

**Comments by:**

**Environmental Protection Information Center 145 G Street, Suite A, Arcata, CA 95521 (707) 822-7711 [www.wildcalifornia.org](http://www.wildcalifornia.org)**

Comment EPIC 1:

As an initial matter, we note that this draft Order does nothing to address “point source” pollution from logging roads and activities as required by the federal Clean Water Act. The United States District Court for the Northern District of California has already found that logging roads and activities in the Bear Creek watershed are releasing “point source” pollution in violation of the Clean Water Act. See *Environmental Protection Information Center v. Pacific Lumber Co.*, 2003 WL 25506817 (N.D. Cal. 2003). The requirement to procure a “point source” discharge permit has been upheld by the U.S. Court of Appeal for the Ninth Circuit. See *NEDC v. Brown*, No. 07-35266, 2011 WL 1844060, (9th Cir. 2011) – attached to these comments.

Response EPIC 1:

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. This decision is being appealed to the United States Supreme Court. Concurrently legislation has been proposed in Congress that would overturn this Court ruling.

Until a final determination of these proceedings, dischargers may obtain coverage under the existing State Water Board’s Industrial Storm Water General Permit Order 97-03-DWQ. The substantive provisions of state waste discharge requirements are likely equally or more protective than those we would expect to see in a plan prepared under Order 97-03. Staff will propose a finding to this effect in the WDR.

Comment EPIC 2:

Because the Regional Water Board is now contemplating the current draft Order we insist that the agency must make every effort to ensure that no pollution from timber activities enters Bear Creek or other waterways. Unfortunately, the current draft Order does not eliminate the discharge of pollution into Bear Creek. Instead, the draft Order simply requires a monitoring and reporting scheme to track some, but not all, of the pollution resulting from timber activities. This is not acceptable.

Response EPIC 2:

The tentative Order includes significant restrictions on rate of harvesting, silviculture, use and maintenance of roads, and a restoration plan. Many of these restrictions have become common operating practices and Best Management Practices. The style and intensity of logging proposed will have far less impact than harvesting methods and practices of the previous decades.

The management plan addresses the following activities:

- Use of selection timber harvesting method;
- A harvest rate limit of 30% of the watershed harvested in a ten year period;
- methods for road use, construction, reconstruction, decommissioning, and repair and maintenance;
- Measures to treat, prevent, or minimize controllable sediment discharge from roads, skid trails, landslides, and other sources related to timberland management;
- Increased retention of riparian vegetation to preserve and/or restore shade and prevent increases in solar radiation;
- In-stream and riparian zone habitat restoration by repositioning and stabilization of existing in-stream large wood and planting riparian zone conifers for habitat restoration; and
- Watershed trend monitoring.

HRC will also implement measures to identify, avoid or restrict harvesting on vulnerable slopes and limit the overall intensity and areal extent of harvesting vulnerable area that have potential to trigger landslides. This includes:

- Use of partial harvesting methods that retain a significant component of post-harvest root strength;
- Use of a shallow landslide model to identify high hazard areas and harvest restrictions based on hazard class;
- No harvesting on areas with high landslide hazard and within 100 feet of Class I and II streams; additional restrictions up to 300 feet from the stream or to the break in slope;
- Review by licensed geologist before proposed harvesting on vulnerable slopes to characterize landslide hazards, assess the risk of sediment discharge, and develop mitigation measures to reduce the landslide risk;
- Maintain and update an inventory of landslides in the watershed to expand understanding of landslide patterns in the watershed and the effectiveness of management measures, and to revise them as necessary.

Comment EPIC 3:

The buffer zones between logging activities and watercourses should be significantly extended for all classes. Buffer zones of between 50-150 feet are called for in the WDRs, but these distances are not enough to prevent sediment from reaching waterways in rain events. Simply leaving Class III watercourse out of the analysis and without protective buffers guarantees that sediment will enter the lower watercourses simply by virtue of gravity. Instead, the buffers should be increased to account for heavy rain events that are commonplace in Humboldt County.

Response EPIC 3:

Buffers have been evaluated including those provided to Class I, II, and III watercourses. Class I and II protection are consistent with recent Forest Practice Rules (FPR) anadromous salmonid protection rules, referred to as 'ASP rules'. Riparian protections within Class III watercourses have greater protections than those in the FPR. Riparian protections include:

- a. No harvesting within 100 feet of Class I and II watercourses;
- b. Any harvesting within a headwall swale connected to a Class I, II, or III watercourse shall retain an adequate number of living trees equivalent to a minimum of 150 square feet of basal area per acre;
- c. No ground based equipment, with the exception of at existing roads and equipment crossings, and permitted new road construction within:
  - 150 feet of a Class I watercourses,
  - 100 feet of a Class II watercourse,
  - 50 feet of a Class III watercourse, or to the closest hydrologic divide,
- d. a checklist for foresters preparing timber harvest plans to assist them in identifying vulnerable slopes and provide criteria for review by a PG.

Comment EPIC 4:

The use of a Mitigated Negative Declaration for the issuance of a permit that covers extensive timber activities and improperly segments such activities in Bear Creek from other waterways under the ownership of HRC is also improper. The intensity of timber activities and the widespread network of roads and skid trails across HRC's ownership in Bear Creek and other waterways require the preparation of an Environmental Impact Report ("EIR") because the activities being permitted will have a significant impact on the environment as defined by the California Environmental Quality Act ("CEQA").

Response EPIC 4:

The Bear Creek Watershed is a relatively small 5,000 acre discrete watershed that drains into the Eel River. HRC has developed management plans and mitigation measures that are unique and limited to the Bear Creek Watershed. For the purpose of the Initial Study, timber harvesting and land management activities were considered apart from and separately from timber harvesting activities in the Eel River by Humboldt Redwood Company in surrounding areas.

The Initial Study and mitigated negative declaration reflects the Regional Water Board staff's independent judgment and analysis. Based on this analysis and the waste discharge requirements for timber harvesting and related activities included in the Order, staff find that the Order and a mitigated negative declaration is consistent with the Basin Plan and will be in the public interest.

**Commenter: Richard Gienger  
Box 283, Whitethorn  
California 95589**

Comment RG 1:

One thing to bear in mind is that the watershed is an example of where attention needs to be paid to sediment sources as point sources – with prescriptions for each source as such. Another is the need to have the biological functions (current and potential) be protected and recovered, monitored and documented to the fullest extent possible.

Response RG 1:

Comment noted. See also Response EPIC 1.

Comment RG 2:

I strongly think that specific requirements for the restoration element need to be augmented with formal cooperation with the Department of Fish & Game, NMFS, other pertinent agencies such as the Department of Parks & Recreation and the public.

Response RG 2:

The tentative WDR requires the restoration plan to be formulated with input from a wide range of state and federal agencies (RWB, Dept of Fish & Game, NMFS, and State Parks) and the public.

Comment RG 3:

Cooperative agreements and periodic field tours are imperative. A specific recovery plan for Bear Creek salmonids -- with appropriate cooperative agreements – needs, for example, to be part of the WWDR. A team effort to raise funds to accomplish recovery is another element that should be integral in the WWDR. Section E should be rewritten and expanded to incorporate these recommendations.

Response RG 3:

Comment noted. The tentative WDR does include a recovery plan for Bear Creek watershed. A team effort to raise funds to support funding of projects is an excellent ‘thinking outside of the box’ idea. The tentative WDR does not preclude such activity from occurring.

**Mike Miles**  
**Humboldt Redwood Company**  
**Southern Operations – Area Forester**

Comment HRC 1:

WDR Findings (Item 26); WDR Specific Requirements (Item [B][3])  
...Requiring a separate re-submittal of this report (as the report will have already previously been provided Staff) in addition to and apart from the standard THP review and approval process is burdensome for both parties, adds an unnecessary element of uncertainty, wastes paper, and seems a bit over the top when compared with requirements of other landowner’s practicing arguably more intensive forest management.

Response HRC 1:

RWB staff concur that a streamlined reporting requirement is necessary to not delay the review process. The revised tentative Order clarifies that the report may be submitted earlier in the project planning or concurrent with CAL FIRE THP review process, and that the RWB will have 45 days to comment on the proposal, and if deemed necessary, may request additional information or require additional conditions be incorporated to further reduce or mitigate the potential for sediment discharge.

Comment HRC 2:

WDR Findings (Item 29); WDR Specific Requirements (Item [A][2])  
...HRC projected its timber harvest would not exceed 30 percent of the total Bear Creek watershed area over a ten year period (2011-2020). This is a harvest level specific to the Bear Creek watershed over the next 10 years and should not be assumed as an acceptable rate of harvest for other watersheds seeking establishment of WWDRs.

Response HRC 2:

RWB staff have modified the finding and requirement to clarify that the harvest rate during the 10-year period following adoption of the tentative Order is not to exceed the 30% rate proposed in the ROWD. In addition, text was modified to clarify that this harvest rate is not intended to establish a rate of harvest applicable to other timberlands owned by HRC outside Bear Creek watershed.

Comment HRC 3:

WDR Findings (Item 32); WDR Specific Requirements (Item [D]) – Requirement that all newly discovered CSDS sites (not associated with the contemporary maintained road system) be treated within one year of discovery is excessively burdensome.

Response HRC 3:

The tentative Order has been revised to reflect that newly discovered ECP sites should be characterized and prioritized within the context of other priority sites and in accordance with the established ECP schedule.

Comment HRC 4:

WDR Findings (Item 33); WDR Specific Requirements (Item [E]) – Regarding the Restoration Plan – A couple of concerns. HRC senior management is concerned over potential for mismatched expectations...

The Order requires a restoration plan but does not detail the extent of said plan other than it will not require use of heavy tracked equipment (e.g. excavator) to implement.

We also have concerns over the due date of November 15, 2012 considering the WWDR has yet to be established, potential permitting 'hurdles', and a belief that observation of stream dynamics throughout all seasons should be conducted during plan preparation.

Response HRC 4:

RWB staff agrees there are inherent complexities of developing a restoration plan that must go through several agencies for approval. RWB staff are committed to working cooperatively with HRC to develop a plan that meets all parties approval, is not cost prohibitive, and provides meaningful restoration of the Bear River.

There is nothing in the tentative Order that prohibits grant funding or external sources of funding for restoration projects.

The tentative Order has been modified to extend the due date of the recovery plan to June 30, 2013.

Comment HRC 5:

MRP Items; Reporting requirements

HRC submitted a number of comments pertaining to the reporting requirements, and suggested that the timing and content of these requirements are duplicative or unnecessary due to requirements for other regulatory programs.

Response HRC 5:

Most of these comments concerned timing of submittal of reports and reducing duplication of reporting of information already submitted. Staff does not believe that changes to the reporting schedules and requirements are warranted at this time. However, staff note that the Regional Water Board has delegated its authority to the Executive Officer to revise, modify, and reissue a MRP. Therefore, potential modifications to the MRP can be discussed following adoption of the tentative Order.

Comment HRC 6:

\$6,500 annual fee... we respectfully ask that WQ look at fees paid for other WWDRs relative to acres and type of activity to assess whether or not an annual fee of \$6500 is consistent and appropriate.

Response HRC 6:

The State Water Board has developed a fee schedule for Waste Discharge Requirements which establish a range of fees based on a Threat to Water Quality (TTWQ) and Complexity rating given to each waste discharge permit. The designated threat and complexity rating determines the fees for the WDR. It

is important to note, however, that the rating classification system was written for facilities with discrete sources of discharge, not for activities that result in nonpoint source discharges on timberlands that can range up to many thousands of acres.

Based on these considerations, staff recommend that the annual fee for this Order shall be based on a TTWQ classification '3' and Complexity classification 'B'.

**Patrick Vaughan**  
**Engineering Geologist**  
**California State Parks**  
**North Coast Redwoods District**

Comment State Parks 1

It is unclear how the entry of Sudden Oak Death (SOD) or other blight, earthquake or fire affects the 30% of permitted disturbance area. Would these be part of the 30% or excluded from the 30%?

Response State Parks 1

The draft WDR does not contain any contingency plan for adjustments that may be proposed following these potential catastrophic events. The County and CAL FIRE requires the timber companies to have protocols to prevent and reduce infestation of SOD.

Comment State Parks 2.

Is there any requirement for the distribution of the 30% of disturbance area over the watershed area (i.e., could a subwatershed take the brunt of harvest so that within that smaller area the impacts were relatively high?)

Response State Parks 2

HRC has divided the approximately 5,000 acre watershed into 3 management units and proposed to concentrate their harvesting within each unit for a ten year period. Harvesting proposed during the first ten year period is dispersed throughout the management unit. HRC is proposing this approach over one that would have them harvesting over a larger area, which would require use of many more miles of roads.

Comment State Parks 3.

The WDRs requires Water Board approval for geology reports (p. 12, Effects of

Timber Harvest on Slope Stability). What is the mechanism for resolution if California Geological Surveyor California State Parks geologists have differing opinions from Water Board findings that have been addressed during CAL FIRE review?

Response State Parks 3.

Language in the draft Order has been modified to remove the word 'approval' from this requirement and require a review instead. However, the larger question is how we resolve conflict on geologic interpretation or other technical matters. Conflict resolution procedures are established in the California Code of Regulations. Basically, unresolved conflicts are elevated to the Executive Officer and if necessary to the Regional Board for a Public Hearing. Ultimately, unresolved conflict could be petitioned to the State Water Board and then into the court system.

Comment State Parks 4.

Review may occur for harvest up to 300 feet from a watercourse (p. 18, Specific Requirements). Is there a mechanism to address the retention levels outside the no-cut buffers (width is stream class dependent) that accounts for the effects of direct recruitment of large wood to the stream or secondary recruitment impacts from tree fall into the buffer? This is relevant as the WDRs address placing wood in the stream.

Response State Parks 4.

Yes, there is a mechanism to address retention levels during the evaluation of timber harvest plans by CAL FIRE and its review team members, as well as through input from neighboring landowners, such as the State Parks and other interested parties.

Comment State Parks 5.

Is there a mechanism to treat high priority controllable sediment discharge sources(CSDS) problems promptly if they are not in the vicinity of a nearby timber harvest (it appears that treatment is related to nearby timber activities [pg. 16, Legacy Sediment Sources])? New sites appear to be required to be addressed within a year but the language appears vaguer for old sites.

Response State Parks 5.

The draft language has been modified to require CSDS sites to be repaired based on a priority to discharge sediment and in accordance with the ECP schedule. HRC is proposing to treat CSDS sites within three years of discovery. This is not based on or limited to whether the CSDS is located within a timber

harvesting plan area.

Comment State Parks 6.

Improvements in large wood placement design are ongoing - is there a mechanism to ensure that methods used keep pace beyond citing the DFG Stream Restoration Manual or NRCD handbook (p. 17, Stream and Riparian Zone Restoration)? Recommend requiring the most recent edition of the (insert title [s]) manual" as more appropriate for a longer term governing document.

Response State Parks 6.

The comment reflects a high priority for input by other resource agencies involved in protection of riparian habitat, as well as the State and Regional Water Boards. Currently there is a working group made up of the federal, state and local agencies working on establishing streamlined procedures to evaluate and permit the recruitment of large woody debris within Coho streams to improve habitat, beyond limiting to timber harvesting plans.

Comment State Parks 7.

Recommend that large wood placement designs be performed by a Professional Engineer and/or Professional Geologist as appropriate and that the design work examine the wood loading in the context of historical norms and the potential downstream effects of wood mobilization (also see in context of item XIV a parks, in the environmental checklist).

Response State Parks 7.

We concur that licensed professionals will be required to design and evaluate projects as appropriate. Proposals for placement of large woody debris are intended to receive review by multiple agencies and jurisdictions. This includes the California State Parks for projects that may affect the Eel River in the vicinity of Humboldt Redwoods State Parks.

Comment State Parks 8.

For reporting discovery of waste discharge violations (p. 22, General Requirements) item iii calls for provision of a map showing the discharge location - recommend specificity regarding map scale to ensure it conveys the site accurately.

Response State Parks 8.

Comment noted.

Comment State Parks 9.

HRC is to submit a report after discovering waste discharge sites after reporting to the Regional Board (p. 22, General Requirements). Decision making regarding the level of reporting requirement is unclear (e.g., ECP, geology report. etc.) and this has licensing implications that should be addressed.

Response State Parks 9.

The notification of a discharge does not typically require a specific license (e.g. PG). However, the analysis of cause and proposed treatment plans may require special licensing depending on the nature of the report.

Comment State Parks 10.

Landslide repairs are called for as part of the WDRs (p. 22, General Requirements, item viii; p. 16, Legacy Sediment Sources - Erosion Control Plans). This could place workers in potentially hazardous sites shortly after the discharge. If called upon to do the work following a large earthquake or climatically induced failure of sufficient magnitude. A professional geologist should be consulted to ensure entry is safe, in order to meet assertions in the environmental checklist (IXj. Via iv, VIaiii) regarding exposure of people to mudflows, landslides and seismically induced failures.

Response State Parks 10.

Comment noted.