

California Regional Water Quality Control Board-
North Coast Region

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

Vice-chairwoman Dina Moore called the September 23, 2003 Regional Water Board workshop on the Continuation of the Humboldt Watersheds Independent Scientific Review Panel Phase II Report to order at 12:05 a.m.

i. Pledge of Allegiance

Richard Grundy led the Pledge of Allegiance

ii. Roll Call and Introductions

Board Members Present: Shawn Harmon, Bev Wasson, John Corbett, and Richard Grundy, Gerald Cochran and Dina Moore

Board Member absent: Chairman William Massey

Regional Water Board staff Holly Lundborg described the objectives and structure of the workshop and the future actions planned for the continued deliberation of the Panel's Phase II Report. Future actions include a third workshop scheduled for November 4, 2003 in Santa Rosa to hear from residents and agricultural and timberland owners in the watersheds with the item scheduled for Regional Water Board deliberation and direction to staff at the December 3, 2003 Regional Water Board meeting in Eureka.

Governmental agencies presented their view of the Phase II report to the Regional Water Board.

Mark Stopher from the California Department of Fish and Game described the Panel as a "Blue Ribbon" panel, stated that they would like more interaction with the Panel and that they didn't seem to fully understand the HCP process. He concluded that the Report did not provide much help to the Regional Water Board.

Joe Blum from NOAA-Fisheries stated that they were perplexed with the Report, that the HCP is a reality on the landscape, that the report missed the point that Pacific Lumber Company is committed to spending resources, and that transparency does not guarantee success. He concluded with the reminder that the HCP is part of everyone's reality, that NOAA-Fisheries was committed to working together and that the Regional Water Board needs to decide what advantage the HCP serves and what else is required.

Bill Synder from the California Department of Forestry and Fire Protection stated that the Report puts the agencies back where they started from, no consensus was reached and that the Panel had misconceptions about the HCP and the Forest Practice Rules.

Trinda Bedrosian from the California Geologic Survey (CGS) informed the Regional Water Board that while CGS was not signatory to the HCP, they were the agency that was used for impartial review and geologic expertise. She informed the Board that contrary to statements in the Report, CGS does not discourage innovative application of sound geologic practices. She concluded by informing the Board that in the future policy changes with regard to geologic issues required consultation with CGS and the appropriate State Boards.

Regional Water Board members engaged in Questions and Answers with the agency representatives.

The watershed advocacy groups presented their concerns and policy recommendations to the Regional Water Board.

Mark Lovelace representing the Humboldt Watershed Council spoke about the lengthy process to get to this point, that the Panel agreed with the 2000 Regional Water Board staff report regarding the rate of logging. He concluded with a list of four recommendations for the Regional Water Board to consider, cease and desist orders, need for effectiveness and trend monitoring, deny additional Pacific Lumber Company activities, and clean up and abatement of sediment sources.

Jesse Noell informed the Regional Water Board that conditions have gotten worse in the watersheds and showed a series of photographs documenting recent conditions in Elk River. He concluded by asking the Regional Water Board to pursue dredging.

Richard Gienger informed the Regional Water Board that actions were overdue, that a watershed recovery plan with public participation is needed. He concluded with a request for source monitoring and a moratorium on logging until action is undertaken.

Ken Miller told the Regional Water Board that the Report vindicated staff, described lengthy history of Regional Water Board staff requesting data from Pacific Lumber Company and was an expose on landslide prediction and the HCP.

Regional Water Board members engaged in Questions and Answers with the watershed advocacy groups.

Staff from Pacific Lumber Company presented the company's view of the Panel's Phase II report.

Jim Branham introduced a powerpoint presentation that discussed the major flaws in the report, discussed the "gaps" perceived by the Panel and concluded with an overview of Pacific Lumber Company water quality monitoring. He said that flaws in the report were the assumption that economic cannot be considered, that plans must guarantee outcomes, acknowledge the need to define background and recovery, lack of acknowledgement on wealth of data, reliance on old information, and lack of understanding of HCP/SYP/THP process.

Dr. Jeff Barrett said that despite the Panels statements, there are studies proving the effectiveness of BMP, that the HCP is not based on a large number of untested assumptions. He discussed other forest practice rules and review processes and showed photographs of historic logging practices, and HCP logging practices. He described the company's efforts to correct legacy problems. He concluded with the reminder of all the additional Regional Water Board actions beyond the HCP that have been undertaken (WDR, C&As, TMDLs).

Dr. Kate Sullivan described the hypothesis based monitoring approach used by the company, outlined the different monitoring efforts currently underway (WDR, TMDL, Trends, HCP, THP). She concluded with a brief description of some of the monitoring results from road crossing monitoring, watercourse inspections and turbidity analysis.

Regional Water Board members engaged in Questions and Answers with Pacific Lumber Company staff.

A number of public comments were presented to the Regional Water Board.

Following the public comment period, the Regional Water Board members asked its staff some clarifying questions and provided short-term direction to staff. Regional Water Board direction included directing staff to investigate dredging, consider preparation of watershed WDR, revisions to existing WDRs, re-evaluation of the 2000 Regional Water Board staff report, update on monitoring activities in the five watersheds, and the evaluation of data gaps need to answer outstanding questions.

The workshop was adjourned at 4:50 p.m.

Wednesday, September 24, 2003

Vice-chairwoman Dina Moore called the September 24, 2003, Regional Water Board meeting to order at 9:05 a.m.

ii. Pledge of Allegiance

John Corbett led the Pledge of Allegiance

ii. Roll Call and Introductions

Board Members Present: Shawn Harmon, Bev Wasson, John Corbett, and Richard Grundy, Gerald Cochran and Dina Moore

Board Member Absent: Chairman William Massey
State Board Liaison Absent: Gary Carlton

Regional Water Board staff: Executive Officer, Catherine Kuhlman; Assistant Executive Officer, Frank Reichmuth; Interim Division Chief, Nathan Quarles; Division Chief, Luis Rivera; Senior staff; Christine Wright-Shacklett, Dave Evans; Technical staff: Janice Goebel, Jonathan Warmerdam, David Kuszmar, David Flower, Daniel Warner; Administrative staff: Kathleen Daly, Julie Sayre, Jean Lockett; and Counsel, Erik Spiess

iii. Ex Parte Communication

Vice-chairwoman Moore called for Ex Parte disclosures from Board members, if any.

John Corbett stated that he communicated with the Environmental Protection Agency staff on two separated occasions. One conversation was to follow-up on the 303(d) listing and documentation for Humboldt Bay, and the other to request the Federal Register from the 1988 EPA letter that had concerns with Best Management Practices for silvicultural activities.

Gerald Cochran reported that, in his position as the Tax Assessor for Crescent City, he communicated with Andrea Tuttle with California Department of Forestry to discuss state responsibility for fire assessment.

iv. Chairman's, Board Members', State Board liaison's and Executive Officer's Reports:

Chairwoman Moore called for any reports from Board members or the Executive Officer regarding State Board matters.

Catherine Kuhlman reported that the State Water Board gave Region 1 an additional \$200,000 towards the TMDL efforts in the Klamath River.

v. Public Forum

There were no speakers for public forum.

Item 1. Resolution for Susan A Warner

Frank Reichmuth read Resolution No. R1-2003-0111, for Susan Warner into the record.

MOTION: Bev Wasson moved to adopt Resolution No. R1-2003-0111. John Corbett seconded the motion. Motion passed unanimously.

Item 2. Minutes

The June 2003, board meeting minutes were moved to the end of the agenda.

Consent Calendar

Item 3. City of Rio Dell and Duane & Cherie Primofiore Wastewater Biosolids Disposal Site, Order No. R1-2003-0095, Humboldt County, New Waste Discharge Requirements, WDID No. 1B03123RHUM

Item 4. California Department of Transportation Bracut Maintenance Station Order No. R1-2003-0099, Humboldt County, Rescission of Waste Discharge Requirements, WDID No. 1B92004RHUM

Item 5. Westport County Water District, Resolution No. R1-2003- 0105, Conditional Waiver of Waste Discharge Requirements for the Land Application of Wastewater Biosolids, WDID No. 1B03167WNME

MOTION: John Corbett moved to adopt the Consent Calendar. Bev Wasson seconded the motion. Motion passed unanimously.

Item 6. PUBLIC HEARING - (continued from August 27, 2003, Regional Water Board meeting) Order No. R1-2003-0081 to consider whether to affirm, reject, or modify a complaint for administrative civil liability issued on

July 10, 2003, and/or take other enforcement action in the Matter of Hanes Ranch, Inc., and John Hanes, President of Hanes Ranch, Inc., Navarro River watershed, Mendocino County

Chairwoman Moore administered the oath to those who expected to provide testimony in the matter of Hanes Ranch, Inc.

Ms. Kuhlman stated that the site had escalated to an ACLC because the property continues to discharge sediment from a variety of sources that included road fill failures to places where it discharged or threatened to discharge to watercourses.

This item was first heard at the August 2003 board meeting. After Mr. Hanes became ill during the August hearing, the Regional Water Board continued the hearing to the September 2003, board meeting.

Christine Wright Shacklett and her staff covered the specifics of the Hanes, Ranch, Inc., Administrative Civil Liability Complaint Order No. R1-2003-0081 (ACLC) that was issued to Hanes Ranch Inc. and Mr. John Hanes, President of Hanes Ranch, Inc.

Ms. Chandler, Mr. Hanes' attorney, stated that Mr. Hanes is a one-man operation and is limited in resources to write documents as other timber companies may have the resources to do so.

Ms. Chandler referred to the Cleanup and Abatement Order timeline and stated that once one timeline is missed it would be impossible to keep the other timelines. The language in the CAO document was not clear in the definition of the property or stating what staff was looking for. She stated that parts of the ranch were not accessible in the middle of the winter season, so when asked for a report Mr. Hanes could not complete report.

Mr. Hanes gave his presentation on the history of logging, and the family's effort to improve the roads in 1992. He stated his family received a Stewart award in 1994. He stated that the Regional Water Board staff refused to provide any recommendations as to what was needed.

Matt O'Connor with O'Connor Environmental, Inc., representing Mr. Hanes presented his assessment of the Hanes system for erosion.

Dr. O'Connor stated that in his professional opinion erosion problems on the Hanes Ranch are not severe and appear to be relatively low for the region.

Dina Moore asked for clarification on the difference of professional opinion. Dr. O'Connor stated what he alluded to was that Mr. Hanes is familiar with his ranch, and years of maintenance experience has informed Mr. Hanes what works best in certain areas of his land.

Richard Grundy inquired if Dr. O'Connor was hired before or after the hearing in August 2003. Dr. O'Connor stated that he was hired after the Regional Water Board hearing date. Mr. Grundy wanted to know if Dr. O'Connor evaluated the sites to make a professional judgment if the sites meet the requirements of BMPs as layed out by the Department of Forestry. Dr. O'Connor stated he had not made that judgement.

Dina Moore asked if Michael Hyatt with California Geological Survey shared the opinion that many of the erosion problems are recent. Mr. Hyatt stated that he could only comment on the plan that was submitted and he agreed with the Regional Water Board staff that there

were new erosion problems. James Percell with California Department of Forestry and Fire Protection agreed that there were new erosion problems.

Mr. Grundy stated that Mr. Hanes has been working on his land for a long time. Is it possible that Mr. Hanes could be interpreting what was acceptable in 1975 is no longer acceptable now. What Mr. Hanes interpret as a difference in professional judgment may be a difference in what is required by regulation.

Dina Moore stated that she empathize with Mr. Hanes position. However, she stated that she believed that landowners and managers in this day and age bear a heavy responsibility for ensuring that their management activities do not continue to contribute to the degradation of watershed particularly those watersheds that have be declared as impaired. Ms. Moore stated that in her opinion this is a very serious case.

MOTION: Gerald Cochran moved to adopt order No. R1-2003-0081. John Corbett seconded the motion.

The Board discussed fining Mr. Hanes beyond the \$100,000. After deliberating, the Board decided to fine Mr. Hanes \$237,200. One hundred thousand dollars of the fine would be paid in cash and the additional \$137,200 would be held in abeyance as an incentive for Mr. Hanes to complete the necessary work.

MOTION: John Corbett moved that the fine be set at \$237,000 but \$137,200 is to be forgiven if the erosion plan is received within 90-days from September 23, 2003, the date of this hearing and with the understanding that the \$100,000 fine stands. Richard Grundy seconded the motion

Vice-chairwoman Moore directed that the item be continued to allow staff to bring back an Order redrafted to reflect the sentiments of the Board.

Item 2 Minutes

The minutes for the June 2003 board meeting were presented for approval.

MOTION: Gerald Cochran moved to approve the Minutes of the June 2003 meeting as corrected. Bev Wasson seconded the motion. Motion passed 5-1. Dina Moore was absent from the June 2003 board meeting and abstained for voting.

The minutes of the June 2003 were approved with corrections as requested by Mr. Corbett on page 2 third paragraph, and as requested Mr. Grundy on page 4 item 16.

Item 6. The Board continued the hearing for the Hanes Ranch item. After the Board's lengthy deliberation on how to implement the \$237,200 fine the Board took the following action.

Erik Spiess suggested the Board revise the draft order to consist of the following:

- ◆ Item 1) \$100,000 of the Administrative Civil Liability is due and payable within 30 days of this order.
- ◆ Item 2) \$137,200 of the Administrative Civil Liability is suspended in equal amounts provided that the discharger submit a Long term Erosion Control Plan and complete full implementation of that plan acceptable to the Executive Officer as described and by the deadline in the Cleanup and Abatement Order.
- ◆ New paragraph 3) A long term Erosion Control Plan must be finalized in a form acceptable to the Executive Officer not later than 180 days of this Order.
- ◆ Additional paragraph 4) A long term Erosion Control Plan must be fully implemented to the satisfaction of the Executive Officer not later than August 1, 2004.

New finding 11, was added at Erik Spiess' suggestion that reads that Mr. Matt O'Connor appeared on behalf of the discharger and his criticism of the Regional Water Board was sufficiently unsupported and do not amount to well founded expert opinion.

Mr. Grundy voiced his concerns on the language in item 2. Mr. Spiess suggested the following to address Mr. Grundy's concern: "\$137,200 of the Administrative Civil Liability is suspended provided that the discharger submit a long term Erosion Control Plan acceptable to the Executive Officer as described and by the deadline in a Cleanup and Abatement Order and a request for technical reports Order No. R1-2003-####.

MOTION: Richard Grundy moved to accept Mr. Spiess' suggestions. Bev Wasson seconded the motion.

Shawn Harmon suggested eliminating paragraph 4 from the order and leaving the implementation deadline to the discretion of the Executive Officer.

At Erik Spiess' suggestion, the Board withdrew all motions on the table. The Board did this, at Vice-chairwoman Moore's direction, by voting on the pending motions. The motions failed by majority vote.

MOTION: Richard Grundy moved that the Board adopt the following motion read by Mr. Spiess: Item 1 remains the same as previously moved, "\$100,000 of the Administrative Civil Liability is due and payable within 30 days of the adoption of this Order." Reword Item 2 to read "\$137,200 of the Administrative Civil Liability is suspended provided that the Dischargers submit a long term Erosion Control Plan acceptable to the Executive Officer as described and by the deadline in a Cleanup and Abatement Order modifying Cleanup and Abatement Order and Request for Technical Reports, Order No. R1-2002-0102." New Item 3: "A long term Erosion Control Plan must be finalized in a form acceptable to the Executive Officer not later than 180 days of this Order." Bev Wasson seconded the motion.

Roll Call:	Richard Grundy	Yes
	John Corbett	No
	Gerald Cochran	No
	Dina Moore	Yes
	Bev Wasson	Yes

Shawn Harmon Yes
Motion carried by Board majority vote.

Item 7. PUBLIC HEARING - Former Remco Hydraulics Facility, 934 South Main Street, Willits, Mendocino County. Consideration of: Resolution No. R1-2003-084 Approving a Negative Declaration for In-situ Chromium Groundwater Treatment; New Waste Discharge Requirements Order No. R1-2003-085 for In-situ Chromium Groundwater Treatment; and New Waste Discharge Requirements Order No. R1-2003-086 for an In-situ Volatile Organic Compound Pilot Study

Vice-chairwoman Moore administered the oath to those who expected to give testimony in the hearing for Former Remco Hydraulics Facility.

Luis Rivera, Division Chief for Cleanup and Investigations, entered the administrative file into the record. He introduced the item by giving a brief history of the site. He stated that the day's discussion is on chromium and VOC. He reviewed staff's recommendation to the board.

Ross Walker, city manager for the City of Willits, introduced Earl James, a registered geologist, who spoke in support of the project. Mr. Walker submitted for the Board's consideration a copy of a recent order issued by the U.S. District Court in a lawsuit filed against the City of Willits concerning the former Remco Hydraulics Facility.

Ann Farr, trustee for the Willits Environmental remediation Trust, stated that the Trust would like to proceed with the cleanup of the hexavalent chromium on the site.

Donna Avila submitted a petition requesting an environmental impact report to be done on Remco and written testimony on the proposed action.

Erik Spiess suggested that the deadline for comments had passed, and recommended that Ms. Avila's written testimony is excluded from the record to prevent prejudice to the Regional Water Board.

Vice-chairwoman Moore stated that she would follow the advice of legal counsel and not accept any late comments into the record.

Richard Grundy withdrew his request that Mr. Walker's legal document is enter into the record.

Ken Berry stated that when the Board makes a decision it should be an informed decision and the EIR could help them with information.

Mr. Spiess suggested that on page four of the Resolution to add a finding # 19 "Regional Water Board staff prepared an addendum to the initial study check list and negative declaration to support and modify that document discussion of the project description on cumulative impacts. The Regional Water Board has considered the addendum as required by the California Environmental Quality Act and its implementing regulations." Change finding No. 19 in the document to finding 20. And after the "Therefore be it Resolved" in the first paragraph re-word to read, "adopt the initial study checklist and Negative Declaration as modified by the addendum." The rest of the text would be the same.

MOTION: Richard Grundy moved to adopt Resolution No. R1-2003-084 and Order No. R1-2003-086 with the amendment stated by Erik Spiess. Cochran seconded the motion. Motion passed unanimously.

Item 8. City of Santa Rosa Update on the Geyser Re-charge Project

Dan Carlson with the City of Santa Rosa addressed the Board regarding the Geysers Recharge Project.

Item 9. Executive Officer Administrative Civil Liabilities

Frank Reichmuth reported a payment from Sierra Pacific in the amount of \$15,000 that satisfied an ACL issued earlier in the year.

September 17, 2003, an Administrative Civil Liability was issued to Sonoma County Water Agency and Occidental Community Services District for an amount totaling to \$216,000 of which \$190,000 is suspended based on two completed projects.

Item 10. Violation and Enforcement Report

Stands as written

Item 11. Board Member Requests for Future Agenda Items

Vice-chairwomen Moore suggested that all presentations be timed and notify those outside of the agency giving presentation that there is a time limit.

Richard Grundy requested a written report on Sonoma County Water Agency project in the Press Democrat Newspaper. The paper quoted a RWB staff member as saying, "it was unlikely that the Board would take any enforcement action." He requested the information on that project.

Vice-chairwoman stated that it would be good if the Board had a partial day workshop at the Hopeland Field Station.

Item 12. Monthly Report to the Board

Stands as written

Item 13. Leaking Underground Storage Tanks/Sewage Spills

Stands as written

Item 14. Proposition 65 Notifications

Stands as written

Item 15. Other Items of Interest

None

Item 16. Closed Session Item

There were no reports from closed session.

MOTION: John Corbett moved to adjourn. Shawn Harmon seconded the motion. Motion passed unanimously.

There being no further business to come before the meeting body, the meeting adjourned at 3:58 p.m., until the next scheduled Board Meeting on November 4 and 5, 2003.

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

Chairman _____

Date: _____