

California Regional Water Quality Control Board  
North Coast Region

Minutes for April 18 and 19, 2002  
Eureka City Council Chamber  
531 K Street  
Eureka, CA

**Thursday, April 18, 2002**

Chair William Massey called the Regional Water Board hearing to order at 8:41 a.m.

**i. Pledge of Allegiance**

Board member John Selvage led the Pledge of Allegiance.

**ii. Roll Call and Introductions**

Board members present: Shawn Harmon, Richard Grundy, Bev Wasson, Dina Moore, William Hoy, John Selvage, John Corbett, and William Massey

Regional Water Board staff present: Executive Officer, Susan Warner; Acting Assistant Executive Officer, Frank Reichmuth; Counsels, Sheryl Freeman and Erik Spiess; Staff Service Manager I, Kathleen Daly; Senior, Diana Henriouille-Henry; Technical staff, David Kuzmar, Richard Azavedo, Adona White, and Matt Buffleven; Office Technician, Terri Korell; Secretary, Jean Lockett; and Administration staff, Drew Bayless

**iii. Board Member Ex Parte Communication Disclosure**

Ms. Sheryl Freeman gave an explanation of Ex Parte communications, indicating this item was an opportunity for Board members to disclose any ex parte conversations that they may have had regarding any item (s) pending before the Board.

The Chair called for such disclosures from the Board members, if any. Chair Massey stated that in his efforts to obtain funds for the day's meeting and tomorrow's (April 18 and 19, 2002) meeting, and including mediation money for the five watersheds, he has had contact with the State Board's Chair, Art Baggett.

**iv. Public Forum**

Richard Gienger urged the Regional Water Board and staff to hold the Basin Plan hearings and deal with waivers. Waivers need to be reconsidered to see what role the Board can play to protect the beneficial uses of water.

Bill Solinsky, a consulting forester who represents non-industrial timberland owners that are outside of the five watersheds, voiced his concerns that the Board is unaware that the issues of the five watersheds are also affecting landowners outside of the watershed. He asked the Board to take his statement into consideration.

Note: A court recorder was present to transcribe the proceedings.

The Chair made an opening statement pertaining to items 1 and 2 on the agenda. In his prepared statement, he stated that he believed that he spoke for all the Board members by

saying that they are looking for a solution. The TMDL solution is a sound careful process to address all of the sediment-related issues. He noted that the problem is timing, and reflected that the TMDL for Freshwater would not happen for more than eighteen months. He stated that he believes that there are no easy answers. However, a solution could be crafted between Pacific Lumber Company and those in the watershed if all would come to the mediation table with the willingness to solve problems. He requested that each person conduct themselves in a civil manner and that they ask themselves the question: am I contributing to the solution?

Ms. Sheryl Freeman, attorney for the Board, stated that at the last Board meeting a question was raised on Board member John Selvage's ability to participate in the Pacific Lumber Company and the five watershed hearings. Mr. Selvage is the former owner of a consulting company with a client base that included Pacific Lumber Company. Mr. Selvage sold the firm a few years ago but continues to receive compensation for that sale. According to the Fair Political Practice Commission, Mr. Selvage continues to have an economic interest in the firm, and it was determined under the economic analysis that Mr. Selvage is disqualified from participating in the hearing. Ms. Freeman reiterated that the basis for his recusal was not for bias, but based on his continuing economic interest in the sale.

Mr. Selvage recused himself, and left the dais.

Chair Massey asked the Executive Officer to address remaining introductory matters. Ms. Warner stated that the Board's first order of business was to resolve several procedural issues. She addressed:

Edward Washburn's April 16<sup>th</sup> written request for more time, and the need for an ethical wall between the Regional Water Board and its staff. Mr. Washburn made reference to the 2000 Regional Water Board hearings that commenced in 2000 and was vacated in 2001. Ms. Warner stated that the State Water Board remand did not require the Regional Water Board to reinstate the hearings held in 2000. She stated that many actions called for as an option in the year 2000 staff report have already been undertaken. The Board expedited the TMDL schedule for the five watersheds. The Board has directed the Executive Officer to impose monitoring orders when needed. She indicated that no additional time needed to be granted at this hearing, and that the firewall established for the prior 2000 hearings was not necessary at this time.

The second procedural issue was to address the matter of late submittals. Ms. Warner said that the notice for this meeting required that all submittals reach the Regional Water Board office no later than March 27, 2002. Late submittals received after the noticed date have been reviewed and do not provide any new information. She suggested that the Board consider accepting the late submittals as informational documents, but not testimony.

The third matter was a request from Mr. Mark Rentz for two additional 10 minute time periods to speak on items 1 & 2 on the agenda. Ms. Warner reviewed Mr. Rentz's request and concurred with slightly more time, 10 minutes, but found no basis for Mr. Rentz to receive the other additional 10 minutes of time. The Board had limited time to conduct the hearing for both days due to building constraints, breaks, lunch, and presentations, and suggested that only 10 minutes additional time be given.

The fourth issue was a video submitted in advance of the meeting as the verbal testimony of those residents on the video who could not be present for the meeting. She suggested that the video submitted be entered into the record and shown today.

The fifth item was the order of the hearing. Because Mr. Selvage recused himself, both items can be heard in combination.

MOTION: John Corbett moved that they accept the Executive Officer's full recommendations. Bev Wasson seconded the motion. Motion passed unanimously, with Mr. Selvage recused.

Chair Massey announced that there would be no additional time granted to speakers as requested. He stated that everyone would be allowed to speak on both items 1 and 2 upon completion of a speaker card.

Mr. Bill Bertain addressed the Chair by requesting that an additional video be shown as testimony. Susan Warner stated that she would meet with Mr. Bertain outside of the meeting and get more information.

**1. Public Hearing for consideration of potential requests for report(s) of Waste Discharge for Timber Harvest Activities on and about Freshwater Creek, Bear Creek, Stitz Creek, and Jordan Creek.**

Chair Massey administered the oath to those who expected to participate or give testimony in the matter of a request for reports of waste discharge requirements related to timber harvest activities in/on Freshwater Creek, Bear Creek, Jordan Creek, and Stitz Creek.

Ms. Warner gave a brief background of the March 1, 2001, petition filed by the Humboldt Watershed Council to the State Water Resources Control Board (State Board). The State Water Board heard the petition and issued an Order to direct the Regional Water Board to expedite the schedule for development of TMDLs in these watersheds, and take other appropriate regulatory actions as the Regional Water Board deems necessary. She reminded the Board that they had discussed the remand Order at the February 2002, Board meeting, and took the following four actions: expedited the TMDL schedule, directed the Executive Officer to impose monitoring orders when needed, require technical reports under 13267 Order where appropriate, and encouraged mediation. Ms. Warner stated that a public meeting would take place in Eureka on May 7 to explain the process and goals of mediation that the Regional Water Board and staff hope to achieve. A report on progress in these areas will be given to the Regional Water Board at the May 17<sup>th</sup> Board meeting.

Ms. Warner said that the matter before the Board today is to consider whether the Executive Officer's priority for requesting the reports of waste discharge is appropriate.

Frank Reichmuth briefed the Board on the process for report of waste discharge. He explained that a report of waste discharge is the first step to gather information from those who propose or threaten to discharge waste per section 13260 of the Porter-Cologne Act. He reviewed a timeline of steps for processing a report of waste discharge. The action to require reports of waste discharge requirements have been delegated to the Executive Officer, and normally does not require any direction from the Board. Once the report is received, typically the staff reviews the report over a 60-day period. If found adequate staff then have 120 days starting from the date of submittal of the complete report to draft, schedule, and bring a waste discharge requirements order before the Board for adoption. Once staff makes a finding that there are CEQA issues, an additional 105 days can be added to the 120 days for preparation of a negative declaration, and if an EIR is needed we then have up to one year to prepare an EIR. He described the historical adoption of waste discharge requirements for timber activities, and said that this Regional Board has adopted waste discharge requirements in 1972 to 1978. In 1972 Basin Plan prohibitions and guidelines for logging construction and associated activities were adopted, which recognized that waste discharge requirements would be waived in the majority of cases. Mr. Reichmuth reported that the Senate Bill 390 that passed in 2001 effected all waivers by giving expiration date of January 1, 2003.

Mr. Reichmuth gave summary on the Timber Harvest Plans (THP) status for the four watersheds, then concluded his presentation, and began to respond to questions.

At 9:30 a.m., the Eureka Fire Marshall requested that the meeting relocate to a more appropriate meeting place to accommodate the large number of public attending the meeting. The meeting was relocated to the Wharfinger Building and the Chair Massey re-called the meeting to order at 10:15 a.m.

Mr. Reichmuth completed his presentation, and Ms. Warner summed up the presentation by reviewing the two procedures described in the staff report. One procedure addressed reports of waste discharge for specific THPs, which Mr. Reichmuth touched on in his presentation, indicating that Freshwater, Bear, Jordan and Stitz are ranked from high priority to low priority. Ms. Warner stated that only 10 per cent of the THPs likely could be addressed if report of waste discharge requirements were requested on a THP-by-THP basis. The second procedure would rely on a watershed by watershed approach or having a sub-watershed wide requirement for reports of waste discharge plans avoids the piece-mealing approach of plan by plan.

Ms. Warner mentioned that the waste discharge requirements and the report of the waste discharge requirement in water code section 13264 is a very valuable tool and worthy of use. Ms. Warner recommended that in the prioritization of plans within watersheds where it is unable to get appropriate mitigation through the review team process that the Board strongly encourage the Executive Officer to require a report of waste discharge requirement be submitted.

Board member Dina Moore gave an overview of the Board advisory subcommittee's activities in contracting with CONCUR, a firm based in Berkeley and Santa Cruz, for facilitating the mediation process by initiating a stakeholder's analysis and follow up with an independent fact finding process. CONCUR's approach to mediation begins with an independent assessment of the amenability of the dispute of the mediation. The firm will begin initiating confidential interviews with those in the dispute. Ms. Moore concluded by saying that Concur has a policy called a joint fact-finding that has been very successful in the past.

Richard Grundy stated that he was a part of the Board mediation subcommittee and said that they did not get into any of the meat of the mediation. However, Mr. Grundy strongly supported joint-fact-finding as a key element of the mediation.

Connie Stuart on the City Council of Arcata, stated that it seemed that the Board was stating their position before holding the hearing. She stated that the Board members should save their testimony until after the public hearing. She requested that Sheryl Freeman direct the Board to start the hearing and not state their position before such time. Ms. Freeman addressed Ms. Stuart's concerns by saying that although it is not a legal issue, but at the Chair's discretion if the Board voiced their opinions and or comments before the public's comments.

Mark Stopher, with California Department of Fish and Game (CDFG), gave a presentation on the Habitat Conservation Plans (HCP), HCP monitoring and enforcement, status of the watershed analysis component of the HCP and information regarding long-term assurances for the HCP measures. The HCP signatory agencies are U.S. Fish and Wildlife Service, National Marine and Fisheries Service, California Department of Fish and Game, and California Department of Forestry and Fire Protection. He gave a brief summary of CDFG's role in the HCP including the issuing of an incidental take permit pursuant to the California Endangered Species Act.

Dean Lucke, California Department of Forestry, stated that he does not think that the Regional Water Board and his agency's thinking is that far apart, however there are three or four key areas where the agencies disagree. He indicated that the disagreement may be related to policy issues. Bev Wasson asked Mr. Lucke about his understanding of the effectiveness of the monitoring and enforcement of the HCP after the first year. Dean Lucke stated that he thought that it was going well.

Edgar Washburn, the attorney for Pacific Lumber Company introduced the speakers for Pacific Lumber Company to address the Board. Jim Branham, of Pacific Lumber Company, addressed the Board by stating that this is a very important meeting today. The actions proposed by the Regional Water Board staff will have significant economic impact on the company and its employees. Mr. Branham stated that a lot is being done to cleanup the watersheds under the HCP. He urged the Regional Water Board to reject the recommendation of staff to implement additional policy changes. Instead, he asked the Board to direct the staff to implement the TMDL process.

Jeffrey C. Barrett, Ph.D., director of Fish and Wildlife Programs with Pacific Lumber Company, stated that the Board might not be getting balanced statements on the watersheds. Dr. Barrett displayed a number of charts that showed a rapid recovery of Bear, Jordan, and Stitz Creeks watershed with high fish populations. He indicated that flooding is a complex matter. He reported that it was true that some of the sediment is a result from the forest practice activities, but the way to fix the sediment problem was not to shut down the logging activities of Pacific Lumber. If all PALCO's sediment contributions were stopped tomorrow, it would not effect the flooding because there is still 50 years of sediment in the waters. He summarized by saying that the watershed conditions – bioindicators of weather quality (salmon, steelhead, and invertebrates) are generally good; turbidity shows rapid post-storm return to base levels and Bear, Jordan, and Stitz Creeks are experiencing rapid recovery, with high fish populations. Dr. Barrett concluded his presentation by saying that for Pacific Lumber Company there are two fundamental aspects of the Board's decision. One is a change in policy. Will the Board deviate from the 1988 MAA? Will the Board deviate from the 1987 Resolution waiving waste discharge requirements? Will the Board try to alter the lead agency status of CDF in the THP approval process? Will the Board overlay something in addition of the Headwater's Agreement, which is a contract between Pacific Lumber Company and the State of California? To do what is being propose has the impact of all of the above. He suggested that it is not necessary to request a report of waste discharge requirement. Do the fact justify the type of drastic action that the Board is willing to take? He suggested that the information that the Board would request by requiring a report of waste discharge would be redundant. He urged the Regional Water Board reject the staff's report.

Kathy Dube, a surface erosion analyst, indicated that she conducted the analysis of the sediment budget for Freshwater. When the group of analysts identifies the problem areas and stated the land management practices that are resulting in poor conditions or that need to be improved, the prescription process begins. The prescription process looks at what additional measures need to be taken or what changes to land management measures are needed to improve aquatic habitat, much of which is water quality. PALCO and the agencies, realizing that sediment from roads is a big problem, are proposing additional prescriptions for Freshwater Creek. When all the roads in Freshwater are stormproofed and the wet weather restrictions take place, she indicated that the sediment number will go down.

Mr. Bill Weaver, a principal and co-owner of Pacific Watershed Associates, provided the Board background information on studies conducted in Bear, Jordan, Freshwater and Elk River. His firm completed a number of extensive studies of landslides and road on Pacific Lumber Company's ownership, which included Bear Creek, Jordan Creek and the North Fork of Elk and Freshwater Creek. The fifty to seventy-five miles of road stormproofing done by Pacific Lumber across their ownership, is inspected by Pacific Watershed Associates. He stated that the potential sites of erosion and sediment delivery associated with the road systems were not unique and confined to Pacific Lumber Company. Pacific Lumber Company and Mr. Weaver's firm developed a detailed prescription and prioritized plans for treating the sediment sources. Mr. Weaver discussed stormproofing as the type of treatment used. In his opinion, stormproofing and erosion prevention being implemented by Pacific Lumber Company's for their forestlands and forest road systems will actually address the road-related erosion problems identified in their sediment studies for the watersheds.

The Board recessed for lunch at 12:30 PM and reconvened at 1:16 p.m.

Ms. Warner stated that the Board meeting will continue at the Wharfinger building at 8:00 a.m. tomorrow.

Ms. Sheryl Freeman gave information on how the Board will conduct its closed session. She noted that the Board had the authority to choose to deliberate the issue in closed session, and had agendaized a time at the end of the hearing to do so. The authority for such deliberation is in the Bagley-Keene Act, at Government Code section 11126(c)(3).

Mark Rentz stated that he was attending the meeting at the request of Freshwater landowners in the watershed. He urged the Board to listen carefully to the speakers and what they had to say. He stated that the issue is, does this Board want to issue a waste discharge requirements to Pacific Lumber Company? He suggested that the proposal by Regional Water Board staff is a bad proposal and the Board should reject it. The staff's proposal undermines the HCP, and it undermines the spirit of cooperation, and the cooperative attempts of the Management Agency Agreement of 1988. He concluded by saying that staff's proposal undermines the regulatory efficiency of the THP process.

Joe Brecher, attorney for Humboldt Watershed Council, stated that the HCP doesn't cover the primary issue that concerns him and his clients, which is flooding. He listed problems with the TMDL and its implementations. Mr. Brecher discussed mediation as a great tool, but will need a showing of good faith from Pacific Lumber Company. He requested the Board to come to some decision on the report of waste discharge requirements for Pacific Lumber Company.

Joyce King displayed a chart to show that there is an emergency in Freshwater. She pointed out the flood frequency from 1987 to present. The flood risk has been rising steadily since the current logging cycle which started in the late 1980's. Since 1996 people have had to raise their houses due to the flooding. She urged the Board to issue a report of waste discharge requirements.

Ken Miller commented that the problem is one of cumulative impacts to the watersheds. The rate of harvest is a big issue. He pointed out that CDF doesn't protect water quality. And, it has been established that the HCP doesn't protect water quality.

Jesse Noell clarified a comment on representation.

Pat Higgins, a fish biologist, gave information on the output of juvenile salmonids according to downstream migrant trapping records. There have been fewer than a thousand juveniles in an entire year. McCready Gulch and Cloney Gulch have diminished tremendously in terms of their ability to produce juvenile Coho salmon in the last six or seven years. The upper main stem or North Fork of Freshwater has remained the area of most intact ecological function. He concluded by saying there are signs of deterioration in the area.

Jan Kraepelien requested time segments.

Clark Fenton introduced himself as a geologist who is involved in volunteer monitoring of suspended sediment, and turbidity in the Humboldt Bay watershed. He presented graphs that demonstrated the turbidity levels at McCready Gulch, once a water supply for Freshwater Valley showing high turbidity peaks that remain high for extended periods. Salmon can't see or grow in twenty-five NTU's. He went on to discuss the February and December 2001 storm in McCready Gulch and Godwood Creek and the turbidity during that date and time.

Randy Klein, a hydrologist, showed a powerpoint presentation giving data collected on Upper Prairie Creek and Godwood Creek and two managed streams, upper Jacoby Creek and Freshwater Creek. Because Salmon are sight feeders, they begin to not be able to see their feed

at twenty-five NTUs. The graphs showed that Freshwater was above twenty-five NTU. He suggested that the Board issue a cease and desist on McCreedy and Little Freshwater.

Alan Cook, a Freshwater resident, said that the residents of Freshwater support the TMDL. The residents want to stop all activities in the upper basin and all activities in the most damaged areas, and begin mediation. Chair Massey asked Mr. Cook if he was speaking on behalf of the Freshwater Working Group. Mr. Cook responded by saying that, yes, and that mediation would need to produce substantial progress.

Chair asked that everyone consider what Mr. Cook has said over the evening and announced that the Board would resume the meeting at 8:00 a.m. the next morning.

The meeting was adjourned at 3:00 PM.

### **Friday, April 19, 2002**

The Chair Massey opened the Regional Water Board meeting at 8:07 a.m.

#### **Pledge of Allegiance**

Board member Dina Moore led the Pledge of Allegiance.

#### **Roll Call and Introductions:**

Board Members Present: Shawn Harmon, William Hoy, Dina Moore, William Massey, Richard Grundy, Bev Wasson, Bev Wasson, and John Corbett.

Chair Massey administered the oath to those who expected to give testimony for the day's meeting. The Chair announced that the meeting would break at noon and move to the Eureka Inn and reconvene at 1:00 p.m. at that location.

Chair Massey began the hearing by asking if there was a response to Alan Cook's statement regarding mediation in yesterday's meeting.

Jared Carter, vice president of Pacific Lumber Company, stated that Pacific Lumber Company will not agree to a self-imposed moratorium on their logging. He gave an overview of the areas harvested in 2000 and 2001 and went on to say that Pacific Lumber Company has had a negative cash flow of almost \$2,000,000 in 1999, 2000, and 2001.

Mr. Carter stated that there are two issues, mediation or moratorium. The moratorium answer is, no; to stop cutting would cause an economic hardship. They have had to lay off approximately 400 employees of Pacific Lumber. They agreed to the headwater agreement with the guarantee that Pacific Lumber would be allowed to cut. They must harvest in the Freshwater and Elk area. He reiterated that they are not opposed to mediation, but they do not know what it is that they are going to mediate or who would be involved in the mediation. He stated that science ought to make policy. He stated that PALCO will be fair players if the Board decides to continue with the mediation process. And, that they promise to go into mediation as constructive and objective players. He asked the Board to make a decision and hold mediation to decide where they go from there. They do not want to have waste discharge requirements hanging over their head.

Allen Cook, representative of the Freshwater Working Group, requested time to respond to Jerad Carter's response.

MOTION: Dina Moore moved that Freshwater Working Group be given fifteen minutes to speak. The motions passed unanimously, with Mr. Selvage recused and not having participated.

Jan Kraepelien responded by saying it is actually part of the specific watershed, not Freshwater that they are asking Pacific Lumber Company to stop logging for 30 days. He displayed a photograph showing the relatively uncut area that the Freshwater Group is trying to protect. That area is feeding Freshwater and is diluting the silt coming from the rest of the area.

Ken Miller stated that this is about the rate of cut and that Pacific Lumber Company was misrepresenting themselves. His concern was that if Pacific Lumber Company refuses to stop in Freshwater and Elk, where will they stop?

Mr. Joe Brecher said that Humboldt Watershed Council will sign onto the proposal of mediation under the same terms as the Freshwater Working Group.

Jesse Noell said that the point is water quality, and water quality comes from soil disturbance and other forms of erosion.

Cynthia Elkins with EPIC addressed the Board by reading page 1 of the Clean Water Act. She stated that the goals of clean water act are very clear. She stated that it is a mandatory duty that the staff requires waste discharge requirements. The Regional Water Board staff has shown that beneficial use of the waters may be adversely impacted. The Basin Plan sets forth two primary means by which the goals of the Clean Water Act are to be achieved; and that is by implementation of the basin plan and waste discharge requirements.

Pat Higgins, a fishery biologist, stated that he participated for two years with the watershed assessment process. He displayed slides, graphs and pictures to demonstrate that the needs of low sediment for fish spawning needs. He discussed the various watersheds and the level of sediment in the watersheds.

Dan Cohon, a forestry consultant, spoke on behalf of the Forest Landowners of California. The landowners would be severely impacted by Board's decision today. This is not a Pacific Lumber Company issue; all timberland owners are affected. He strongly urged the Board to not support the staff's recommendation, and he hope that the process of mediation will bring about solutions to the problem.

Shirley Shelburn handed out a news article and requested the Board to examine data about non-industrial timber management plans, information on timber taxes contributions to county budgets, and Pacific Lumber Company's tax contribution for 1999/2000.

Robert Darby, the senior aquatic biologist for the Pacific Lumber Company, discussed fishery data and suggested that data sets can be made to say anything. He discussed four different fish data sets. He said that you could get very different results in just a matter of months.

Steve Adams, from Scotia, stated that he was there to oppose the waste discharge requirements in the area. He felt confident that the agencies like CDF and Fish and Game could work with Pacific Lumber and carry out the already proposed Plan to protect the resources.

Brian Griesbach, forestry technician, stated that he supports Pacific Lumber Company and their HCP. He stated that the staff report and other groups' reports were based on past information. He is disturbed that Pacific Lumber Company and the Regional Water Board have an on going battle.



Mike Miles, employed by Pacific Lumber Company, commented that it is his experience that clear cutting is misrepresented. Mr. Miles said that it is his job to ensure all harvest operations in this region are in compliance with the HCP, Forest Practice Rules, and any additional THP-specific requirements, such as agency recommendations. It is in his opinion that Pacific Lumber Company's HCP represents a quantum leap in forest protection.

Robert Vogt, assistant director of environmental services with Pacific Lumber Company, indicated that they could not take any more layoffs of more employees. PALCO does not need more regulations, but more communication.

Michael Duffy, with Pacific Lumber Company, said that the employees range in all levels of education and appreciated good forest practices. Pacific Lumber Company has been forced to layoff many good people. Pacific Lumber employees want the chance to fix the damages that was caused by the past.

Len Nielson, with Pacific Lumber Company, concerned that he heard that there is no salmon in the creeks. The HCP is design to work over 50 years and not 3. He requested that the information shown by the Freshwater group be removed from the record.

Burt Silva, a Scotia resident, said that Pacific Lumber Company entered into an agreement with the government and was promised that they would be able to log. The solution is to give Pacific Lumber Company the time and chance to prove them selves.

Ron Bush, employee of Pacific Lumber Company, stated that the stringent requirements of the HCP are such that the water quality concerns have been more than adequately addressed. The over regulation and bias has impacted the company, families of the workers, the communities and the customers that the company serves.

Ron Sanderson, a Pacific Lumber Company employee, spoke on the impact on the families of those who were laid-off by Pacific Lumber Company. He stated that he is looking for the truth and to be free of the controversy.

Janet Mattson, a neighbor of Pacific Lumber Company, said that Pacific Lumber Company is a great neighbor. She voiced her concerns that any regulations put on Pacific Lumber Company unnecessarily will also be a burden to her. She requested the Board to not add anymore regulations.

A ten-minute break was observed at 10:00 a.m.

Mark Rentz repeated his statement of April 18, by saying that the adoption of the proposal to have reports of waste discharge requirements would, constitute an inconsistency and undermine the Timber Productivity Act of 1982.

Charles Ciancio voiced his concerns that the Regional Water Board staff could use the waste discharge processes if they felt that the harvest plan mitigation is not enough. He requested that the Regional Water Board read the two letters he sent to them as his written comments.

Wayne Rice, a Pacific Lumber Company employee, stated that the HCP was issued to Pacific Lumber Company to take care of all or most of the issues. He stated his concerns that there would be more mitigation and additional processes to go through.

Than Williams, an employee of Pacific Lumber Company, supported Pacific Lumber Company by saying that the HCP that Pacific Lumber Company has in place far surpasses anything that he's seen except maybe the Tahoe Basin.

John Sneed, an employee of Pacific Lumber Company, asked the Board to consider the impact of their potential decision to require report of waste discharge requirements. The HCP has only been in place for a short period of time and it is too early to realize the full benefits of its implementation.

Robert Brothers suggested that Pacific Lumber Company slow down the rate of harvest to keep some level of jobs going on a sustainable basis. There is no doubt the HCP will reduce the impacts, but will they reduce them enough? Reports of waste discharge will give information on what needs to be done in Freshwater.

Bernie Bush, employee of Simpson Timber Company, voiced his concerns and the concerns of the members of Simpson Timber Company about the potential implications that the Board's action may have. He stated that the reports of waste discharge requirements are not suitable for non-point-source issues. He requested the Board to direct the staff to set aside the matter of report of waste discharge requirements.

Jesse Noell requested that the Board make a decision. There are more rainstorms and more flooding.

Steve Horner presented material to the Board just for informational purpose only. Mr. Horner discussed the Regional Water Board's staff reports on preharvest inspection in the Elk River drainage. Mr. Horner urged the Board to direct the Executive Officer to not request reports of waste discharge.

Lane Russ, representing the Humboldt County Association, voiced his disappointment that Humboldt group was not allowed to have time to give a presentation on the damage that has occurred. The economic impact on industrial landowners will be a hardship. He urged the Board to not require waste discharge requirements and use mediation as a solution.

Paula Yoon, represent the Institute of Study for Humboldt University, said that the mediation proceedings should be paid for by the Regional Water Board. She also recommended that the mediation start immediately

Bill Blasewitz said that it was obvious that Pacific Lumber Company, Maxxam, ScoPac and California Department of Forestry has dropped the ball and the Regional Water Board will pick it up and do something positive with it.

John Williams said that during an investigation of Pacific Lumber Company they found that the forest practices of Pacific Lumber Company to be aboveboard. Reports of waste discharge are very disruptive and not necessary. He urged the Board to deny the staff's request for authority to issue reports of waste discharge.

John Rice, a rancher and a non-industrial timber owner, concerned that the regulations against Pacific Lumber Company will eventually affect the small landowners.

Ken Miller reiterated the rate of harvest. He stated that other agencies have been compromising because of the HCP agreement. The problem is not THP's but cumulative impact, and he urged the Board to get Pacific Lumber Company to slow down and decrease the impact on the watershed and residents of the land.

Joyce King said that she doesn't think litigation regulation and legislation are good answers for this dispute. Pacific Lumber who owns their land should be able to work it as long as they don't hurt their neighbors. She supported the idea of mediation.

Catherine Peiy donated her three minutes for everyone to sit in silence and think about what is happening today. Purpose of the silence is for those to think of why we are here. 2-minutes of silence were observed.

Sean Zimmermaker supported Pacific Lumber Company by saying that he had never witnessed greater protection given to water courses, hillslopes or roads than given by the Pacific Lumber Company. He stated that further regulations are not necessary.

Nada Nanda said that for the last eight years she has worked to bring the water back to water quality standards. The Regional Water Board is responsible for the citizens of the public and not Pacific Lumber Company as a private entity.

Matt Dias stated that he stood in opposition of the recommendation to request report of waste discharge requirements. He suggested that the Regional Water Board staff assist Pacific Lumber Company and its staff in implementing the HCP.

Butch Parton, president of the Humboldt County Farm Bureau, said that many small non-industrial landowners depend on the timber companies to keep them viable. The residents in Freshwater should not be surprised that their homes are being flooded because they flooded years ago.

Colleen Devine-King, a resident of Humboldt County and a biologist for Pacific Lumber Company, stated that Pacific Lumber's HCP goes above and beyond the call of duty to protect the water.

Darryle Story, a resident of Freshwater, said that the flooding in the watersheds is illegal and a crime. The residences of the watersheds want quality water. What would the economics of the valley be if not for water quality. He urged the Board or staff to talk to some of the residents.

Naomi Waggoner, with Earth First, voiced her appreciation of the non-union employees that are loyal to their boss. Pacific Lumber should submit to monitoring if they are so confident of their HCP.

Tim McKay, a resident of Humboldt County, said that we are in the thirtieth year of a contract with the American people called the Clean Water Act. Those folks who are doing well financially are managing to succeed in preventing the cleanup of our water.

Connie Stuart thanked the Regional Water Board staff for an excellent staff report. She referred to page 9, 5, and 7 of the report that discussed the Basin Plan, the agency's mission to protect water, and the staff's suggested plan to fulfill the mission of protecting water quality in this matter. She suggested that all the agencies should mediate and come up with a process so that everybody could understand.

Doug Smith said that he has been trying to figure out the five hundred clear-cut equivalent acres. The HCP and the SYP have nothing to do with whether or not we can swim in the streams or use the water for drinking.

Mr. Loveless stated that the people who are speaking here today are outraged at what is happening in their homes. They have suffered economic hardship. Pacific Lumber Company has caused and will continue to cause damage.

A fifteen minute video was shown as testimony for residents who were unable to attend the meeting. Residents discussed their fear during the flooding season of not being able to get out of the area in case of a medical emergency. The video showed the levels of floods that each resident experienced. Residents: Alan Cook, Mary McCain, Mike Stringer, Bill Blassowize, Rudy Langolis, Jack Quirley, Marian Coleman, Dave Boston, Kirk Hippins, and Tiffany Whitenhouse.

## **Item 2 Public Hearing for Consideration of Potential Requests for Report(s) of Waste Discharge for Timber Harvest Activities on and about Elk River.**

The Chair administered the oath to those who expect to give testimony in the matter of Elk River.

Frank Reichmuth gave an overview on the status of Elk River, and the threat of discharges in the watershed. Mr. Reichmuth discussed the Board's authority for making a request for report of waste discharge; the background on the generic process for requesting reports of waste discharge, and reviewed the public notice for this hearing. He stated that the Regional Water Board staff's recommendation is to direct the Executive Officer to request a report of waste discharge.

Frank Bacik, attorney for Pacific Lumber Company, discussed what he called "timber wars" of Pacific Lumber Company. He went on to say that the HCP represents the promise that there would be a balance of economic interest for the company and the protection of environmental resources. Mr. Bacik pointed out that he believed that a misunderstanding of the law is that the Regional Water Board has primary jurisdiction for enforcement of the Porter-Cologne Water Quality Act. It is not the case that the Board, the staff, or the agency has any specific exclusive or even primary jurisdiction for enforcement of the Porter-Cologne Act. Drinking water quality, domestic sources, water quality values and resources are protected through the Forest Practices Act and multi-disciplinary comprehensive regime under the Forest Practice Act. He cited several sections of the Forest Practices Act and then stated that the Director of California Department of Forestry makes the final determination on whether the Basin Plan is being complied with in the context of timber harvest plans. Mr. Bacik continued to say that the courts do not agree with the Regional Water Board on the authority or jurisdiction to request reports of waste discharge.

Dr. Jeff Barrett introduced slides from Coho biomass, and macroninvertebrate stream health analysis. He stated that conditions are not as bad as they are led to believe. He showed graphs and maps of areas of harvesting completed and proposed by Pacific Lumber Company, HCP harvest restrictions in the Elk River Basin. Sediment studies in Elk River helped Pacific Lumber Company to identify where and how to fix roads, and identified areas that are sensitive to landslides. The vast majority of harvesting done in Elk River by Pacific Lumber Company is commercial thinning or selection.

Sheryl Freeman gave an overview of the Board having explicit authority under the Porter-Cologne Water Quality Control Act that designates the Water Board as the primary agency to protect water quality in the State of California, and noted that no provision of statute or case law has deprived the Regional Board of the authority to regulate timber as it affects water quality. The State Board has confirmed this authority of the Regional Board's in its recent presidential decision regarding THP520.

Frank Reichmuth stated that Mr. Bacik referenced two petitions to the Board in the past to adopt waste discharge requirements for a timber harvest plan. Both times the requests were from the public to adopt the order and staff's recommendation was not to adopt the waste discharge requirements. Mr. Reichmuth clarified Dr. Barrett's comments on Reichmuth's participation in the HCP discussions. He indicated that he had participated quite a lot in the habitat conservation plan discussions along with Fish and Game and others. He stated that the meetings were quite interesting, but in the latter part of 1998 he was unable to attend.

Cynthia Elkins, with the Environmental Public Information Center, mentioned the Antidegredation policy tier III that applies to the outstanding national resource waters. She stated that EPIC believes that the headwater areas and South Fork and Elk River should be protected under the Antidegredation Policy. If we are to continue to have Coho in the Elk River it is absolutely necessary that we protect these waters. In addition to the old logging plans, Pacific Lumber Company proposed new logging plans that covered 1,282 acres, which represents about 17 percent of the watershed. They will also construct 21,000 feet of new road under the new plans.

Ms. Elkins stated that EPIC filed the first law suit in the 1980's called EPIC vs. Johnson, requesting CDF to do a cumulative impact analysis. Unfortunately, EPIC believes that CDF's cumulative impact analysis is below standard, such that in EPIC's eyes the court decision has not been implemented yet. She stated that pretty much every agency that has ever looked at this matter stated that CDF's cumulative impact analysis is flawed. Ms. Elkins showed a picture of a dormant landslide that triggered a massive landslide that went into the south fork and Elk River. Pacific Lumber Company filed a plan in 1996 that CDF signed off on. The habitat conservation plan does not cover dormant landslides.

Pat Higgins displayed graphs and pictures to discuss fine sediment in South and North Fork, and to show the difference before logging and after logging.

Jesse Noell addressed the Board by reviewing written information that he had discussed previously in yesterday's meeting. He asked the Board to issue waste discharge requirements.

Ms. Freeman stated that a new item offered as substantive evidence does not have to be accepted into the record, as it was being offered after the deadline stated in the notice. However, Ms. Freeman stated that Mr. Noell could submit his written information for the Board to use as information as Mr. Noel gave his verbal testimony.

Mr. Noell reviewed a letter from Mr. Crowley of Lanahan and Reilly written to withdraw two head of agency appeals filed by the staff. Ms. Warner stated that the letter is in the record. Mr. Noell stated that he would like to submit monitoring data in the interest of assisting with report of waste discharge requirements. He stated the level of sediment impact is not acceptable to the residents in watersheds. He urged the Regional Water Board to direct the Executive Officer to issue report of waste discharge to Pacific Lumber Company.

Ken Miller said that the situation in Elk River needs to be looked at. He gave information that he believed disputed CDF's statements regarding HCP for Pacific Lumber Company. He read part of a letter written by CDF dated January 1, 1999, addressed to Pacific Lumber Company stating that they acknowledge that the pre-permit application agreement does address partially habitat concerns, but does not adequately address the flooding and public safety concerns.

The Board observed a dinner break at 5:30 PM and resumed the meeting at 6:54 PM.

Kristi Wrigley addressed the Board by asking why there was so much talk about the HCP. Ms Wrigly said that good science will give the Board good information. The HCP does not directly address the issue of water quality. She stated that the public needs the Water Board to straighten up the problem by addressing the owner Maxxam. She requested the Board to require ownership wide report of waste discharge requirements for Pacific Lumber Company.

William Bertain, representing the Elk River residents, requested the Board to establish the ownership wide in the Elk River and to have a finding today. The CDF process has proved to be a total failure because the lives of down stream property owners have been ignored. Mr. Bertain asked the Board to act on the truth and the information that they have heard from those residents from Elk River. He stated that the Board needs to take action by encouraging the Executive Officer to take action. Mr. Bertain stated that the residents of Elk River would seek an injunction if the Board will not act and require a report of waste discharge requirement.

Shawn Therault, appearing for Larry Ward, Jr., a resident of Elk River, read a statement written by Larry Ward stating the increase of flooding has affected the water quality and the land in the Elk River area. Mr. Ward and other residents met with Pacific Lumber Company to discuss the issue with no resolution. In his letter, Mr. Ward urged the Board to require report of waste discharge requirements, so that the land can be restored and to protect the water quality.

Mike Louv, a resident of Elk River, gave testimony saying because of the damage to his land he cannot sell his home. The river is filled with silt and there are two to three inches of clay all over his land. He requested the Board to issue report of waste discharge requirements.

Kay Tetrault, an Elk River resident, voiced her inability to resolve the mud and sediment in the river. She stated that the Board has the ability to resolve the issue. She urged the Board to issue the report of waste discharge requirements.

Tera Prucha, a resident of Elk River, stated that the Board should listen to their staff. The Regional Water Board staff has studied the scientific evidence for a long time. She urged the Board to use their best judgement and listen to their staff.

Dan Cohoon, a representative of the members of the Forest Landowners, said that this is not a Pacific Lumber Company issue. This is about a policy that affects all the forest landowners. The current permit process has been discussed and he urged the Board to not issue a waste discharge order.

Doug Smith stated they he is working with EPIC in creating a map of the THP. He donated the remainder of his time to the Board so that a decision could be made today.

Richard Geinger passed out an excerpt from Pacific Watershed Associates to the Board and asked them to refer to page 35, which showed an estimate of future erosion of sediment delivery. He asked the Board to take the public trust seriously. He stated that it is important to carry out policy and issue the waste discharge requirements.

Lawrence Dwight, a rancher in the Humboldt area, stated that in his point of view the Elk River might need to be drained again. We may also need to build drainage for the fish.

Lane Russ said that his property flooded repeatedly. There were drains installed and those drains continue to work. He said that he and other landowners below and above him in the Elk River area have not experienced the sediment on their land as stated by others residents who have made claims. He asked the Board to not adopt waste discharge requirements.

Howard Russell's presentation was given in the form of a three-minute video. Chair Massey allowed Mr. Russell to show his video, but the video was not admitted in the record. The video showed the sediment in the South and North Fork watersheds. It demonstrated the woody debris and sediment. Ms. Sheryl Freeman stated that Mr. Russell could admit the videotape as his oral testimony.

Denver Nelson, a ranch owner, indicated that Pacific Lumber has logged next to his place for 120 years. He voiced his concerns that Pacific Lumber Company may be pushing their limits with logging. He showed a graph of completed TMDLs in the Van Duzen, Eel River, and Elk River, and Freshwater Creek.

Michael Turner, a resident of Humboldt county for 30 years, said that if the Board were aware of the water conditions of Elk River, and to allow children to drink the water from that river would be harmful. He asked the Board to follow their own mission and direct the Executive Officer to issue report of waste discharge requirements.

Matt Turner, resident of the North Fork River, discussed the declining fish in the Elk River. He stated that he is deprived of his right to fish and wade in the river. He strongly urged the Board to order the waste discharge requirements.

Ralph Kraus, a 44-year resident of North Fork and Elk River, strongly urged that the Board require ownership wide requirements. Cleanup and abatement Order No. 97-115 was issued in 1997 and there has been very little activity by Pacific Lumber to obey that order. He stated that

the Regional Water Board staff has described the river very well. The lack of consideration for those residents that live along the river is unacceptable.

Jan Kraepelien showed colored graphs and maps of Freshwater that showed the clear-cut of Pacific Lumber Company. Pacific Lumber Company is responsible for what they did to the land. He asked the Board to do an open discussion and open decision on this matter.

Joel Rankin discussed flood factor on the Elk River. He produced a number of exhibits on flooding analysis, the 17 pending harvest plans, and a scale of how many acres are logged by Pacific Lumber Company.

Robert Darby, an employee of Pacific Lumber Company, disagreed that there were no fish in the watersheds. He said that there were fish in both Elk River and Freshwater. Pacific Lumber Company's HCP will protect the fish in the watersheds and we need to give it a chance by supporting the HCP.

Shirley Shelburn reiterated her remarks made earlier in the day. If Pacific Lumber Company is going to survive in the long term, they will need to report on waste discharges now.

Marianne DeSobrin, a resident of the Elk River area, reinforced EPIC's comments on protecting South Fork. There are fewer trees, fish, sawmills, jobs, and fewer working irrigation pumps, and more flooding, sorrow, and anger. The report of waste discharge requirements will solve a lot of the problems.

Robert Brother stated that Pacific Lumber indicated that they are strict in their practices and they have the best science. He believes that the issue is a harvest-scheduling problem.

Cristina Pasteris, a resident in the North Fork of Elk River, asked the Board to require waste discharge requirements for the watershed. She is not to be able to flush her toilets or brush her teeth until the water tanks arrive in the morning. She suggested that the Board members tour Pacific Lumber Company and experience the water for themselves.

Patrick Higgins voiced his disappointment that the science in this discussion has been misrepresented. He stated that he worked two years on the Freshwater report and hoped that the Board will read the report. He agreed with Mr. Dorby's statement that there was fish in the Elk River, however those fish are tiny fish and will not make it to adult fish.

Shawn Therutault requested a solution that will keep Pacific Lumber Company in business and that will deliver clean water to the residents of the watersheds.

Jack Rice said that Board's decision and any policy changes can have a negative impact on others outside of the watersheds. He asked the Board not to adopt the report of waste discharge requirements.

Mike Miles, Compliance Forester of Pacific Lumber Company, asked the Board if they had any questions for him regarding the operations of Pacific Lumber Company. He stated that the flooding that the watersheds are experiencing is from more than 10 years ago.

Robert Vogt, an employee of Pacific Lumber Company, stated that Pacific Lumber Company agreed that there is a problem in the creek, but he is not sure if a report waste discharge requirement will stop the flooding, because the flooding is natural.

Steve Horner, an employee of Pacific Lumber Company, said the regulations for timber companies are forcing companies to close. He requested that the Board not direct the Executive Officer to issue waste discharge requirements.

Bill Conroy, the Monitoring Program Coordinator for Pacific Lumber Company, referred to the picture shown by Ms. Elkins. He pointed out that Pacific Lumber Company did not own that piece of land when the slide and harvesting took place. He discussed the monitoring and the data collecting activities that is taking place at Pacific Lumber Company in their efforts to help the Regional Water Board and staff to make a decision. He requested that the Board allow Pacific Lumber Company employee and the water Board staff to work together.

William Bertain discussed the THP 219 that is near a scout camp and said that the THP should not be allowed. He stated that Pacific Lumber employees have been victimized, but the concern of the Board is the residents in the Elk River watershed.

Jesse Noell, stated it is interesting that there is a lot of restrictions placed on development because of flooding, but Pacific Lumber Company does not have to abide by those restrictions.

Kristi Wrigley displayed a map that showed the Boys Scout Camp at Briggs Creek, and Pacific Lumber's logging areas. She wanted the Board to see what happened before when the area was harvested and stated this is what they have to look forward to. She stated that the residents needed help and they need it now.

Jannel Bohannon stated that her family owns property in the Elk River. She voiced her support for responsible logging, but doesn't support what is going on in Elk River. The increase in flooding in the valley coincides with the increase in logging.

Susan Warner stated that Supervisor John Wooley left a written copy of his oral testimony, which was handed out to the Board.

A 16-minute video was shown: Mike Turner, Scott Neeley, Margie Bohannon, Don Brewer, Phil Nicholas, Dina Moore questioned if those shown in the video spoke in the meeting and gave their testimony in person. The chair stated that it was his understanding that the video was in lieu of those who could not attend the meeting. After minor discussion, the Chair allowed the video to be viewed.

Sheryl Freeman stated the Board would go into closed session under the Bagley-Keene Act, as authorized by Government Code section 11126(c)(3).

The Board returned from closed session at 11:31 p.m.

The Chair re-opened the meeting by reading section 13000 of the Porter-Cologne Act; "It is the intent of the legislature that the State Board and each Regional Board shall be the principal state agencies with primary responsibility for the coordination and the control of water quality." He also read from the EIS for the HCP volumes I, on pages 3, 4, 12, and 13 states as an environmental mitigation of the HCP that "the North Coast Regional Water Quality Control Board is responsible for implementing and regulating water quality control plans. The Basin Plan provides a definitive program of actions that preserve and enhance water quality." The Chair stated that the Board understands their position. The Chair called for a motion to implement their decision.

**MOTION:** John Corbett moved to: a) Continue to move forward with mediation efforts in the four watersheds, b) Direct the Executive Director to give the Board a status report on existing monitoring requests at the next Board meeting. c) Staff should consider further cleanup and abatement orders on Elk River and Freshwater. Richard Grundy seconded the motion. The motion passed unanimously, with Jack Selvage recused, and having not participated.



Mr. Hoy asked Susan Warner to read his letter of resignation effective April 30, 2002, addressed to Governor Gray Davis. Ms. Warner read part of the letter to the public. The letter stated that he enjoyed serving as a Board member, but must resign. Ms. Warner stated that the staff would miss Mr. and Mrs. Hoy.

[There were angry audience comments on the Board's motion.]

There was some dialogue about the scope of the hearing. Sheryl Freeman noted that this hearing was conducted at the Board's request to schedule a hearing so they can consider directing the Executive Officer to request reports of waste discharge. This was not a hearing on the petition per se, but as part of the Regional Board's "further actions as the Board deems appropriate" as ordered by the State Board.

John Corbett stated that the Board needs to get an answer to the public on the Board's procedures in the near future. Ms. Warner noted that, through its actions at this meeting and the one in February, the Board had concluded this stage of its response to the State Board's remand, and that the Regional Board had not requested that another meeting be scheduled. Ms. Freeman noted that the Board could ask staff to schedule a future hearing to respond to the original petition point by point, if they wish. Mr. Corbett requested that the interested parties should have a written document in their hands if they should decide to petition the Board's decision. Ms. Freeman noted that the executive officer could summarize the actions taken at this meeting and the prior actions by the Board in response to the remand, and issue that to the interested parties, if the Board so wished.

The Chair stated that the motion was an action taken by this Board to mediate, and other actions. Mr. Corbett stated that he shared the concerns of the public.

Ken Miller stated that he will not mediate. He stated that he did not see a need.

The Chair stated that the Board has given the Executive Officer a directive in terms of which direction they would like to go.

Mr. Bertain asked the Executive Officer what she intends to do with the order. Ms. Warner stated that she cannot answer Mr. Bertain at the moment but will respond at a later date after she met with her staff. Mr. Bertain asked if she would be making a decision within the next week on plan 219. He asked what did the Board have in mind on the cleanup and abatement.

Richard Geinger suggested that motion was to continue the status report.

Jan Kraepelien wanted an explanation for the word "to consider".

Jared Carter thanked the Board for their efforts and stated that Pacific Lumber Company will work with the mediation in an effort to make it a success. They will work with the residents and staff to find a way to improve conditions in the stream. He will continue to inquire about dredging. Pacific Lumber Company will stand ready to donate equipment and people and spend money if there is something that can be done that will look like it has some opportunity for success.

Cynthia Elkins strongly voiced her opinion and said that the Board had an opportunity to take small step. She stated that this hearing was a sham. She stated that the people have no hope in the Board.

Unknown speaker: The public hearing excludes the public; the Board came back with no decision. This Board was the public's only hope and now it is shattered.

Ken Miller asked each Board member to vote on the waste discharge report.

Mr. Hoy stated that there is a reluctance to make any statements.

MOTION: Bill Hoy moved to adjourn the meeting. Shawn Harmon seconded the motion. Meeting adjourned with John Corbett abstaining. The Chair stated that there were six votes and one abstention.

There being no other business to bring before the Board, the meeting adjourned at 12:00 a.m.

The Secretary, Jean Lockett recorded the minutes of the April 18 and 19, 2002, Board meeting of the North Coast Water Quality Control Board, to be approved by the Board at its next meeting.

\_\_\_\_\_ Chair

\_\_\_\_\_ Date