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April 15, 2019

North Coast Regional Water Quality Control Board
Attn: Mr. James Burke, Senior Engineering Geologist
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

RE: Comments Regarding Proposed Initial Study, Proposed Mitigated Negative Declaration, and Proposed Order No. R1-2019-0021, Waste Discharge Requirements for Nonpoint Source Discharges and Other Water Quality Factors Related to Timber Operations and Associated Activities Conducted by Humboldt Redwood Company, LLC in the Upper Elk River Watershed, Humboldt County

Dear Mr. Burke and North Coast Regional Water Quality Control Board:

Please consider herein the comments of Pacific Coast Federation of Fishermen's Associations (PCFFA) and Institute for Fisheries Resources (IFR). Please consider herein the comments of Pacific Coast Federation of Fishermen's Associations (PCFFA) and Institute for Fisheries Resources (IFR). We appreciate the opportunity to comment, and look forward to your written response. We sincerely hope that we do not have to submit these comments in the form of an appeal to the State Water Board if the Order fails to adequately protect the water quality objectives, the listed salmonids and the other beneficial uses in Elk River that are protected by federal, state and local laws and regulations.

Background Participation

PCFFA has been actively participating in the process of developing the HRC WDR since at least the original Consent Decree to provide 303(d) listings and Total Maximum Daily Load (TMDL's). After participating fully in the comment opportunities, written and oral, to improve the protective values of Order No. R1-2016-004. We joined the 2016 appeal of Order No. R1-2016-004 to the State Water, and intervened in Humboldt Redwood Company's litigation challenging the authority of the board, to underscore and support the authority and

responsibility of the Regional and State Boards to protect the public trust resources that we all rely on.

We have requested many of the changes in the WDR that we are asking for again, which we appealed to the State Board with mixed results. We are therefore not confident that the “desired outcome” will be reached or that the result will be fair to us or other lawful users of the “beneficial uses.”

Pacific Coast Federation of Fishermen’s Associations is the largest trade association of commercial fishing families on the West Coast. For more than forty years, PCFFA has led the commercial fishing industry in assuring the rights of individual fishing men and women, and in fighting for the long-term survival of commercial fishing as a productive livelihood and way of life. Our members coast-wide rely on healthy salmon fisheries from California’s rivers. Not only do we rely on these rivers and the forests that support them to restore endangered salmon runs so we can someday fish again on the “harvestable surplus,” but many other coastal fishing support businesses rely on fishing to bring income to the area. Money earned locally from salmon fishing is spent locally as well. In fact, commercial fishermen from the entire California Coast as well as from Oregon and Washington come to Eureka to fish for salmon when healthy stocks provide an opportunity, and spend their money locally for gear and supplies. Moreover, they supply healthy, fresh fish to local markets who add value to the products sold. Commercial boats from up and down the coast brought millions of dollars worth of salmon to market in Eureka in recent decades.

In August of 2006, Commerce Secretary Carlos M. Gutierrez declared a “Commercial Fishery Failure due to a Fishery Resource Disaster as a result of natural causes, man-made causes beyond the control of fisheries managers to mitigate, or undetermined causes” under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended. The value of California commercial salmon fisheries ranged from \$5-\$18 million dollars per year to the fisherman (“ex-vessel”) between 2001 and 2004, not including the multiplier effect.

PCFFA’s sister organization, the Institute for Fisheries Resources (IFR), is a non-profit 501(c)(3) dedicated to the protection and restoration of fish resources and the human economies that depend on them. A critical component of both organizations’ missions is robust protections for water quality in surface waters that support salmon fisheries.

How we are harmed

Our habitat and range as commercial fishing families has been altered by a combination of natural and manmade impacts and is tied to the future of these salmon stocks at risk that are listed under CESA and the ESA as threatened or endangered. Our livelihood and the communities that are resource dependent, including fisheries and timber workers, have declined in direct proportion to the decline of the timbered watershed ecosystem base.

Every additional input of sediment over the next eleven years is going to have an exponentially increasing impact on the fish and the fishing community. The information on how cumulative impacts are compounding over time is clearly spelled out in documents from

and for the water boards, including Watershed Management for Unstable and Erodible Areas in Northern California, State of California, The Resources Agency, Department of Water Resources Northern District, October 1982, Prepared for the US Environmental Protection Agency and the State Water Resources Control Board (attached to our comments).

In the Klamath Long Range Fisheries Restoration Plan, the success of the restoration of the salmon populations is to be measured by the ability of commercial, sport and tribal fisheries to carry out their harvest of surplus stocks, over and above self-sustaining levels, and “the economic health of several local communities.” Commercial salmon fisheries in the ocean are severely curtailed due to the ESA listed status of Coastal Fall Run Chinook and Coho salmon, while sport fishing is severely curtailed due to the status of steelhead as well.

The Tidal Mixing Zone and effected salmon habitat in the receiving waters, the estuary of Humboldt Bay.

Not only has the “impacted reach” exceeded its capacity to transport sediment, but sediment from Elk River causes turbidity in the tidal mixing zone of Humboldt Bay Estuary, where juvenile salmon and other marine life that constitute their food and the balance of species. Turbidity causes mortality in juvenile salmonids trying to transit the river system (Sigler et al, 1984).

The Elk River coho are an important element of recovering the Southern Oregon/Northern California Coastal coho population, as each stream provides a refuge for genetic survival. A small population is much more vulnerable than a large population to predation, climate change or unusual weather events, stochastic events, and man-made disturbances referred to in the Criteria for Listing, (Appendix A), such as increased turbidity.

One of the recommended measures in the Lower Elk River Restoration program, channel modification, was shown by the modeling results to relieve some flooding, but would increase juvenile salmon mortality and deliver more sediment to Humboldt Bay. (Striplen and CalTrout, presentation Feb. 21 Region 1 Board meeting). The tiny, residual population of coho salmon in Elk River is vulnerable to any additional mortality. It is unconscionable under these circumstances to add any additional sediment from logging.

Board compliance with the Non-Point Source Policy

Under the proposed order, the TMDL Action Plan cannot be implemented successfully or achieve water quality objectives listed in the Clean Water Act Section 208, amendments, regarding non-point sediment discharge and the guidance for implementing restoration and remediation programs from the NPS Policy Key Elements.

Key Element 2: Adequate analysis that specific measures will work.

The Key Elements of the Non-Point Source Policy (see Appendix B), Key Element 2 states that the “RWQCB must be able to determine that there is a high likelihood that the program will attain water quality requirements.” The staff must show analysis to determine that the proposed canopy cover, riparian buffer and wet weather operation proposals are adequate to

attain water quality objectives. The Order must provide supporting evidence or analysis to show that the specific measures can meet the zero load allocation by 2031. Additionally, the proposed Restoration and Stewardship Programs in the Lower Elk River are too early in their process to show any such assurance.

Otherwise, the board should recognize that the sensitive and damaged watershed cannot support the current rate of timber extraction and road use.

Key Element 3: Milestones and timelines

The proposed measures need specific milestones and timelines attached to water quality objectives. Otherwise, there cannot be a “high likelihood” of achieving water quality objectives.

Key Element 4: feedback mechanisms

The proposed order must have “sufficient feedback mechanisms so that the Regional Board, dischargers and public can determine whether the program is achieving” its desired results. The Board would need to track water quality conditions on an annual basis, considering the proposed timeline to achieve its goals. A five-year review is too much of the available time to make corrections, or adjust course.

Key Element 5: consequences

The proposed order fails to define specific consequences for failing to achieve milestones, or the zero allocation.

CEQA Compliance

There is substantial evidence that ongoing impact will have environmental effects, in combination with existing discharges and those from Green Diamond. The Board must prepare an Environmental Impact Report (EOIR) because any additional anthropogenic discharge to the system already exceeds prescribed standards.

History of watershed activities

Several pages of history of the watershed that were in the previous order have been removed from the new proposed one. That history should be restored to the document because it shows causes of cumulative impacts.

Finding 94 in Proposed Order No. R1-2019-0021—“allowing” to “enable”

It is neither appropriate or feasible to add more sediment to an already impacted system. How does “allowing some timber harvest activity to continue enable[s] HRC’s participation in cleanup and restoration efforts” ? (Finding 94). You cannot adequately measure the results of your restoration work when you are continually adding more sediment into the already “impacted reach.” “Enabling” is what co-dependents do for addicts; the Board may be addicted to the few remaining timber jobs, but a change in focus is needed to restore all the “beneficial uses,” including timber production. The timber jobs went down with the salmon fisheries, as predicted, when companies overcut, even under the Forest Practice Rules.

The record shows that the Regional Board has already acknowledged that the capacity of the Elk River to transport sediment has been exceeded, causing nuisance (health and safety issues for 20 years). The latest data from the Elk River Recovery Assessment: Recovery Framework studies, presented by Chuck Striplen at your Feb. 21, 2019, meeting, shows that the cumulative impacts are trending toward increasing impairment over time. The (WDR Report), in its description of watershed processes on steep and erodible slopes shows that the impairments get worse faster over time. Therefore, it is illegal and illogical to combine the allowance of restoration-caused sediment discharge with sediment discharge from timber extraction for profit. Clearly, the sediment from restoration is necessary while the timber extraction discharge is not necessary. The restoration work can be done in an accelerated program without combining it with timber extraction using other funding, that is, not by paying for it with timber sales.

Mendocino and Humboldt Redwood Companies, subsidiaries of the GAP clothing store, bought up cut-over lands from Georgia Pacific, Louisiana Pacific, and Pacific Lumber company, after those companies “cut and ran.” Having knowingly bought a fixer-upper, the multi-billionaire Fisher family owners of Humboldt Redwood Company, who own 440,000 acres of timberlands in California, half of it in Humboldt County, according to “Fortune,” could easily bankroll the entire restoration of the Elk River watershed while paying their workers a living wage. Meanwhile, the fishing families that rely on a robust salmon recovery to more than viable, self-sustaining population in order to engage in fishing commerce, and whose navigation is impaired in the receiving navigable waters, are paying for the externalized costs of the permitted waste discharge.

Cost of “waste” dredging and disposal, hazards to navigation

Fishermen in Humboldt Bay who moor at Woodley Island Marina are paying thousands of dollars each year into a dredging fund to tie up in the marina. Not only is the dredging fund inadequately accounted for, but the permitting agencies will not allow the least expensive dredge disposal because the sediment is more than 50% fine sediment, and therefore considered “waste”. We are not producing this waste, but must pay to remove it, and absent the success of removal, are running aground at low tide. Fishermen pay costs from damage to fishing vessels that run aground. Freshwater Creek, another tributary with major HRC holdings, also bleeds sediment into the bay. An aggressive, basin-wide restoration program is needed, as well as rest from unnecessary ground disturbance.

Additionally, there is a hazard to navigation from sediment building up at the Buoy 19, off the mouth of Elk River, and just north at the fuel-receiving dock. This is separate from the dangerous bar at the Humboldt Bay entrance that builds up from material moving north from the Eel River mouth (including from Bear, Stitz and Jordan Creeks) and recently from erosion near the Coast Guard station. The entrance is dredged separately by the Army Corps of Engineers, as long as Humboldt Bay has sufficient commerce to justify the expense. Adequate commerce becomes questionable when fishing is curtailed and ships carrying wood ships, now our “quality forest products,” cannot get out the entrance for half the year, after the first storm each winter until the following summer dredging. It is not legal to dump sediment into a non-navigable water that impacts navigation and commerce

in a navigable water. (National Audubon Society v Superior Court, Appendix C)

Authorization of some sediment for economic and social development

It is not accurate or appropriate to claim that the “authorization of some sediment discharges from ongoing timber operations...is necessary to accommodate important economic and social development in the area and is consistent with the maximum benefit to the people of the state.” (Finding 94) The proposed Order contends that timber extraction is the highest economic need for the community, while actually, the salmon-based economy is the leading economic indicator, especially when combined with the other beneficial uses that are being harmed.

For example, the average value of a 40-year-old redwood log is about \$1,000.00, while the average value of a 3-year-old, 20 pound salmon at \$5.00/pound (\$3.50-\$12.00/ pound to the fisherman) is \$100.00, and over 40 years 12 of those fish are worth \$1,300.00. One 3-year-old fish each year would be worth \$4,000.00. This does not count the added benefits to the community of a robust salmon fishery. But it is not “us or them.” Timber production capacity is also impaired by soil compaction and soil loss that are accelerated by increasing peak flows, allowed under your program.

We have tried to make it clear to the Regional Board for the last several, or many, years, that our community and industry is negatively impacted by the continued inadequate controls of controllable, fish-killing sediment discharges into Elk River and Humboldt Bay, and that these impacts must stop sooner rather than later. “Most of the adverse effects appear be due to lack of recognition of the potential effects to resources at risk.” Final Report of the Forest Practice Rules Resource Assessment Team to the State Water Resources Control Board April 24, 1987 (attached to our comments). The future of our community depends on the future of these listed salmon stocks.

The Pacific Fisheries management Council was created by the Magnuson-Stevens Fisheries Act in 1976 to deal with management of salmon and other fish stocks in the ocean and protect them from domestic and foreign damage, to do stock assessments and set fishing seasons according to the “precautionary principle.” Ten years later, the PFM Council formed a Habitat Committee, with the following five provisions of policy: (see APPENDIX A). These policy provisions correspond with the Criteria for Listing in the federal Endangered Species Act as responses to the criteria.

Federal Water Pollution Control Act of 1972: “The goal of section 208 of the Federal Water Pollution Control Act amendments of 1972 (Public Law 92500, the Clean Water Act) is to insure “fishable and swimmable” water by 1983 (Coats and Miller, 1981). Section 208 sets the guidelines for developing area-wide pollution controls from sources as agriculture, silviculture, mining, and construction....

“Non-point pollutants associated with silviculture include: sediment, organic debris, water temperature increases, nutrients, pesticides, grease and oil. The most extensive and serious pollutant is sediment. The most logical and least expensive method of reducing sediment in

streams is to modify land-use practices.” (Arts)

“We have long recognized that the police power—the power of government to implement its concern for the general welfare—may severely curtail the use to which real property may be put.” Supreme Court of Wisconsin, 1974

“Without adequate, competent personnel to administer it and without the desire of the governing body to enforce it, a soil loss regulation will be ineffective. An extensive education and information program also is essential for an effective program.” (Arts)

Additional issues:

The new draft order fails to consider the effects of a gap in the monitoring procedures, specifically an “inadequate” trigger of 3” of rain in a 24 hour period to inspect roads for sediment delivery to Elk River following cumulative rain storm events.

Road inspection trigger of 3” in 24 hours is inadequate

The road inspection trigger of 3 inches of rain in 24 hours (Road Management C7 in the previous Order) was clearly shown to be inadequate by the flood road pictures shown by Alydda Mangelsdorf and the muddy runoff from roads pictures shown at the May 12, 2016, hearing. There were not 3 inches of rain on any of the days preceding massive flooding and sediment delivery on January 17, 2016. See January, 2016, rainfall data below.

January 2016 rainfall

Elk River South Fork Monitoring (SFM) Station Gauge

Jan 10 .00”

Jan 11 .00”

Jan 12 .91”

Jan 13 .94”

Jan 14 .58”

Jan 15 .14”

Jan 16 .38”

Jan 17 2.12” by South Middle Fork Gauge,
(2.92” by Woodley Island Station)

There have not been 3 inches of rain in 24 hours, except once in ten years: in February, 2015. It caused “debris torrents” according to the ROWD, and made road inspection difficult until flood waters subsided, making places with road runoff connectivity to the stream difficult to identify. We recommend a road inspection trigger of no more than three inches over three consecutive days that takes into account cumulative saturation of soils, or two inches in one day.

Road inspection after storms : designate local agents

Requirements that the timber company self-report violations of the WWDR when inspecting roads sets up a natural conflict of interest.

The Regional Board staff previously indicated that the public is responsible for locating and reporting sediment delivered from road failures connected to the stream; this is not realistic because the sediment sources are on private property and are not accessible to the public. The Board should designate a local agent or agents that could be available to inspect roads on short notice in the event of storm events, to avoid the result that road sediment connectivity to the stream may go unidentified. This could be an agent of the County, a state agency with offices locally, such as California Department of Fish and Wildlife, or the Habitat Conservation Plan (HCP) oversight personnel.

Conclusion and Recommendations

PCFFA has supported the North Coast Regional Water Quality Control Board's authority, both in the legislature and in court, to regulate discharges from timber extraction on private and public lands (SB 810 and HRC v NCWQCB, 2016). The text of Senate Bill 810 (October 12, 2003) states:

"(3) This bill would prohibit a timber harvesting plan from being approved if the appropriate regional water quality control board finds, based on substantial evidence, that the proposed timber operations will result in a discharge into a watercourse that has been classified as impaired due to sediment, that causes or contributes to a violation of the regional water quality control plan."

We and other groups have petitioned the State Water Board to halt the enrollment of THPs under the previous order until an effective WDR can be developed. We do not see analysis or evidence that the current proposal will be effective in attaining the water quality objectives.

We appreciate your efforts to grapple with the specifics of how to arrest the meltdown of the geologically sensitive and drastically impacted Elk River Watershed. We recommend that the Board suspend timber harvest enrollments until an EIR can show that a program will be effective in addressing the impairments. We recommend that the Board help find funding and develop a comprehensive restoration program to accelerate the rate of recovery of fish habitat and nuisance abatement, employing timber workers and others to maintain a minimum local economy while working toward a more robust resource-based future economy that includes both salmon and timber harvest.

Thank you for considering our comments.

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APPEENDIX A:

The listing criteria from the Endangered Species Act are answered by the corresponding policy elements of the PFMC Habitat Committee:

ESA Listing Criteria

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

~~SEP~~ (D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

PFMC Habitat Committee Policy

1. There shall be no net loss in the productive capacity of any marine, estuarian (sic) or freshwater habitats that sustain Pacific salmon;

2. Pacific salmon shall be assured co-equal treatment with other purposes of water and land resource development programs;

3. There shall be vigorous efforts by responsible public agencies to restore and strengthen salmon stocks;

4. State and federal regulatory agencies should be strict in requiring the best management practices available for timber harvest, mining, water development, agriculture, and other activities under their control that can have adverse effects on salmon; and

5. Water development programs should be reviewed and undertaken on a comprehensive or programmatic basis, in order to identify and eliminate cumulative or “synergistic” impacts in drainages where salmon spawn and rear.

APPENDIX B

Version Date: May 20, 2004

NPS control implementation programs shall include the following five key elements:

KEY ELEMENT 1: An NPS control implementation program's ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

Existing and potential beneficial uses of the waters of the State are identified through a public process. RWQCBs establish water quality objectives to protect those uses, and a program to implement the objectives. The State also is required to adopt and implement an antidegradation policy designed to protect water quality that is higher than that necessary to protect the designated beneficial uses. For purposes of this policy, the term "water quality requirements" is used to include water quality objectives established to protect beneficial uses and any higher level of water quality needed to comply with the State's antidegradation policy.

An NPS control implementation program must be specific as to the water quality requirements it is designed to meet. For example, if the program relies upon dischargers' use of MPs, there should be a strong correlation between the specific MPs implemented and the relevant water quality requirements. The program also should provide other information as required by the RWQCB, including but not limited to the identification of participant dischargers. The RWQCB must be able to ensure that all the significant sources of the NPS discharges of concern are addressed.

KEY ELEMENT 2: An NPS control implementation program shall include a description of the MPs and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure and verify proper MP implementation.

A RWQCB must be able to determine that there is a high likelihood that the program will attain water quality requirements. This will include consideration of the MPs to be used and the process for ensuring their proper

implementation. It also will include other factors such as the level of discharger participation and the effectiveness of the MPs implemented.

MPs must be tailored to a specific site and circumstances, and justification for the use of a particular category or type of MP must show that the MP has been successfully used in comparable circumstances. If an MP has not previously been used, documentation to substantiate its efficacy must be provided by the discharger. A RWQCB must be convinced there is a high likelihood the MP will be successful. A schedule assuring MP implementation and assessment, as well as adaptive management provisions must be provided. We recognize that in the earlier stages of some pollution control programs, water quality changes may not be immediately apparent, even with the implementation of pollution control actions. Although MP implementation never may be a substitute for meeting water quality requirements, MP implementation assessment may, in some cases, be used to measure nonpoint source control progress.

KEY ELEMENT 3: Where a RWQCB determines it is necessary to allow time to achieve water quality requirements, the NPS control implementation program shall include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.

The Porter-Cologne Act (CWC §13242[b] and § 13263[c]), the NPS Program Plan, and the NPS Implementation and Enforcement Policy recognize that there are instances where it will take time to achieve water quality requirements. The effort may involve all or some of various processes, including: identification of measurable long term and interim water quality goals; a timeline for achieving these goals; identification and implementation of pollution control MPs; provision for maintenance of the implementation actions; provision for additional actions if initial actions are inadequate; and, in the case of third-party organizations, identification of a responsible third-party to lead the efforts.

In considering approval of specific interim goals and the time necessary to achieve those goals, a RWQCB may consider such factors as the necessity of providing for significant capital outlays for MP implementation, the presence of a severely degraded waterbody, and whether or not an NPS control implementation program is a component of a larger TMDL implementation program. The time schedule may not be longer than that which is reasonably

necessary to achieve an NPS implementation program's water quality objectives. Preliminary development of the time schedule shall be undertaken by the party responsible for developing the NPS control implementation program. The RWQCB may amend and must approve the time schedule. If the RWQCB later determines that additional time is necessary to complete the program, it may make further amendments to the time schedule or issue an enforcement order that contains a compliance schedule.

KEY ELEMENT 4: An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required.

Verification measures to determine whether an NPS control implementation program is meeting its stated purpose is a key element of all NPS control implementation programs. In addition to verification of proper MP implementation (Key Element 2), feedback mechanisms are needed to clearly indicate whether and when additional or different MPs or MP implementation measures must be used, or other actions taken. Designing the appropriate types and frequency of verification and feedback measures (e.g. reporting, inspection, monitoring, etc.) is an integral part of implementation program development and success.

In all cases the NPS control implementation program should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the MPs are being properly implemented and are achieving the program's objectives, and/or to provide feedback for use in adaptive management. These efforts are necessary to determine whether the program is on time and on track in achieving its goals.

Depending on the water quality problem, the cause, the beneficial uses at risk, and the purpose for which the monitoring will be used (e.g. adaptive management or regulatory purposes) the appropriate type(s) of monitoring should be used. Some monitoring approaches include photo monitoring; assessing residual dry matter on rangelands; various indicators of healthy instream habitat; riparian and wetland habitat structure, density and cover; and bioassessment. Some programs may involve collecting and reporting ambient water quality monitoring data. Those programs should be consistent with the SWRCB Surface Water Ambient Monitoring Program (SWAMP) Data Quality Management Plan (DQM), which provides for more than one level of

data quality. The DQM approach to data quality recognizes that the rigor needed to monitor for regulatory purposes may not be necessary for other purposes. Consequently, the SWAMP DQM provides data quality and reporting objectives for both regulatory and screening studies. Regardless of which approach is used, all monitoring programs should be reproducible, provide a permanent/documented record and be available to the public.

KEY ELEMENT 5: Each RWQCB shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program's stated purposes.

A RWQCB action to approve or endorse an NPS control implementation program shall contain a general description of the course of action or actions to be taken if verification/feedback mechanisms indicate or demonstrate that the program is failing to achieve its stated objectives. Although not binding on the RWQCB, this element should be written with the objective of creating clear expectations and reinforcing the obligations that dischargers, third parties, and other agencies, in addition to the RWQCBs, have accepted in agreeing to implement an NPS control implementation program. This element also has the advantage of requiring the examination of proposed programs with respect to options for enforcement should the program not proceed as well as expected.

Clear expectations regarding potential RWQCB responses to inadequate or ineffective programs, including but not limited to adopting a revised program or the taking of an enforcement action, provides dischargers and the public with greater certainty regarding the process. RWQCB options will vary significantly, depending on the structure of the program. (e.g., which administrative tool or tools are being utilized, whether third-party regulatory or land use agencies, or private entities are coordinating the dischargers' efforts, etc.) While not all programs need be directly enforceable, any enforcement limitations that might be encountered should be well understood by the RWQCB prior to approving or endorsing an NPS control implementation program.

In cases of individual noncompliance, selective enforcement actions may be taken. In cases of third-party noncompliance, an effort to revise the third-party program is an alternative. Generally, prior to initiating major revisions to a program, informal contact with dischargers, group representatives, or other third parties, if any, will be attempted in order to redirect unsuccessful

efforts. However, although the direction and efforts of a particular third-party program are being undertaken as a group effort, with group designated or accepted leadership, if the group or third-party fails to follow through on their commitments, any RWQCB enforcement action taken will be against individual dischargers, not the third-party.

APPENDIX C

[6] Mono Lake is, as we have said, a navigable waterway. The beds, shores and waters of the lake are without question protected by the public trust. The streams diverted by DWP, however, are not themselves navigable. Accordingly, we must address in this case a question not discussed in any recent public trust case -- whether the public trust limits conduct affecting nonnavigable tributaries to navigable waterways. [33 Cal.3d 436]

This question was considered in two venerable California decisions. The first, *People v. Gold Run D. & M. Co.*, supra, 66 Cal. 138 [4 P. 1152], is one of the epochal decisions of California history, a^[SEP] signpost which marked the transition from a mining economy to one predominately commercial and agricultural. The Gold Run Ditch and Mining Company and other mining operators used huge water^[SEP] cannon to wash gold-bearing gravel from hillsides; in the process they dumped 600,000 cubic yards of sand and gravel annually into the north fork of the American River. The debris, washed downstream, raised the beds of the American and Sacramento Rivers, impairing navigation, polluting the waters, and creating the danger that in time of flood the rivers would turn from their channels and inundate nearby lands.^[SEP] Although recognizing that its decision might destroy the remains of the state's gold mining industry, the court affirmed an injunction barring the dumping. The opinion stressed the harm to the navigability of the Sacramento River, "a great public highway, in which the people of the State have paramount and controlling rights." (P. 146.) Defendant's dumping, the court said, was "an unauthorized invasion of the rights of the public to its navigation." (P. 147.) Rejecting the argument that dumping was sanctioned by custom and legislative acquiescence, the opinion asserted that "the rights of the people in the navigable rivers of the State are paramount and controlling. The State holds the absolute right to all navigable waters and the soils under them The soil she holds as trustee of a public trust for the benefit of the people; and she may, by her legislature, grant it to an individual; but she cannot grant the rights of the people to the use of the navigable waters flowing over it" (Pp. 151-152.)

National Audubon Society v. Superior Court (1983) 33 Cal.3d 419 , 189 Cal.Rptr. 346; 658 P.2d 709.

Additional References:

Adapted from: James L. Arts, Jour. Soil Cons., V 36 N. 6. 1981.

Sigler, John W., T.C. Bjornn, and Fred H. Everest.
Effects of chronic turbidity on density and growth of steelhead and coho salmon. Idaho Cooperative Fishery Research Unit, University of Moscow, Idaho. Transactions of the American Fisheries Society 113-142-150, 1984.

Final Report of the Forest Practice Rules Resource Assessment Team to the State Water Resources Control Board April 24, 1987

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Watershed Management for Unstable and Erodible Areas in Northern California, State of California, The Resources Agency, Department of Water Resources Northern District, October 1982, Prepared for the US Environmental Protection Agency and the State Water Resources Control Board