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Sent via electronic mail to: northcoast@waterboards.ca.gov on date shown below

January 18, 2016

Mr. Mathias St. John
Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

RE: EPIC Comments Regarding Draft Order No. R1-2016-004, Waste Discharge Requirements and General Water Quality Certification for Humboldt Redwood Company Timber Operations in Upper Elk River Watershed and Proposed Mitigated Negative Declaration

Dear Mr. St. John and North Coast Regional Water Board:

The following comments are submitted on behalf of the Environmental Protection Information Center (EPIC) regarding Draft Order No. R1-2016-004, Waste Discharge Requirements and General Water Quality Certification for Humboldt Redwood Company (HRC) timber operations in the Upper Elk River Watershed, and the associated proposed Mitigated Negative Declaration to support the Draft Order. EPIC appreciates the opportunity to provide written comments at this time, and respectfully requests a formal written response.

General Comments on Draft Order

EPIC supports the need for the Regional Board to adopt stringent Waste Discharge Requirements to constrain waste discharge and other controllable water quality factors from timber operations and associated activities by HRC in the Upper Elk River Watershed. The necessity of prescribing and enforcing measures above and beyond the existing Watershed-Wide WDRs and Habitat Conservation Plan for HRC in the Upper Elk River Watershed is supported by the overwhelming evidence before the Board that watershed conditions in the Upper Elk River are significantly impaired, beneficial uses are not being attained, and existing controls on HRC's timber operations have not been enough to arrest the ongoing impairment. In fact, conditions in Elk River continue to worsen, despite changes in management, silviculture, and operational procedures instituted with the HRC takeover of the old Pacific Lumber Company ownership in the watershed.

Given this, EPIC fundamentally questions how the Regional Board can continue to permit ongoing waste discharges from timber operations by HRC, or Green Diamond Resource Company, in the Upper Elk River Watershed, given the determination that the "impacted reach" of the Elk River Watershed has a zero assimilative capacity for additional sediment, and the

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proposed numeric target for the forthcoming Technical Total Maximum Daily Load (TMDL) for sediment in the Upper Elk River is similarly set at zero. There seems to be a fundamental disconnect between the assimilative capacity of zero and the load allocation of zero, and the terms of the Proposed Order, which will clearly not restrain waste discharges to attain a zero addition of new sediment in either the short-term or long-term.

EPIC remains concerned that the Regional Board may be relying too heavily on the hopes of the Elk River Recovery Assessment, and the Elk River Stewardship group processes, to ensure attainment of water quality objectives, watershed recovery, and the abatement of nuisance conditions in the impacted reach that continue to threaten the homes, lives, property, and safety of local residents. These processes, while certainly meritorious, are largely still in developmental phases, and, more disturbingly, appear to be largely dependent upon financial support and cooperation from HRC.

EPIC believes the Regional Board is overcomplicating matters that are in fact quite obvious and simple. The impaired condition of the Upper Elk River Watershed is a direct result of past and ongoing significant adverse cumulative impacts directly resulting from poorly-regulated and implemented timber harvesting practices causing waste discharges in the watershed. We know that during the so-called “moratorium” years of 1997-2002, watershed conditions markedly improved. It seems rather apparent that acting swiftly and decisively to curtail timber operations in the watershed to prevent waste discharges is the simplest, and indeed, most immediate and likely most effective way of controlling non-point source sediment pollution and facilitating watershed recovery in the Upper Elk River.

Specific Comments Regarding Draft Order

EPIC believes the Draft Order constitutes a substantial improvement over the existing WWDR governing waste discharges from HRC’s timber operations in the Upper Elk River Watershed. Below we address some of these improvements and provide suggestions for further improvements of the Draft Order.

1. Temporary Prohibition on Harvest Activities in High-Risk Sub-watersheds

Strict controls on timber operations to prevent waste discharges are the only sure-fire way to ensure reductions in non-point source sediment discharges from anthropogenic sources in the Upper Elk River Watershed. Section I(A)(4)(a) on page 29 of the Draft Order would institute a temporary prohibition on HRC timber operations in five so-called “high risk” sub-basins in the Upper Elk River. This prohibition is to exist for a period of five-years. EPIC supports the Regional Board’s authority and factual basis for implementing a prohibition on harvesting to control logging-related sediment sources from contributing to the already-impaired conditions in the impacted reach and elsewhere in the watershed. EPIC also appreciates and generally concurs with the methods utilized and rationale for determining the relative risk factors associated with logging operations and sediment production in sub-watersheds in the Upper Elk River.

There are, however, two concerns with limiting the scope of the temporary harvest prohibition in the manner the Regional Board has chosen. First, the five sub-watersheds selected are all located in the South Fork or Mainstem region of Upper Elk River; there are no watersheds in the North Fork of Elk River designated as “high risk” and thus none subject to the temporary prohibition. The provisions of Section I(A)(3) on page 29 of the Draft Order, which will allow

HRC to harvest a maximum of two percent of its ownership every ten-years based on the clearcut equivalent acre calculation methodology, will apply across the entire North Fork of Elk River, which constitutes the vast majority of HRC's ownership in the Upper Elk River Watershed. The allowance of a two percent clearcut-equivalent acre cap per-decade does not represent a fundamental improvement over HRC's current and future projected harvest rate in the watershed.

Secondly, three of the five "high risk" sub-watersheds subject to the temporary prohibition on HRC's timber harvesting operations, McCloud Creek, Tom Gulch and Railroad Gulch, also have Green Diamond ownership. Green Diamond owns 1,900-acres in these sub-watersheds. Green Diamond's timber operations in these sub-watersheds are not constrained in any way by this Draft Order. Rather, Green Diamond is currently subject to its property-wide WDR, Order No. R-1-2012-0087, which includes a special South Fork Elk River Management Plan, referred to as Attachment C to the Order. R-1-2012-0087. The South Fork Elk River Management Plan presently allows Green Diamond to harvest as much as 75 acres-per-year, on a three year rolling average. All of Green Diamond's South Fork Elk River ownership is in three of the five "high risk" sub-watersheds, in which HRC would be prohibited from harvesting for the next five years. EPIC questions the potential overall effectiveness of imposing a temporary prohibition on HRC timber operations, while allowing Green Diamond to clearcut up to 75 acres per-year on a three-year rolling average. The Draft Order and the proposed Mitigated Negative Declaration do not identify nor evaluate the cumulative adverse water quality impacts associated with Green Diamond's operations. This is needed to evaluate whether the proposal to allow exceptions to the temporary prohibition will result in increased significant and cumulative impacts. Further, EPIC maintains that a full evaluation of Green Diamond's operations must be provided to develop an adequate regulatory structure for HRC to prevent and/or address discharges of waste and other controllable water quality factors associated with timber harvest activities.

2. Enhanced Riparian Management Zone Prescriptions

Requirements in the Draft Order for enhanced Riparian Management Zone (RMZ) buffers beyond HCP and Watershed Analysis prescriptions that also include enhanced basal area retention requirements are an important improvement, particularly as they pertain to Class III watercourses, which, to this point, have clearly received inadequate protections. The Regional Board has long-understood that measures prescribed in the HCP and subsequent Watershed Analysis Prescriptions developed by PALCO and then HRC were not specifically designed, and not likely adequate, to protect beneficial uses of water, obtain water quality objectives, or to prevent or abate nuisance sedimentation and flooding conditions in the Upper Elk River Watershed. The results of the Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015), as well as the monitoring observations of Salmon Forever and others, clearly demonstrate that HCP and Watershed Analysis prescriptions have simply not been enough to stem the tide of sedimentation, and aggradation in the Upper Elk River Watershed resulting from contemporary timber operations. To the extent that the Regional Board intends to permit waste discharge requirements to support ongoing timber operations, the measures contained in the Draft Order represent the bare minimum of what is necessary to curtail further sediment contributions from contemporary timber operations conducted by HRC given the well-documented degraded instream conditions in the impacted reach of Elk River. Quite simply, more is needed to ensure that the zero load allocation is rigorously met.

3. Discretionary Enrolment

EPIC strongly supports the provisions in the Draft Order at Section V, paragraph 1, on page 44 that provides for Regional Board Executive Officer discretion over individual THP enrollment in the until January 2020. Given the well-documented impaired conditions in the Upper Elk River Watershed, and given the uncertainty of the effectiveness of permitting further waste discharge from timber operations, as well as the uncertainty of the effectiveness and implementation of instream recovery efforts, the Regional Board's Executive Officer must retain discretionary control over THP enrollment to ensure that water quality objectives are being attained, nuisance conditions are being abated, and watershed recovery is progressing in a meaningful and measureable fashion. EPIC recommends that the Regional Board discard the January 2020 timeline for a transition from discretionary enrollment to ministerial enrollment as articulated in this Draft Order, as this timeline locks in a presumption and expectation that the enrollment procedure will perfunctorily and automatically change, regardless of what the evidence may show about the effectiveness of controls during the first five-year period. Rather, EPIC suggests that the Regional Board table the prospect of future ministerial enrollment to a later date when the effectiveness of the strategies of this Draft Order, and any ongoing recovery efforts, can better inform the determination as to whether ministerial enrollment is appropriate and justified.

Conclusion

The Draft Order contains considerable and significant improvements over the existing WWDR regulating HRC's timber harvesting operations in the Upper Elk River watershed presently. However, there is an overwhelming body of evidence, including in the Technical Sediment Source Analysis (Tetra Tech 2015), the monitoring data gathered by Salmon Forever, and indeed, even in HRC's own Report of Waste Discharge (ROWD) (October 2015), to document that contemporary timber operations pose a significant and ongoing risk of exacerbating the already overwhelmingly impaired conditions in the Upper Elk River Watershed. This poses the fundamental question of how the Regional Board's Draft Order can achieve a zero nonpoint source load allocation in this watershed with no assimilative capacity, with a structure that supports ongoing and future timber operations which contribute to the overwhelmed assimilative capacity in the impacted reach.

Please do not hesitate to contact us should there be any questions, and thank you for this opportunity.

Sincerely,



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