bay/Eel River timber harvest unit granted the Dischargers' extension request. The letter stated that "a complete and adequate monitoring plan adhering to the provision of Order Items 4(c) and 5 shall be submitted no later than November 1, 2005."

25. On October 24, 2005, the Dischargers submitted a draft monitoring plan, which contained most of the required information. However, the component for post-erosion monitoring was not included.

26. On October 31, 2005, Regional Water Board staff extended the November 1, 2005 deadline for submittal of a complete and adequate monitoring plan to November 7, 2005.

27. On November 7, 2005, the Dischargers submitted another monitoring plan. This plan was inadequate because the wet weather inspection sampling schedule language did not include an enforceable sampling schedule. In addition, a protocol for estimating post-treatment discharge was not included.

28. In letter dated November 29, 2005, the Senior of the Regional Water Board's Special Projects unit (formally the Humboldt Bay/Eel River timber harvest unit) issued a NOV to the Dischargers for failure to submit a complete monitoring and reporting plan and associated documents by the extended due date November 7, 2005. The NOV states a complete plan including all provisions required by the Order must be submitted by December 7, 2005.

29. On December 5, 2005, the Discharger submitted a draft protocol for conducting void measurements. However, a complete and final protocol was not submitted by December 7, 2005.

30. On December 16, 2005, the Chief of the Regional Water Board's timber Division issued a third NOV to Dischargers for failure to submit complete and adequate documents related to Order's monitoring and reporting requirements.

31. On April 26, 2006 Regional Water Board staff received another monitoring plan submission. The monitoring plan contained unacceptable inconsistencies, including, but not limited to, the type of monitoring to be conducted at which sites, reporting content and due dates, and still contained an unenforceable sampling schedule. Several revisions to the associated Watershed Operating Protocols (WOPs) were also necessary.

32. In a letter dated May 23, 2006, the Regional Water Board Executive Officer stated the April 26, 206 monitoring plan is approvable with the stipulation that the inconsistencies listed, in part, in Finding 35 be adequately addressed. The letter documents numerous changes necessary to the monitoring plan to rectify the inconsistencies in the plan and associated Watershed Operating Protocols (WOPs.) The letter also specifically states language for an acceptable sampling schedule.

33. On June 15, 2006, Dischargers resubmitted the 2005 monitoring plan and associated documents.

34. In a letter dated July 17, 2006, the Regional Water Board Executive Officer approved the June 15, 2006 monitoring plan with clarification on the approved monitoring sampling schedule.

35. In the final, approved monitoring plan, Dischargers proposed the following due dates for submission of monitoring reports:

a. Quarterly reports due on January 15, April 15, and July 15, 2006;
b. Annual report due on October 1, 2006.

These reporting dates are final and enforceable deadlines of Cleanup Order R1-2004-0028, as provided in the final sentence of Item 5, which states, "The Discharger shall implement monitoring and reporting activities according to the approved QAPPs and SOPs."

36. On February 10, 2006, the Discharger submitted the January 15, 2006 quarterly report, 24 days late. In this report, Discharger reported no monitoring results as no monitoring was conducted.

37. On June 15, 2006, the Discharger submitted the April 15, 2006 quarterly report, 59 days late.

PART IV: Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2006-0046, Item 4 (Sediment Inventory and Master Treatment Schedule)

38. On April 10, 2006, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2006-0046 (Cleanup Order No. R1-2006-0046) to the Pacific Lumber Company, on behalf of the Dischargers, requiring Dischargers to assess, treat and monitor existing and threatened discharges of sediment to the Freshwater Creek watershed from its timberland holdings in this watershed.

39. On May 4, 2006 and February 2, 2007, the Regional Water Board Executive Officer issued corrected versions of Order No. R1-2006-0046 correcting typographical errors related to Item numbering and Item references. Due dates and required technical documents did not change from either correction.

40. Item 4(a) of Cleanup Order No. R1-2006-0046 requires the Dischargers to submit, by **November 15, 2006,** a sediment source inventory and sediment reduction plan for the Dischargers' ownership in the Freshwater Creek watershed.

41. Item 4(b) of Cleanup Order No. R1-2006-0046 requires the Dischargers to submit, by **November 15, 2006**, a master treatment schedule for the Dischargers' ownership in the Freshwater watershed.

42. In a letter dated October 18, 2006, the Dischargers indicated that they were on track to submit the sediment source inventory, sediment reduction plan, and master treatment schedule, as required under Items 4(a) and 4(b) of Cleanup Order No. R1-2006-0046, with one exception; that "a portion of the sediment source inventory specifically

related to skid trails, gullies and crossings not related to roads will not be complete." Dischargers did not propose a date by which the data would be submitted, although their letter did state that the data would be integrated in early 2007.

Also in this letter, the Dischargers stated they would submit on November 15, 2006, the "specific methodology and locations of where we are going to inventory for skid trials, gullies, and crossing not related to roads as well as the exact date when this information will be integrated into the sediment source inventory."

The October 18, 2006 letter, through its subject line, "CAO R1-2006-0046 Request for extension on Sediment Inventory" appeared to request an extension of time to submit that portion of the sediment inventory specifically related to skid trails, gullies and crossings not related to roads. No extension of time was granted by the Regional Water Board Executive Officer.

43. On November 15, 2006, the Regional Water Board received documentation from the Dischargers in response to Items 4(a) and 4(b) of Cleanup Order No. R1-2006-0046. The submittal was deficient with respect to Item 4(a) as it did not contain information on sediment sources associated with skid trails, gullies, other non-road related stream crossings, surface erosion and hillslope landslides. The submittal was also deficient with respect to Item 4(b), since Cleanup Order No. R1-2006-0046 requires that the master treatment schedule be based on a complete inventory. The master treatment schedule submitted by the Dischargers was based on the deficient inventory.

44. In a letter dated December 20, 2006, the Regional Water Board Executive Officer expressly denied the Dischargers' request to extend the due date for the sediment inventory. The letter cited the Dischargers' failure to begin the necessary data collection in a timely fashion as not being reasonable grounds for granting an extension of time. The letter also specifically warned that failure to comply with Order requirements may result in administrative civil liabilities for each day of violation.

45. On February 23, 2007, the Regional Water Board Executive Officer issued a Notice of Violation to the Dischargers for violations associated with Item 4(b) of Cleanup Order No. R1-2006-0046. Specifically, the letter noted that a complete and adequate master treatment schedule was dependent on there first being a complete and adequate sediment inventory. The NOV also specifically warned that failure to comply with Order requirements may result in administrative civil liabilities for each day of violation.

46. On March 16, 2007, the Pacific Lumber Company submitted, on behalf of the Dischargers, a "Skid Trail Sediment Source Assessment Project" Report (Report) to the Regional Water Board. The Report included an inventory of legacy skid trail sediment sources within two 160 acre units in the Freshwater Creek watershed and an evaluation of the erosion characteristics and impact of those sources. The Report was not a complete inventory of the skid trail sediment sources in the Freshwater Creek watershed.

47. On June 28, 2007, the Pacific Lumber Company submitted, on behalf of the Dischargers, a landslide treatment plan for CAOs R1-2004-0028, R1-2006-0046, R1-2006-0055. The submittal did provide site specific treatments for individual sites, however, all information associated with the investigation, assessment and characterization of sediment sources as required by Item 4(a)(iii) including maps, aerial photos, and field notes was not included in the submittal. The inadequacies were discussed with the Dischargers during a meeting on July 2, 2007.

48. On July 12, 2007, the Dischargers submitted a Proposed Skid Trail Sediment Source Inventory and Treatment Plan for identifying and treating skid trail related sediment sources within their Freshwater Creek landholdings. The submittal is inadequate to meet Order requirements as it lacks sufficient detail as to when and where skid trail related sources will be inventoried and treated in a time frame the ensures the impaired beneficial uses of water are protected from discharges associated with these sediment sources.

49. To date, the Dischargers have failed to submit a complete inventory of sediment source sites in the Freshwater River watershed, as required by item 4(a) of Cleanup Order No. R1-2006-0046. Specifically, the inventories and related documents submitted to date do not include (1) a complete inventory of skid trail related sources, and (2) a complete inventory of surface erosion sediment sources.

50. To date, the Dischargers have failed to submit a complete master treatment schedule for all sediment discharge sites since Cleanup Order No. R1-2006-0046 requires that the master treatment schedule be based on a complete inventory, which has not yet been submitted.

PART V: <u>Cleanup and Abatement and Requirement for Technical Reports Order No. R1-2006-0055, Item 4 (Sediment Inventory and Master Treatment Schedule)</u>

51. On May 5, 2006, the Regional Water Board Executive Officer issued Cleanup and Abatement and Requirement for Technical Reports Order

No. R1-2006-0055 (Cleanup Order No. R1-2006-0055) to the Pacific Lumber Company, on behalf of the Dischargers requiring Dischargers to assess, treat and monitor existing and threatened discharges of sediment to the North Fork Elk River watershed from its timberland holdings in this watershed.

52. On February 2, 2007, the Regional Water Board Executive Officer issued corrected versions of Order No. R1-2006-0055 correcting typographical errors related to Item numbering and Item references. Due dates and required technical documents did not change from either correction.

53. Item 4(a) of Cleanup Order No. R1-2006-0055 requires the Discharger to submit, by **December 13, 2006** a sediment source inventory and sediment reduction plan for the Discharger's ownership in the North Fork Elk River watershed.

54. Item 4(b) of Cleanup Order No. R1-2006-0055 requires the Discharger to submit, by **December 13, 2006**, a master treatment schedule for the Discharger's ownership in the North Fork Elk River watershed.

55. In a letter dated October 18, 2006, the Dischargers indicated that they were on track to submit the sediment source inventory, sediment reduction plan, and master treatment schedule, as required under Items 4(a) and 4(b) of Cleanup Order No. R1-2006-0055, with one exception; that "a portion of the sediment source inventory specifically related to skid trails, gullies and crossings not related to roads will not be complete." Dischargers did not propose a date by which the data would be submitted, although their letter did state that the data would be integrated in early 2007.

Also in this letter, the Discharger states they would submit on December 13, 2006, the "specific methodology and locations of where we are going to inventory for skid trials, gullies, and crossing not related to roads as well as the exact date when this information will be integrated into the sediment source inventory."

The October 18, 2006 letter, through its subject line, "CAO R1-2006-0055 Request for extension on Sediment Inventory" appeared to request an extension of time to submit that portion of the sediment inventory specifically related to skid trails, gullies and crossings not related to roads. No extension of time was granted by the Regional Water Board Executive Officer.

56. On December 13, 2006, the Regional Water Board received documentation from the Dischargers in response to Items 4(a) and 4(b)

of Cleanup Order No. R1-2006-0055. The submittal was deficient with respect to Item 4(a) as it did not contain information on sediment sources associated with skid trails, gullies, other non-road related stream crossings, surface erosion and hillslope landslides. The submittal was also deficient with respect to Item 4(b), since Cleanup Order No. R1-2006-0055 requires that the master treatment schedule be based on a complete inventory. The master treatment schedule submitted by the Dischargers was based on the deficient inventory.

57. In a letter dated December 20, 2006, the Regional Water Board Executive Officer expressly denied the Discharger's request to extend the due date for the sediment inventory. The letter cited the Dischargers failure to begin the necessary data collection in a timely fashion as not being reasonable grounds for granting an extension of time. The letter also specifically warned that failure to comply with Order requirements may result in administrative civil liabilities for each day of violation.

58. On May 8, 2007, the Regional Water Board Executive Officer issued a Notice of Violation to the Dischargers for violations associated with Item 4(b) of Cleanup Order No. R1-2006-0055. Specifically, the letter noted that a complete and adequate master treatment schedule was dependent on there first being a complete and adequate sediment inventory. The NOV also specifically warned that failure to comply with Order requirements may result in administrative civil liabilities for each day of violation.

59. The May 8, 2007 Regional Water Board Executive Officer NOV cited substantial discrepancies in the Dischargers reporting of previously treated sediment sources within the December 13, 2006 master treatment schedule. In addition, the letter states the proposed sediment site treatment rate is unacceptable based on the slow rate of sediment treatment in North Fork Elk River and the large volume of sediment discharging and threatening to discharge.

60. The May 8, 2007 Regional Water Board Executive Officer NOV cited the Discharger's failure to submit site specific descriptions and treatment of hillslope landslide and bank stabilization sites.

61. On May 21, 2007, the Regional Water Board Executive Officer issued a letter to Dischargers citing the December 13, 2006 sediment inventories failed to include surface erosion sediment sources. The letter cites information from the Discharger's Elk River watershed analysis (Elk WA) indicating they are aware that surface erosion is a significant sediment source. The Discharger was notified that failure to

comply may result in administrative civil liabilities for each day in violation.

62. On June 28, 2007, the Pacific Lumber Company submitted, on behalf of the Dischargers, a landslide Treatment Plan for Cleanup Order Nos. R1-2004-0028, R1-2006-0046, R1-2006-0055. The submittal did provide site specific treatments for individual sites, however, all information associated with the investigation, assessment and characterization of sediment sources as required by Item 4aiii including maps, aerial photos, and field notes was not included in the submittal. The inadequacies were discussed with the Dischargers during a meeting on July 2, 2007.

63. On July 12, 2007, the Dischargers submitted a Proposed Skid Trail Sediment Source Inventory and Treatment Plan for identifying and treating skid trail related sediment sources within their North Fork Elk River landholdings. The submittal is inadequate to meet Order requirements as it lacks sufficient detail as to when and where skid trail related sources will be inventoried and treated in a time frame that ensures the impaired beneficial uses of water are protected from discharges associated with these sediment sources.

64. To date, the Dischargers have failed to submit a complete inventory of sediment source sites in the North Fork Elk River watershed, as required by item 4(a) of Cleanup Order No. R1-2006-0055. Specifically, the inventories and related documents submitted to date do not include (1) a complete inventory of skid trail related sources, and (2) a complete inventory of surface erosion sediment sources.

65. To date, the Dischargers have failed to submit a complete master treatment schedule for all sediment discharge sites since Cleanup Order No. R1-2006-0055 requires that the master treatment schedule be based on a complete inventory, which has not yet been submitted.

POTENTIAL MAXIMUM CIVIL LIABILITY

66. CWC section 13268(b)(1) provides that civil liability may be administratively imposed by a regional board against any person that fails or refuses to furnish technical or monitoring reports required pursuant to CWC section 13267. CWC section 13268(b)(a) also provides that the civil liability shall not exceed $1,000 for each day in which the violation occurs.

67. The Dischargers are alleged to have violated requirements contained in Cleanup and Abatement and Requirement for Technical Reports

Orders No. R1-2004-0028, R1-2006-0046, and R1-2006-0055, as outlined in the table below:

Cleanup Order	Requirement	Period of Violation	Potential Maximum Administrative Civil Liability
R1-2004-0028	**Item # 2.c.** Summary Report	10/15/04 – 01/04/08 ▶ 1,175 days	$1,175,000
R1-2004-0028	**Item # 3.a.** Sediment Inventory	03/01/06 – 11/27/06 ▶ 271 days	$271,000
R1-2004-0028	**Item # 3.b.** Master Treatment Schedule	03/15/06 – 11/27/06 ▶ 257 days	$257,000
R1-2004-0028	**Item # 4.c. & 5.** Monitoring Plan and Documentation	12/07/06 – 06/15/06 ▶ 189 days	$189,000
R1-2004-0028	**Item # 5.** 1st Quarter Report	01/17/06 – 02/10/06 ▶ 24 days	$24,000
R1-2004-0028	**Item # 5.** 2nd Quarter Report	04/15/06 – 06/15/06 ▶ 59 days	$59,000
R1-2006-0046	**Item # 4.a.** Sediment Inventory	11/15/06 – present ▶> 500 days	>$500,000
R1-2006-0046	**Item # 4.b.** Master Treatment Schedule	11/15/06 – 05/01/08 ▶ 532 days	$532,000
R1-2006-0055	**Item # 4.a.** Sediment Inventory	12/13/06 – present ▶ > 500 days	>$500,000
R1-2006-0055	**Item # 4.b.** Master Treatment Schedule	12/13/06 – 05/01/08 ▶ 504 days	$504,000
	Total:	**4,047**	**Total: >$4,011,000**

CONSIDERATION OF FACTORS

68. Pursuant to CWC section 13327, the Regional Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstance, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

a. Nature, Circumstance, Extent, and Gravity of the Violations
The Dischargers failed to meet multiple deadlines of the requirements of Cleanup and Abatement and Requirement for Technical Reports Order Nos. R1-2004-0028, R1-2006-0046, and R1-2006-0055.

b. Susceptibility to Cleanup or Abatement
This factor does not apply as the proposed liabilities relate to failure to submit documents necessary to assess and conduct cleanup activities, and does not assess liabilities for the resulting discharges.

c. Degree of Toxicity
Sediment is not considered a toxic substance. However, there are numerous ways in which sediment causes impairment of beneficial uses of waters of the state.

d. Ability to Pay
The Dischargers filed Chapter 11 Bankruptcy Protection on January 18, 2007. It is unclear whether the Bankruptcy impacts the Dischargers' ability to pay.

e. Effect on Ability to Continue Business
The Dischargers filed Chapter 11 Bankruptcy Protection on January 18, 2007. It is unclear whether the Bankruptcy impacts the Dischargers' ability to continue in business.

f. Voluntary Cleanup Efforts
This factor is not applicable.

g. Prior History of Violations
On February 15, 2005, the Regional Water Board Executive Officer issued an Administrative Civil Liability Complaint, Order No. R1-2005-0013, for violations of NPDES Requirements permit No.

CA0006017 for failure to submit required reports in a timely manner. The violations were for submission of the June and July 2004 monthly reports, which were 74 and 43 days late respectively. A mandatory minimum penalty of $9,000 was assessed and issued to the Pacific Lumber Company. The Pacific Lumber Company paid the penalty.

h. Degree of Culpability
The Discharger has verbally cited the lack of available contractors to conduct the necessary assessments to complete the sediment source inventories required under Cleanup Order No. R1-2006-0046 and Cleanup Order No. R1-2006-0055. However, the Dischargers routinely conduct similar assessments during Timber Harvest Plan development and has employees trained in the sediment inventory procedures and who make feasibility determinations on a routine basis. Therefore, the Discharger did not necessarily have to rely on independent contractors to do the work, instead they could have utilized their own trained staff in order to meet the required due dates.

i. Economic Savings Resulting from the Violations
Regional Water Board staff does not have sufficient information to calculate the economic savings, if any, resulting from the violations.

j. Other Matters as Justice May Require
Regional Water Board staff costs associated with the enforcement of CAO R1-2006-0046) are conservatively estimated to be approximately $10,000.

In addition, the violations described above are particularly intolerable given the state of the Elk River and Freshwater watersheds and the need for compliance with the Cleanup Orders in order to protect the beneficial uses.

Freshwater Creek and all its tributaries have been listed by the United Stated Environmental Protection Agency (US EPA) as sediment impaired under Section 303(d) of the Federal Clean Water Act. The Regional Water Board's Elk River Resolution No. R1-2006-0038 adopting Watershed Waste Discharge Requirements for Timber Harvesting Activities on the Discharger's landholdings in the Elk River watershed (the Elk River WWDR Resolution) contains numerous findings documenting the severity of the sediment impairment and the negative impacts to the beneficial uses of water.

In the Freshwater Creek Watershed-Wide Waste Discharge Requirements, the Regional Water Board also found that the existing

discharges of sediment must be eliminated and found that Cleanup Order No. R1-2006-0055 is a critical vehicle to accomplish this goal.

The waters of Elk River support, or before recent timber harvest related degradation of water quality, have supported domestic and agricultural water supplies for more than 100 residents. The waters of Humboldt Bay, to which Elk River is tributary, grow 70 percent of California's commercial oysters.

The waters of North Fork Elk River support Coho and Chinook salmon, and Steelhead and Cutthroat trout. Coho salmon, Chinook salmon, and Steelhead trout are listed as threatened under the Federal Endangered Species Act in the Elk River watershed. Additionally, the California Fish and Game Commission amended the California Endangered Species Act (CESA) to list Coho salmon as threatened in the Southern Oregon / Northern California Coast Evolutionarily Significant Unit (ESU), which includes Freshwater Creek.