

California Regional Water Quality Control Board
North Coast Region

MINUTES OF MEETING
January 23 and 24, 2003
Regional Board Meeting
Regional Water Board Hearing
Room
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Thursday, January 23, 2003

Chairman William Massey called the Regional Water Board meeting to order at 9:07 a.m.

i. Pledge of Allegiance

John Giorgi led the Pledge of Allegiance

ii. Roll Call and Introductions

Board Members present: William Massey, Dina Moore, Richard Grundy, John Corbett, Shawn Harmon, John Giorgi, Bev Wasson

Absent: Gerald Cochran

Regional Water Board staff present were Executive Officer: Susan Warner; Assistant Executive Officer: Frank Reichmuth, Interim Division Chief: Nathan Quarles; Senior staff: John Short and Mark Bartson; Technical staff: Holly Lundborg, Ben Kor, Theresa Wistrom; Administrative staff: Kathleen Daly, Terry Barnes, Jean Lockett, and State Board Liaison: Gary Carlton; and Counsels: Sheryl Freeman and Erik Spiess

v. Ex Parte Communications

Sheryl Freeman gave an explanation of the ex parte communication item as an opportunity for Board members to report any contacts outside of the Board meeting on matters either pending or impending before the Board. Such matters would include items that already may be scheduled or plan to be scheduled before the Board of a regulatory or adjudicatory nature. Reporting requirements and prohibitions are involved in ex parte contacts that must be complied with to ensure legitimacy of actions taken by the Board.

Chairman Massey called for ex parte communications, if any.

John Corbett stated that he received written information from Mr. Cochran related to the full agenda. The information that he received is in the full agenda package.

Board members were also reminded of the pending need to complete their annual reports on economic interests and fulfill the annual ethics training requirement.

iii. Election of Officers

Chairman Massey opened the floor for election of officers.

MOTION: John Corbett moved to elect William Massey as Chairman, and the motion was seconded by Bev Wasson. John Corbett modified his motion to include election of Dina Moore as Vice Chairman. Bev Wasson seconded the amended motion. Motion passed unanimously.

iv. Minutes from past meetings

The minutes of the September 2002 Board meeting were presented for acceptance.

MOTION: John Corbett moved to accept the minutes of the September 25 and 26, 2002 Board meeting. Bev Wasson seconded the motion. Motion passed unanimously.

v. Public Forum:

George Hollister thanked the Regional Water Board staff, Rebecca Fitzgerald and Dave Fowler, for their site visit during a storm event in Comptche and to verify the concerns of many Comptche residents that the US EPA TMDL report on the Albion watershed is erroneous. Mr. Hollister displayed pictures as he read an excerpt of the Regional Water Board staff report following their site tour. He indicated that he requested Ms. Fitzgerald to write a letter to US EPA on Albion's behalf.

Ms. Warner stated that Ms. Fitzgerald reported on what she had observed during the visit. Ms. Warner indicated that she has asked staff for a full assessment before a letter is to be considered.

Jerry Philbrick suggested that there has been discrimination towards the timber industry that is unnecessary, and indicated the Regional Water Board should focus on common sense, rather than a liberal agenda.

Lorraine Dickey stated that the residents of the West College/Clover Drive site are actively looking for funds to pay for the remaining water hookups. She thanked the Board for all that they had done to clean up the site. Dina Moore stated her appreciation for Ms. Dickey's efforts.

Consent Calendar

1. Order No. R1-2003-0001 The City of Point Arena Wastewater Treatment Facility, Mendocino County, Revised Waste Discharge Requirements, WDID No. 1B80045OMEN

MOTION John Corbett moved to accept the Consent Calendar. John Giorgi seconded the motion. Motion passed unanimously.

Items 2 and 3A, which are interrelated, were delayed until after Item 3

3. **PUBLIC HEARING to consider Amendment of Order No. R1-2002-0111, waiving waste discharge requirements for specific, currently active timber harvesting activities.**

Chairman Massey administered the oath to those who expected to give testimony for the item.

Nathan Quarles addressed the Board by giving an update on Order No. R1-2002-0111 Waiver of Waste Discharge Requirements for Specific, Currently Active Timber Harvest Plans as of January 1, 2003. The objective of the tentative order is to amend it to include and exclude specific THPs, as appropriate. The Order as adopted on December 10, 2002, included an Attachment A, which listed 1,345 THPs to be waived. The Board directed staff in December to bring back a revised Attachment A which would include timber harvest plans that were adopted between November 18 and December 31, 2002.

Mr. Quarles reviewed the different tables included in the staff report: Table 1 contains THPs approved between November 18, 2002 and December 31, 2002; Table 2 contains THPs with resolved violations or resolved non-concurrences; Table 3 contains THPs originally waived, but currently excluded from the revised Attachment A. Mr. Quarles also indicated that THP 1-01-302 HUM should be included into Attachment A. He explained the basis for including THPs to be added and to be deleted in Attachment A. Mr. Quarles stated that Simpson Timber Company contacted him to let him know that they have three THPs that have been approved that did not appear on Attachment A. Mr. Quarles stated that staff had not confirmed whether the THPs were approved or not.

Dina Moore asked for staff's recommendation regarding the three THPs that Simpson Timber Company had identified. Mr. Quarles stated that staff recommended including them in Attachment A and if needed later, the waiver for the plans could then be revoked. Mr. Quarles wrote the THPs in Table 1 and read them into the record: THPs 1-01-010, 1-02-219; and 1-02-098.

Mr. Giorgi asked what information do we have on the road completion for THP 299-095. Mr. Quarles stated that the THP is included in attachment A.

Jared Carter, representing Pacific Lumber, stated that Pacific Lumber Company objected to the staff proposal to remove a group of plans from attachment A. Mr. Carter stated that the Company objects to the recommended action because they did not receive notification. He requested that the Board not take any action on THPs that would affect Pacific Lumber Company's watersheds.

Jim Branham representing Pacific Lumber Company expressed concern with the exclusion of their Company's plans from the waiver.

Steve Horner representing Pacific Lumber Company, indicated concern with the staff recommendation.

Jesse Noel stated that the plans in Freshwater Creek and Elk River should not be waived as the floods have increased about a foot since the last timber harvest activity. The Board has harmed a number of parties in the watershed because of delays and having the knowledge of the condition of the watersheds conditions. Mr. Noel read an excerpt of a letter to CDF from a concerned resident in freshwater.

Dina Moore set out options that the Board could consider, including tabling their decision on this item until later after hearing the rest of the related items. Susan Warner also stated that the Board could include Pacific Lumber on the list for waivers, and if need be, the waiver for these THPs could be revoked by the Executive Officer at a subsequent time.

MOTION: Dina Moore moved to table Item 3 until item after Item 12 is heard. John Corbett seconded the motion. Motion passed unanimously.

Ms. Warner stated that it was not staff's intent to surprise a regulated party and for that reason, Ms. Warner apologized to Pacific Lumber Company on behalf of the staff and herself.

4. Update on addressing waivers of WDRs for currently active US Forest Service Timber Sales and similar operations

Mr. Quarles stated that Order No. R1-2002-0111 (Waiver of Waste Discharge Requirements for Specific, Currently Active Timber Harvest Plans as of January 1, 2003) was adopted on December 10, 2002, and did not address other silvicultural activities conducted by the US Forest Service, and staff have been working with the US Forest Service on this issue. The US Forest Service contacted the Regional Water Board staff to inform them that they will comply with Order No. R1-2002-0109, and they had produced a notice of intent with a cover letter to encourage their contractors to comply with the order. Staff concurred with the US Forest Service approach.

5. Update on Development of Categorical Waiver Policy for Irrigation Return Waters

Ben Kor updated the Board on the status of the draft waiver policy. He stated the Regional Water Board intent is to draw from those elements and principles contained in the Central Valley Regional Water Board policy that was adopted in December. Mr. Kor stated that the staff has mailed out 160 packages to interested parties, and received four oral comments. He would like input from the Board on the principles and elements of the draft policy.

Mr. Kor briefly reviewed some of the elements of the waiver, such as: applicability, enrollment, farm plan development, time schedules, annual reports, and interim nature of waiver policy.

Dina Moore asked if the item was on the March agenda, and whether there was a challenge in staff's workload priority to have the document ready to be adopted by March. Ms. Warner stated that this project would have to be placed on the top of all other priority projects in order to complete it on time. Mr. Harmon stated that he had a couple of concerns on the irrigated land definition that seems to be addressing a different problem than what it actually means. The Board discussed several difficulties in the implementation of group monitoring. Mr. Grundy raised issues with enforcement on a group that may not be a duly constituted entity. Mr. Giorgi wondered if the waiver could proceed parallel with the timber harvesting waiver.

Chair Massey requested that Mr. Kor submit a written report in February.

Susan Warner reminded the Board that the Chairman wanted item 6 on the agenda moved to Friday January 24, 2003.

7. Update Regarding Occidental County Sanitation District and Request by Sonoma County Water Agency for Modification of Administrative Civil Liability Order No. 97-126, Cease and Desist Order No. R1-2001-47 and Time Schedule Order No. R1-2001-48.

This item stands as written.

8. Update on the State Water Resources Control Board Enforcement Policy

This item was removed from the agenda prior to the Board meeting.

9. Update on the City of Santa Rosa Sub-regional Wastewater Treatment and Disposal System Construction, Geysers pipeline.

Susan Warner stated that this item is an ongoing update on the City of Santa Rosa's Geysers pipeline project. She introduced Ed Brauner, deputy city manager for the City of Santa Rosa. Mr. Brauner reported, as he stated at the last Board meeting, that the Geysers project was slightly behind the projected date for completion of December 31, 2002. The delay was due to lawsuits filed, and other complications. Mr. Brauner covered the remaining construction segments needing completion. Mr. Corbett asked when the project would be completed, and Mr. Brauner indicated that the complete project will be up and running by summer 2003, if the weather cooperates. Mr. Brauner also stated that he sent a letter in October 2002 to the Executive Officer requesting additional time for the completion of the project. Ms. Warner indicated that staff concurs with a minor schedule revision in the cease and desist order, which will be presented to the Board at another Board meeting in the spring.

10. Status Report on the Implementation of the Roseland Action Plan and Related Groundwater Investigations

Mark Bartson covered the activities of the McMinn Avenue State Superfund Area since the September 26, 2002 Regional Water Board meeting, when the Board adopted a motion that affirmed that the McMinn State Super Fund Area as a very high priority for staff and the Regional Water Board.

Mr. Bartson displayed a map to show the location of the groundwater contamination. He recapped the Plan of Action, such as:

- ◆ Development of an Outreach Plan
- ◆ Annual soil gas and indoor air sampling conducted at Roseland Elementary School
- ◆ Connection of 18 Red Zone properties to the city water system
- ◆ Assistance from the Regional Water Board for the connections to city water
- ◆ County/SPCSD funding for sampling and staff time

Mr. Bartson reported that an updated Regional Water Board Workplan was being finalized. He also reported that an order was being prepared for issuance to another responsible party in the area.

Mr. Corbett asked if the staff and county are in communication on how the funds are being used for the project. Ms. Warner referred to a letter from Supervisor Reilly that indicated that the county was satisfied with current communications, which includes a monthly update on the expenditures.

11. Report by Regional Water Board Subcommittee for the Garcia River TMDL

Dina Moore reported on the Regional Water Board subcommittee that consisted of herself and Bev Wasson. Ms. Moore reported that in December 2002 the subcommittee met with the Regional Water Board senior staff currently responsible for the plan and the implementation the Garcia River TMDL. It was noted that the Garcia River Plan is the first of its kind in the area and because it has only been in place for one-year, the group felt that significant changes should not be made until after the plan has been in place for a two-year period. The subcommittee met with the Garcia landowners and their representatives in the area. Landowners voiced their concerns of the cost of implementing the plan. They were concerned that some of the landowners sold their property or have given up their leases because the plan was too costly. However, with help, the landowners continue to make an attempt to develop an erosion plan and as required, statement of intent.

Ms. Moore stated that her concerns of the threats to public members who voice their opinion through testifying or by written letters to the Board.

Bev Wasson stated that she too finds it offensive that public members are being threatened by other public members.

Allen Levine gave a brief history of his background. He stated that he has attended all of the workshops on the TMDL and received good quality cooperation. He stated that he had filed the initial litigation on development of TMDLs for the Garcia. He indicated his opinion that the Garcia TMDL-THPs are doing a great job because CDF does a much better job with TMDL/THPs than just THPs.

13. Update on Progress in Negotiating a Memorandum of Understanding between State and Regional Water Board and the California Department of Forestry and Fire Protection

Frank Reichmuth reported on the draft Memorandum of Understanding (MOU) being developed between the two agencies. Mr. Reichmuth stated that the Water Board needed an improved conflict resolution process and that was one of the main drivers behind the MOU.

Mr. Reichmuth stated that the main issue to establishing the MOU is to have an intermediate conflict resolution process. The Head-of-Agency appeal process is designed to let the Department of Fish and Game and the State Water Board appeal the approval of a THP by the CDF decision-maker to the Board of Forestry.

The MOU draft has been sent out to the Regional Water Boards for the Executive Officers to sign. Mr. Reichmuth requested the Board's input on the draft MOU within the next two weeks or so.

Mr. Corbett asked for the proposed process with CDF after the MOU is signed. He also asked how the process would address concerns that are not policy issues. Mr. Reichmuth responded to the questions.

Mr. Grundy expressed concerns about another agency pursuing water quality protection when the Regional Water Board is the lead agency. He stated that he would like the Office of Administrative Law to comment on the MOU before the Board approves for the Executive Officer to sign it. Ms. Freeman stated that although the intent is that other agencies will try to pursue protection of water quality, if such agency protection doesn't work, then the Regional Water Board maintains their independent authority.

Ms. Warner asked for some direction to the Executive Officer in signing the MOU. Mr. Corbett stated that his concern is that the drafts are given to the Board in such a short period of time and it is taxing to try and read it all. Ms. Moore stated that she was pleased with the direction the MOU is going. Mr. Grundy stated that he would like to have a better idea of what the types of improvements are being made in the MOU. He suggested a need for stronger language stating that the Board retains the authority to act. Mr. Grundy asked that the MOU be brought back to the Board at the next Board meeting. Chair asked if brought back to the Board does it create an issue for the Executive Officer if the document is held up. Ms. Warner stated that the Board could rely on her to identify issues that the Board would like to know about or see in the document.

Mr. Grundy reiterated his concerns of the Executive Officer signing the MOU document without Board reviewing the document. However he would agree with the Executive Officer to sign the document provided that the OAL provide their comments.

Mr. Giorgi stated that the Board needs to put more faith in the Executive Officer to bring the document back if there are significant changes or sign the document if it doesn't change.

Ms. Warner indicated that if the draft did not contain significant and substantive new changes from the draft given to the Board, then she would sign it, otherwise she would bring any substantially changed MOU draft back to the Regional Water Board prior to signing it.

14. State and Regional Water Board Communications

Gary Carlton, State Board liaison, stated that the State Water Board management along with CDF understood the efforts to develop the MOU. The purpose of the MOU was to not make any additional rules but to provide clarification of the MAA. The MOU came about in an attempt to clarify the MAA.

Mr. Carlton also reported that waivers of waste discharge requirements were a large issue for the State Board. Many Regional Water Board actions on waivers, including those for timber harvest plans, have been petitioned to the State Board.

Mr. Carlton reported that many new MS4 storm water permits have been petitioned from the southern regions. Mr. Carlton also informed the Board that adoption of the updated 303(d) list is scheduled for February 4, 2003.

All state agencies are being asked to cut their budgets and there will also be budget cuts in this Fiscal year and the next Fiscal year.

Chairman Massey opened the public forum for items **2, 3, 3a**, and **12** for those who could not stay at the in the afternoon.

Anthony Leonardo stated that he employed 30 people in his business. He is a contractor for Pacific Lumber Company. If the Regional Water Board staff recommendations are followed, he will have to put those 30 people out of work.

Bud Newton stated that he employees 20 people in his business. Pacific Lumber Company's work is above standard. The winter work is very important to timber companies.

Ed Lewis of Lewis Logging indicated that PALCO needs to harvest to provide an even flow of work.

Rex Bone stated that he works for a company that does business with PL. He stated that the decision that the Board makes today would have an impact on the families in the Humboldt area.

Dean Lewis, Vice President of Lewis Logging, stated that California harvest regulations are the most restrictive. He told the Board that if a home is built in a flood plain, there will be flooding, as that is the nature of flood plains.

The Regional Board adjourned into Closed Session at 12:15 p.m. The Board re-convened out of closed session at 1:15 p.m., and had nothing to report.

12. Report by CONCUR, Inc., and the Independent Science Panel: "Final Report on Sediment Impairment and Effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks."

Holly Lundborg reviewed the contents of the agenda item package and gave an overview of the presentation for item 12. She outlined the presentation and the allotted time for each presentation. Ms. Lundborg introduced Dr. Scott McCreary.

Dr. McCreary stated that he was there to introduce the Panel members that are present today. McCreary stated while the report is labeled Final Report this is not the last word. He pointed out that the abstracts in the presentation are not to be treated as the official statement of the Panel. Dr. McCreary reviewed the history of the item from the start to date, including the petitions for WDRs, the retention of CONCUR by the Regional Water Board, the recommendation by CONCUR for a convening committee of stakeholder representatives and the creation of an independent scientific review process. Dr. McCreary then reviewed the three questions that the Panel was asked to cover in their report. To obtain additional information beyond that provided in documents, the Panel also conducted a site inspection. Accompanied by both stakeholders and PALCO science staff, the Panel made site visits of the Freshwater watershed, Elk River, and Bear Creek. They also conducted aerial surveillance of all five watersheds.

Dr. McCreary stated that all panelists signed the report, indicating unanimous concurrence with the final report. He stated that summaries paraphrasing or abstracts in his powerpoint presentation was not to be treated as the official statement of the Panel.

Dr. McCreary then introduced Dr. Bill Haneberg, a consulting Geologist based in Port Orchard, Washington and a member of the Scientific Review Panel, to give a presentation on the Panel's assignment.

Dr. Haneberg stated that the Panel:

- ◆ Recognized the importance of developing a balance that preserves the productive capacity of the land and sustains the local economy while protecting beneficial uses downstream.
- ◆ Also realized the scientifically complex nature of the issues being addressed, and the lack of data, as the problem becomes more complicated.
- ◆ Recognized that geological and meteorological variability is important. The rates of uplift, bedrock types, and modes of mass wasting vary within and among the five watersheds, and that makes it difficult to define and estimated background values of sediment production or turbidity.

Dr. Haneberg stated that the complexity in variability also makes it difficult to assess the risks and the success of mitigation techniques. He covered the two policy alternatives for dealing with variability and the how the panel approached its role as one of assisting policy-makers with science-based decisions without advocating particular policy outcomes. Dr. Haneberg discussed the five criteria the panel observed to avoid advocacy science. He then introduced Dr. David Tarboton of the panel.

Dr. Tarboton, Professor of Civil and Environmental Engineering and Utah Water Research Laboratory at Utah State University, described the panel's findings for addressing the first question. Question 1 asked the Panel to discuss the technical strengths and weaknesses of the varying approaches described in some of the documents provided to them to address harvest rate and flood severity as well as any other reasonable approaches for calculating a rate of harvest for each of the five watersheds that is protective of water quality, which considers natural and other anthropogenic sediment sources.

Dr. Haneberg addressed Question 2. He stated that the Panel concluded that there were two fundamental processes contributing to flooding problems and impacts to

beneficial uses: large increase in suspended sediment yield and moderate increase in surface water runoff. Dr. Haneberg summarized the options available that could be immediately implemented and the relative effectiveness in lessening the adverse flooding conditions and impacts to beneficial uses. The Panel developed a matrix of benefits and impacts that may be used to prioritize the options based on the planning priorities of the decision-making organizations.

Dr. Robert Twiss, Professor in the Graduate School, and Professor Emeritus of Environmental Planning at the University of California, Berkeley, addressed the third question for the panelists:

What additional data or piece(s) of information, if any, will be useful in the future for refining approaches to address the above [Question 1 and 2] issues?

He described how more work needs to be done in the immediate time period to refine and clarify the term "background level." He indicated that any definition of background should recognize the natural variability of response of different geologic units to timber harvest. Then, one could set rates of timber harvest that allows for adjustments over time based upon new information.

Dr. Twiss suggested that the Board consider corrective actions, including prescriptions on timber harvest, which could be developed on watershed-by-watershed basis because of differences in sediment production processes between Freshwater, Elk, Stitz, Bear, and Jordan. The Panel decided that there are no technical reasons why corrective actions could not start soon and proceed in parallel with on-going monitoring and analysis.

The Board observed a break at 2:45

Continuation of Item 12 Report by CONCUR, Inc., and the Independent Science Panel: "Final report on Sediment Impairment and effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks."

Holly Lundborg requested that all those who wanted to express their position, and time would not allow, to sending their written comment to the Board.

Ms. Lundborg gave the Regional Water Board an overview of the numerous staff recommendations that are listed in the staff report. Ms. Lundborg covered the staff's sixteen recommendations that addressed the recommendations and key findings contained in the Scientific Review Panel's Report. Ms. Lundborg requested that the Board provide their input and give staff direction.

John Corbett suggested, in the interest of inter-agency relationship, that the Regional Water Board staff call CDF and have an informal discussion with them to inform them how their concerns will be met.

David Kuzmar gave a short presentation on the erosion issues in the watersheds, especially with respect to the December rains. He displayed a graph of the daily precipitation values for the Eureka rainfall gage in December 2002, and drew the Board's attention to two storms which occurred in December. He also showed photographs of Bear Creek where it discharges to the Eel River taken by air and which illustrate recent sediment deposition. The staff presentation then concluded.

Mr. Robert Manne, Pacific Lumber Company, expressed his disappointment in the 16 recommendations made by the Regional Water Board staff. He stated that he is disappointed that the staff is prepared to base 16 recommendations on the Panelists' report. Mr. Manne stated that it has been difficult for Pacific Lumber Company who has spent \$17 million on scientific review. He stated that the results of the Scientific Review Panel are questionable, and recommended that the Board trust the agencies, Fish and Game, and Fish and Wildlife. Mr. Manne stated that the Board must take action as well as not take the recommendations of the staff.

Mr. Grundy commented that he could not match the staff recommendations with the panel recommendations. Ms. Moore concurred that she was having difficulty matching the sets of recommendations.

Mr. Manne further stated that Pacific Lumber Company needed four things: (1) the six timber plans in Elk River needed to be covered by the Waste Discharge Requirements; (2) three plans in Freshwater Creek needed waivers of waste discharge requirements; (3) the Board not take the 44 plans from Appendix A (of the waivers), and (4) the Scientific Review Panel report be sent to the state and federal level for their review. If the Board does not approve the 6 THPs in Elk River and waive waste discharge requirements for the 3 THPs in Freshwater, Pacific Lumber Company will lay off 500 employees within the next week.

Dr. Jeff Barrett stated that the Panel's report was incomplete and contained scientific problems. Dr. Barrett restated the questions that the Panel answered and provided additional information to dispute the Panel's answers. He indicated that the Panel did not get a chance to evaluate what is already being done to restore water quality before it recommended whether or not limits on timber harvest are needed. Dr. Barrett concluded by saying that the Panel's recommendations would cause severe economic hardship to PALCO, its employees, its contractors, and the community.

Dr. Kate Sullivan, Senior scientist for PALCO, updated the Board on Pacific Lumber Company's progress in implementing hydrologic and sediment monitoring in Elk River and Freshwater Creeks. She stated that the Scientific Panel was given a very restricted list of materials to review. Dr. Sullivan stated that she considers the panel's work more of an instructive guide for integrating the science and policy issues than a report. Dr. Sullivan gave details on the flooding and the normal function of rivers to carry sediments eroded from steep headlands to downstream depositional environments. She called out the ten-options that the Panel recommended and gave reasons why those options were not appropriate.

Edgar Washburn, attorney for Pacific Lumber, stated that his comments may be harsh but it needed to be said. He was surprised that the scientists signed the report (Final Review Panel Report) given their reputation. He stated that the report was more political science. He stated that he believes that the Board does not have the authority to adopt any of the 16 recommendations of the staff. CDF has the final authority.

Ross Johnson of the California Department of Forestry and Fire Protection indicated that the report was flawed, the rate of harvest was appropriate as calculated by CDF, and that his agency was concerned with the Board's process with the Panel.

John Munn, with California Department of Forestry and Fire Protection, commented on the sediment prediction model that the Scientific Panel recommended for use in setting harvest rate limitations as part of CDF's approval of THPs. Mr. Munn disputed the recommendation and gave various reasons why the empirical models would not be applicable. He also indicated that funding was available to obtain process-based models in the Noyo watershed.

Pete Cafferata of California Department of Forestry and Fire Protection indicated that the report inadequately describes the review team process.

Mark Stopher of the Department of Fish and Game indicated that the harvest rate calculations would not be useful in the context of the habitat conservation plan (HCP).

Joe Blum, with National Marine Fishery Service (NOAA Fisheries), fully supports the Department of Fish and Game comments with relation to the Panel report. Mr. Blum indicated that the Board has a very difficult task before them. He suggested that Board tell its staff that the HCP was a fact of life, and represents many years of work in a very significant way. It provides the Board with a process platform for things that the Board wishes to do in the watersheds. The HCP has watershed analysis and adaptive management. Mr. Blum suggested that we move forward and not backward.

Ken Miller supported the Panel report.

Joe Brecher stated that there may be some progress in getting the waste discharge requirements. He proceeded to give a history of the Board meetings and process of their petition to get the Board to issue waste discharge requirements. He stated that it was a courageous move by the Regional Water Board staff. He stated that he will continue to file petitions.

Jesse Noel displayed pictures of the floods that occurred in Elk, Bear, and Jordan the watersheds December 2002. He displayed photos that dated back to 1998 of clear-cut areas in South Fork and Elk areas. He stated that the Board's job is to prevent nuisance, threats to people safety, and health and that's not the job of CDF.

Richard Gienger stated that he was sad to hear the science panel attacked. He stated the Board needs to make a real difference in this situation. He displayed a picture dated back to 1997 of the tip of the delta in Bear Creek, and indicated that the recent sediment discharge caused a big impact on Bear Creek.

Cynthia Elkins stated that Pacific Lumber has taken millions of dollars from the five watersheds.

Mark Rentz encouraged the Board to set aside the 16 recommendations of the Regional Water Board staff.

Daniel Porter, a PALCO botanist, indicated the Panel report was incomplete.

Rick Ross, a PALCO employee, indicated the Panel report was incomplete.

John Sneed stated that the Panel's recommendation ignores all of the fundamental details of how roads are built. He requested that the Board not allow the Executive Officer implement her staff's recommendation.

Tim Torin echoed Mr. Manne's speech on the loss of jobs. Hundreds of people will lose their jobs. This includes those who PL does business with in the area.

Jay Bell, a PALCO employee, used his 90 seconds for a "moment of silence."

David Shy, a PALCO employee, stated that the scientific review is not the end of the process. There needs to be a review of the economic part of the process.

Hugh Heuer a PALCO employee, stated the Board has only given him 90 seconds to plead for his job. He asked the Board to remember that real people will be affected by their decision.

Dennis Schlotzhauer indicated that he has sent a letter a week to the Governor asking that he attend the Regional Water Board meeting. He stated that it is not the job of the Regional Water Board or its staff to be the lead agency or watch the rate of harvest throughout the state.

Attila Gyenis stated that no one has the right to take water quality from those in the watershed. He stated that the rate of cut is too much and too fast.

Bernie Bush stated the science panel report does not justify the actions that the staff recommends. He encouraged the Board to look at Dr. Matt O'Connor's report.

Pete Ribar reiterated that the report does not justify the staff recommendations.

Bill Short of the California Geological Survey stated that he wanted to enter into the record a brief review signed by their state geologist, Jim Davis, a review of the Panel's report. He stated that the review cautioned the Board against using analysis that is overly simplistic.

Bonnie Burchel stated that the one-day field trip of the panelist was not conclusive enough for the staff to make the 16 recommendations, and she asked that the Board reject those recommendations.

Ron Sanderson asked the Board to allow the HCP to work and suggested that the employees of PL be designated as an endangered species.

Diana Griffith, Humboldt County resident, thanked the Panel for their report. She stated that the watersheds are falling apart and it is time that the Board take steps to protect the water.

Steve Horner recommended that the Board direct the staff to not take any actions based on the panelists' report.

Alan Levine stated that doing the right thing wouldn't put PL out of business.

Steve Christiansen, a Freshwater resident, stated that the rate of cut that Pacific Lumber Company is operating under was established in 1999 based on financial needs and had nothing to do with the HCP.

Ed Conti, of Tetra Tech, stated that the panel report implies that there is a need for a third party. The watershed analysis is subjected to peer review.

Jesse Noel reminded the Board that in 1997 there were problems in the watershed. The residents wrote to the Board at that time to say that their filters were clogging up and other issues occurred due to sediment discharge.

Diane Beck, resident of Kneeland, stated that the residents' hope that the Regional Water Board acts on this matter and that it will benefit the north coast streams.

Dr. Scott McCreary stated that the range of comments were pretty impressive. He stated that as he said in the beginning of the presentation that this was not the final panel report. The panelist reviewed 200 documents and brought in decades of information. He stated that the HCP was not the focal point for the panelist. The Freshwater watershed analysis was not the fundamental focal point for the panelist.

Richard Grundy indicated that he wanted to know what could be done in the short-term, and what could be done in the long-term with the TMDL. Dr. Twiss responded and referenced a chart presented earlier.

Mr. Grundy wished to know to what extent did the staff recommendations flow from the Panels report, and observed that something was lost in the translation.

Dina Moore stated that she is interested in the HCP considerations, fleshing out the Phase II effort and determining the challenges presented with budget limits. She asked how Dr. McCreary saw his role in Phase II of the process, or whether his skills could be best used as a facilitator. Dr. McCreary stated that there is a role for CONCUR in Phase II, and asked what was the role desired by the Regional Water Board.

Chairman Massey asked Dr. McCreary to review the process of the selection of the panelist and those who participated in it. Dr. McCreary described that process.

There was discussion between the Board, Dr. McCreary, and the three panelists present on what the next step/focus should be. Dr. McCreary indicated the importance of collaboration in the next phase.

Mr. Corbett raised an issue regarding monitoring, and described the four elements of the HCP. Dr. Twiss indicated in response that it would be good for the staff and Panel to re-think the list of documents for review in Phase II.

Ms. Moore asked if they thought that it would benefit the Board if the panelist reviewed the HCP and SYP.

Scott McCreary suggested that a package of the testimony of those who spoke be given to the panel for their review.

The Board deliberated on their next steps. John Giorgi stated that he would like the Board to do something that will bring the Board to the center of the issue.

Richard Grundy stated that the Board had received vast information to digest and he had additional questions. He stated he was not comfortable with the staff recommendations at this time.

John Corbett recommended that the Board table the issue until Friday, January 24, 2003 Board meeting.

MOTION: John Corbett moved to adjourn for the evening and table the issue to tomorrow. Richard Grundy seconded the motion. Motion passed unanimously.

Bev Wasson made a statement indicating our charge is to protect water quality, and regretting that water quality and people's lives have been affected by the corporate mentality of maximizing short term profits.

Meeting adjourned at 7:48 P.M.

Friday, January 24, 2003

The Regional Water Board meeting was called to order by Chairman William Massey at 8:40 a.m.

Pledge of Allegiance

Shawn Harmon led the pledge of Allegiance

Roll Call and Introductions

Board Members present: William Massey, Dina Moore, Richard Grundy, John Corbett, Shawn Harmon, John Giorgi, Bev Wasson

Absent: Gerald Cochran

Regional Water Board staff were Executive Officer: Susan Warner; Assistant Executive Officer: Frank Reichmuth; Interim Division Chief: Nathan Quarles; Senior staff: John Short and Mark Bartson; Technical staff: Holly Lundborg, Dave Kuszmar, Ben Kor, Theresa Wistrom; Administrative staff: Kathleen Daly, Terry Barnes, Jean Lockett; and Counsel: Sheryl Freeman and Erik Spiess.

6. Update on Implementation of Assembly Bill 885, which added Chapter 4.5 (commencing with Section 13290) to Division 7 of the Water Code, relating to onsite sewage treatment systems.

Theresa Wistrom addressed the Board with an update on legislative requirements for individual wastewater treatment systems. Ms. Wistrom stated that Governor Davis approved the Assembly Bill 885 on September 27, 2000. The Bill was sponsored by

Assemblymen Jackson, and it required the State Water Resource Control Board to confer with the State Department of Public Health, the California Conference of Environmental Health Directors, the California Coastal Commission, and local regulating agencies before adopting specific regulations and standards for the permitting and operation of on-site sewage treatment and disposal systems. The legislation required each Regional Water Board to incorporate the regulations or standards into its Basin Plan. Ms. Wistrom briefly reviewed the State Board's coordination effort, and stated that the State Board had issued a first draft set of rules on October 22, 2002. The draft rules included many of the standards that have been in Region 1's Basin Plan since 1979, but as written, would require a Basin Plan amendment. Ms. Wistrom expressed concern that the draft regulations had the potential for threatening the structure for on-site system regulation that has been established in the North Coast Region. Region 1 staff is continuing its efforts to communicate with the State Board on this matter. The due date for the action is January 1, 2004.

23. Progress Report on Budget Implementation and Development of Priorities and Goals

Jack Selvage was present to assist the Board with the goal setting strategic planning process. Mr. Selvage briefly reviewed what the Board had accomplished thus far, and outlined a three-step process for going forward by evaluating challenges, threats, and opportunities. These then would lead to Assessment, Visioning/Goal Setting, and Specific Actions.

Mr. Selvage indicated that more work was needed on the assessment area of the goal setting.

The values stated for the Regional Board members would be more focus on staff and the Regional Board, whereas, the state's value statement focused is more global.

Dina Moore stated that she would like to see the information in place so that other Board members can use the process. Mr. Selvage indicated that he could draft a report by April, following completion of individual and confidential interviews.

Frank Reichmuth updated the Board on the budget, displaying a graph that demonstrated the allocations of funds and the general fund programs. He reported that the Regional Board's cuts are not as extensive as other departments.

Dina Moore asked if the NCWAP program would be cut. Bob Klamt responded by saying that at this point Region 1 still has its funding, but there will be some shifts in emphasis.

Susan Warner informed the Board that the WQCC has been canceled due to budget reasons.

15. Board Member requests for future agenda items

Mr. Grundy requested the enforcement policy discussion to be placed on the agenda. He also asked for information on assessing fines and processing fees.

The Board took a 25-minute break to accommodate the public per his announcement the prior evening that the Board will take up the items at 11:00 a.m.

3. Public Hearing to consider Amendment of Order No. R1-2002-0111, waiving waste discharge requirements for specific, currently active timber harvesting activities.

Susan Warner stated that Item 3 is considering that portion of the waiver for currently active timber harvesting activities. Ms. Warner stated that her recommendation to the Board is to not use all of the Tables presented by staff yesterday. Rather, Ms. Warner indicated her recommendation to the Board would be to void Table 4, with Tables 1 and 2 adding plans, Tables 3 and 5 deleting plans, and Table 6 adding plans to the waiver groupings of Attachment A.

Daryl Storey passed his allotment of time to Ken Miller, who asked if the Board was going to waive waste discharge requirements for the Pacific Lumber THPs. Mr. Miller voiced his concerns if the Board took such an action.

Jesse Noel stated that he displayed pictures in the January 23 Board meeting that demonstrated the cumulative effects of timber harvesting in these watersheds.

Steve Horner stated that he has been in contact with the RWB staff to let them know where and when PL was cutting. He suggested that the Regional Water Board had full knowledge that Pacific Lumber Company was cutting.

Nathan Quarles stated that staff had been in contact with Pacific Lumber Company and staff has been in the field. Pacific Lumber Company is under a legal obligation to report to CDF the amount of acreage they are cutting.

Mr. Giorgi indicated that we needed to give the waiver process time. Mr. Corbett moved to give the waivers time, with monitoring. The motion was seconded by Mr. Harmon.

MOTION: John Corbett moved to approve Tables 1, 2, 3, 5, and 6 as amended by discussion. Shawn Harmon seconded the motion. Ayes—Massey, Corbett, Moore, Giorgi, Harmon, Corbett, Noes—Wasson. Motion carries.

Sheryl Freeman observed that approval of the tables was the first step. The Board just amended the tables, which go into Attachment A, but still needs to adopt the resolution that is included with Item 3. This resolution has a couple of other changes embedded within it as well as the attachment that the Board just changed and approved.

MOTION: John Corbett moved adoption of Resolution R1-2003-0006. Shawn Harmon seconded the motion. Motion passed unanimously.

2. Order No. R1-2002-0105 The Pacific Lumber Company, Elk River, Humboldt County, Revision of Waste Discharge Requirements, WDID No. 1B02133RHUM.

Chairman Massey administered the oath to all those who expected to participate in this item.

Nathan Quarles gave a brief introduction by providing background information to the Board. He stated that on November 7, 2002, the North Coast Regional Water Quality Control Board adopted Order No. R1-2002-0105, Waste Discharge Requirements (WDR) for the Pacific Lumber Company for timber operation for eight THPs within the Elk River watershed. Mr. Quarles stated that Pacific Lumber Company requested specific revisions to the waste discharge requirements by adding an additional seven THPs, reduction in herbicide notification requirements and requesting functional revisions in the WDR. Mr. Quarles covered the specifics of Pacific Lumber Company's requests.

Mr. Quarles introduced David Kuszmar who covered the field inspections by displaying maps and photos of the Bridge Creek THP 1-00-030 tributary to North Fork Elk River. He pointed out the landslides and silt along the banks of the creek. He covered a road-related landslide that caused the creek to back up and created a debris dam on Bridge Creek. He stated that the creek is now in a state that its carrying capacity is unusable to move out what has been delivered to it.

Mr. Quarles stated that staff was concerned with THP 1-00-030 because of the soil discharges that had occurred in the past. Staff is concerned overall about Elk River and Bridge Creek as they are impaired watersheds and the beneficial uses are not being obtained. The timber operations that are planned in the watersheds will likely deliver additional soil to an already impaired system. Mr. Quarles concluded his presentation by recommending that the Board not amend the WDRs with the additional THPs submitted by Pacific Lumber Company. Until such time as the Regional Water Board staff can develop a defensible rate of harvest for Elk River including Bridge Creek.

Jim Branham stated the Pacific Lumber Company's staff has spent time with the Regional Water Board staff looking at the watersheds. He stated that Pacific Lumber Company was not notified of any problems in the watersheds. Mr. Branham indicated that they were not aware of any specific problems until Mr. Quarles' presentation today. Mr. Branham stated that their efforts to monitor in the watersheds will cost them \$500,000. He went on to voice his frustrations over resolving some of the issues in the watershed.

Craig Anthony, Vice President of Timberland Division of Pacific Lumber Company, indicated that the Executive Officer's Summary Report and the Regional Water Board staff report recommended that the Board adopt the inclusion of the THPs. Mr. Anthony stated that Pacific Lumber Company had informed the Regional Water Board staff in November 2002 when the WDRs were adopted that there would be more THPs to be approved and brought to the Board for inclusion in the WDRs. He stated that there are five of those THPs that have been approved and he would like them included in the WDR. He stated that the THPs are important to Pacific Lumber Company and urged the Board to include them in the WDRs.

Steve Horner questioned the lack of notice regarding the violations reported by staff.

Ms. Warner stated that the Regional Water Board staff had areas of concern and that those concerns were not termed as violations.

Craig Anthony stated that a big part of moving forward is that Pacific Lumber Company staff and the Regional Water Board staff needed to work closely together in building trust between all the agencies and Pacific Lumber Company. He stated although the 45-day herbicide notification requirement is an inconvenience, he has instructed the Pacific Lumber Company staff to go with what the Regional Water Board staff's request.

Jesse Noell voiced his concerns that the Regional Water Board has not surveyed the cross sections and the impact reaches in the Elk River. The Regional Water Board has not determined how the threat is proceeding in size.

Dina Moore asked Mr. Blum for his opinion on the process for coordination, and Mr. Blum replied that it was through the HCP coordination and day-to-day opportunities.

Steve Will, with Steve Will Trucking, spoke about being a taxpayer and concern for jobs.

Cynthia Elkins stated that she hoped that the pictures of Bridge Creek made an impression on the Board. She suggested that Pacific Lumber Company showed no regard for the Regional Water Board or for the law. She urged the Board to exercise their authority under section 13265 (4) and seek an restraining order and all civil liabilities allowed under the law.

Ken Miller stated that there is a difference between in what the Regional Water Board protects and the National Marine Fishery and Fish and Game protect. The two agencies do not have the same responsibility in protecting the native fish.

Joe Blum stated that the HPC form was developed for endangered and threatens species under the California and Federal Endangered Species Act. It was not design to cover all beneficial uses. The HCP can provide a platform for the Regional Water Board to take advantage of. Add additional specifications within the Regional Water Board's law and regulations that will allow all agencies work together.

There was further discussion on the HCP and its roles/impact it has on the recovery of the species in the streams.

The Board observed lunch from 1:20 p.m. to 2:00 p.m.

No further public comments were taken.

MOTION: Dina Moore moved adoption of Resolution R1-2003-007, as amended without timber harvest plan 115. Shawn Harmon seconded the motion. Motion passed unanimously.

Clarification was made that within the adoption of that Resolution will be a change in the total harvest acreage to reflect elimination of THP 1-00-115 HUM from that order.

John Giorgi indicated the need to monitor before and during harvest, and his wish to see such monitoring on all plans.

12. (continued from January 23, 2003 Board meeting) Report by CONCUR, Inc., and the Independent Science Panel: "Final Report on Sediment Impairment and effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks."

After a lengthy discussion, the Board made the following motions.

MOTION: John Corbett moved to direct the staff to prepare and bring back to the Regional Board at the March 2003 Board meeting, a sensitive watershed nomination of the five watersheds to BOF pursuant to 916.8. John Giorgi seconded the motion. Chair Massey suggested that the motion include that staff's presentation is no later than the March meeting so that staff could make a presentation in the February meeting if possible. Motion Passed unanimously.

MOTION: Richard Grundy moved to authorize staff to proceed with the gathering of information and refinement of the empirical-based model that can be used in TMDL development and other purposes as it is perfected, as presented by the review panel.

John Corbett suggested that the motion be stated as, "Within the economic restriction of 13267 the Regional Board staff should require the information to refine an empirical sediment budget and for the modeled sediment budget approach."

Richard Grundy moved that his motion be amended to include Mr. Corbett's language. Bev Wasson seconded the motion. Motion passed unanimously.

MOTION: Dina Moore suggested that the staff follow up on Dr. Twiss' offer, based on affordability, to assist the Regional Board staff with the GIS effort. John Corbett seconded the motion. Motion passed unanimously.

MOTION: Richard Grundy moved to direct the Regional Water Board staff to use the HCP as a mechanism for implementing some of the Regional Water Board's requirements on water quality and be more collaborative with Mr. Blum of NOAA Fisheries, and have staff report back to the Regional Board on any progress that might be made there. John Corbett

seconded. Chair Massey stated that perhaps the staff would not only seek the assistance of NOAA-Fisheries, but other signatory agencies of the HCP to see were we can find common ground and assistance. Motion passed unanimously.

MOTION: John Corbett moved to develop Phase II of the Scientific Review Panel, including the issues raised yesterday by Dr. McCreary and to report back in February.

Some discussion followed the motion. Ms. Moore requested that the Panel review the levels of protection in the HCP, especially what the HCP does in terms of the rate of recovery of beneficial uses. Chair Massey suggested that Phase II start with the input of staff and the working group and staff will report to the Board on their progress. John Corbett agreed with the modification as proposed by Mr. Massey. Richard Grundy Seconded. Motion passed unanimously.

John Giorgi suggested that the Board discuss accepting the Scientific Review Panel Report. Sheryl Freeman indicated that the document was prepared per the Board's instruction and for the purpose of advising the Regional Water Board staff. In that manner, the report has already been accepted by the Board, and no formal motion to accept the report is required.

3A. Consideration of Pacific Lumber Company's Request to Waive Waste Discharge Requirements for Selected Plans in Freshwater Creek.

Chairman Massey administered the oath to those expected to give testimony for this item.

Nathan Quarles stated that on December 5, 2002, the North Coast Regional Water Board gave direction to the Executive Officer to issue a Report of Waste Discharge Requirement to Pacific Lumber Company for Freshwater Watershed. Pacific Lumber Company has several different THPs that they intend to harvest in 2003. On December 19, the Executive Officer issued an order for Report of Waste Discharge. The Executive Officer has evaluated and waived two THPs as deemed appropriated. One THP was under Order No. R1-2002-0111 and the other under Order No. R1-2002-0109. The THPs were waived provided that Pacific Lumber Company submit a notice of intent. Mr. Quarles covered the seven THPs. He indicated that the Regional Water Board's staff recommendation is that the Regional Water Board do not act to waive waste discharge requirements for any additional plans in the Freshwater Creek watershed. The Executive Officer issued the order on December 19, 2002.

Craig Anthony with Pacific Lumber Company stated that they are not asking that all of the plans be waived. He asked the Board to consider the few plans being requested to be waived.

Darrel Story, representing the Freshwater Working Group, stated that the damage in the watershed is enormous. Mr. Story gave an estimate of over \$200,000 of damages to the resident's homes in the five watersheds.

Ken Miller cited page 19 of the Final Panel Review Report, page 31, 32, 33. Mr. Miller discussed the recommendations that the Panel made to the Board. He stated that the Board needed to make sure that Pacific Lumber Company understands that cutting trees cause has a effect on the watersheds.

Diane Beck displayed a map to show the area where THPs are located in the area, and commented on the matter.

Cynthia Elkins stated that the Board has failed to protect the water quality in Elk River. She stated that it is surprising that the Board is allowing Pacific Lumber Company to violate the WDRs.

The Board discussed EPIC's petition for the Regional Water Board to take enforcement action against Pacific Lumber Company. Ms. Freeman gave the Board several suggestions on how the Board could handle the petition.

MOTION: John Corbett moved to allow no further waiver.
Bev Wasson seconded the motion. Motion passed with six ayes with John Giorgi opposed.

Meeting adjourned at 5:12 p.m.

There being no further business to come before the meeting body, the meeting adjourned at 5:12p.m., until the next scheduled Board Meeting for February 26, and 27, 2003.

The Secretary, E. Jean Lockett recorded the minutes of the January 23 and 24, 2003, meeting of the North Coast Water Quality Control Board, to be approved by the Board at a subsequent Board Meeting.

Chairman _____

Date: _____