

EXECUTIVE OFFICER'S SUMMARY REPORT
8:30 A.M., November 3, 2011
Regional Water Quality Control Board
David C. Joseph Hearing Room
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403

Item: 6

Subject: **Public Hearing** to consider adoption of Order No. R1-2011-0100, Waste Discharge Requirements and Mitigated Negative Declaration (SCH No. 2011092021) for Discharges Related to Timber Harvesting and Associated Land Management Activities Conducted by **Humboldt Redwood Company, LLC, In Bear Creek Watershed**, a Tributary to the Lower Eel River, Humboldt County

Introduction

The Regional Water Quality Control Board (Regional Water Board) will consider adoption of tentative watershed-wide Waste Discharge Requirements (WDR) for discharges related to timber harvesting and related management activities on timberlands owned by Humboldt Redwood Company, LLC (HRC) in the Bear Creek watershed. The tentative WDR contains general and specific discharge requirements to implement applicable water quality standards from the Water Quality Control Plan for the North Coast Region. The draft WDR and a Mitigated Negative Declaration (SCH No. 2011092021) was circulated for a 30-day public review beginning on September 9, 2011.

Background

HRC owns approximately 95% of the 5,440 acre Bear Creek watershed, a tributary to the Lower Eel River (see map Attachment 5). Intense ground disturbance from timber harvesting particularly during the period from the late 1940s through the early 1970s when logging was unregulated, and continuing into the late 1990s under the Forest Practice Rules, resulted in extremely high rates of sediment discharge in Bear Creek watershed from roads and landslides. Many of the mainstem stream segments in Bear Creek have been repeatedly buried by sediment from debris torrents during periodic large storm events, the most recent being the New Years' 1996/1997 storm.

In December 1997, the California Department of Forestry and Fire Protection (CAL FIRE), the Department of Fish and Game (DFG), California Geologic Survey (CGS) and

the Regional Water Board determined, based on field observations and aerial photograph data, that Bear Creek was one of five watersheds significantly cumulatively impacted by sediment discharges after the 1996/1997 storms. The other watersheds are: Stitz and Jordan Creeks, which are also tributary to the Eel River in the same vicinity as Bear Creek, and Freshwater Creek and Elk River which are tributary to Humboldt Bay approximately 25 miles to the north. This resulted in a significant curtailment of timber harvesting in these watersheds.

In 2008, Regional Water Board staff provided Pacific Lumber Company (PALCO), the previous owner of the Bear Creek watershed timberlands, information that would be necessary to be included in a Report of Waste Discharge (ROWD) to be submitted in application of waste discharge requirements for the timber harvesting and related activities in Bear Creek watershed. On October 20, 2010, HRC submitted a ROWD in application of waste discharge requirements for its timber harvesting and related management activities on lands in the Bear Creek watershed. The ROWD describes HRC's management plan consistent with a multi-species state and federal Habitat Conservation Plan (HCP) approved in 1999 by DFG, National Marine Fisheries Service, and United States Fish and Wildlife Service. HRC's management plan is designed to prevent or minimize potential cumulative watershed impacts and promote restoration of the beneficial uses from their management activities conducted throughout the Bear Creek watershed. On December 15, 2010, Regional Water Board staff determined the ROWD was complete.

Mitigated Negative Declaration

On September 9, 2011 the Regional Water Board started a 30-day public comment period and issued a public notice (Attachment 9) of intent to adopt a mitigated negative declaration (SCH No. 2011092021) for the Bear Creek watershed WDR. Fifteen copies of the Initial Study (Attachment 2) and draft WDR were delivered to the State Clearinghouse for circulation to Responsible Agencies and Interested Parties. In addition, the public notice was widely distributed to interested parties by email and a copy of the notice and relevant documents were posted on the Regional Water Board's web page.

The Bear Creek watershed is a discrete watershed, and for the purpose of the Initial Study timber harvesting and land management activities by Humboldt Redwood Company in Bear Creek watershed were considered apart and separately from these activities in surrounding areas of the Eel River watershed. Based on our analysis, staff recommend adoption of a mitigated negative declaration for this project.

Waste Discharge Requirements

The WDR establishes enforceable general and specific requirements to implement HRC's management plan. The main elements include:

- Limits on the harvesting intensity and areal extent of timber harvesting;
- Improved methods for road use, construction, reconstruction, decommissioning, and repair and maintenance;
- Inventory of controllable sediment discharge sources from roads, skid trails, landslides, and other sources related to timberland management;
- Retention and protection of riparian vegetation to preserve and restore shade, prevent increases in solar radiation, and meet the temperature objective;
- Restoration of in-stream and riparian zone habitat by repositioning and stabilization of existing in-stream large wood and planting riparian zone conifers for habitat restoration; and
- A monitoring and reporting program that includes watershed trend monitoring, annual work plans describing HRC's planned activities for each upcoming year, and an annual summary report of activities conducted during the previous year.

As a watershed-wide WDR, timber harvest plans would not be enrolled individually in the WDR as is the current practice. Rather, assessment of compliance will be achieved on a watershed scale through the review of annual work plans and progress reports required by the Monitoring Reporting Program, and periodic audits including inspections of HRC's implementation of the WDR. Regional Water Board staff will continue to review and comment on individual Timber Harvest Plans as part of the CAL FIRE review team pursuant to the Forest Practice Rules.

In addition, as a watershed-wide WDR, HRC would pay a single annual fee to maintain coverage in the WDR. The annual fee would be established pursuant to the rating classification established by the State Water Resources Control Board (California Code of Regulations, Title 23, Division 3, Chapter 9).

A legal challenge is working its way through the federal courts contending that stormwater runoff from logging roads are "point sources" under the Clean Water Act and therefore require permits under the National Pollutant Discharge Elimination System (NPDES). On May 17, 2011 the United States Court of Appeals for the Ninth Circuit, concluded that discharges from logging roads require NPDES permits. To date, US EPA and the State Water Resources Control Board have not promulgated regulation or issued guidance regarding the regulation of logging roads as a point source. This proposed WDR will implement a program that goes well beyond any requirements of the CWA. HRC may elect to apply for a NPDES permit at that time.

The Regional Water Board received 4 comment letters during the comment period (Attachment 8), and staff have provided written responses to these comments

(Attachment 7). In response to comments, staff made some modifications to the public review draft WDR, which are presented in strike-out and underline (Attachment 3). Attachment 4 is a clean copy of the tentative Order for the Board's consideration.

The WDR strikes a reasonable balance of establishing enforceable requirements to minimize possible discharges from activities associated with timber harvest activities and roads, promotes restoration activities, and allows HRC to manage its' land for the long term production and sustainable use of timberland in a manner that protects water quality.

**PRELIMINARY STAFF
RECOMMENDATION:**

Staff recommends approval of the Order.

Attachments

1. Notice of Completion for State Clearinghouse
2. Initial study and negative declaration
3. Redline Strike out version of Tentative Order No. R1-2011-0100
4. Clean Copy Order No. R1-2011-0100
5. Bear Creek Watershed Site Map
6. Clean Copy MRP No. R1-2011-0100
7. Response to comments
8. Comment letters received
9. Public notice