

FRIENDS OF ELK RIVER

friendsofelkriver@gmail.com

29 September, 2016

North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Attn: James.Burke@waterboards.ca.gov

Re: Waste Discharge Order No. R1-2016-0004

Dear Board Members:

After a spring and summer of workshops and hearings and revisions, the latest draft of the Elk River WDR is even farther from restoring the beneficial uses of Elk River. We urge you to reject it.

In our first written comments last winter we pointed out that the WDR's implementation measures did not adequately address the condition of the river—as documented by the Upper Elk River Sediment Study and incorporated into the TMDL Action Plan you adopted in May. That document also summarized our "Option B," calling for a timber harvest moratorium in the upper watershed, placing recovery before continued logging, and providing a way to resolve your impossible choice of making the river safe for people and fish or using it as a channel for industrial run-off.

Instead, even the WDR's timid and compromised attempts at regulation have been removed or weakened. The plan's unraveling began with your allowing HRC to write its own rules—"tailor its own compliance," as the WDR puts it. Your underlying pro-industry bias became starkly evident at the April 7 hearing in Eureka. Board members disparaged the work of their own staff, questioned the sediment study funded by the EPA, then gave lengthy consideration to the paid consultants of the timber companies, who were invited to step forward and further weaken the regulations they had already helped to write. The subsequent frenzy of ad hoc rule-making was a dramatic climax to the 18-year charade of helping Elk River recover. By evening of the second day of hearings, Board members didn't know what they were being asked to vote on.

At that hearing and the first WDR discussion in May, the Board removed or compromised every protection we had proposed for the river, and even came up with some new ways around their mandate to protect water quality:

- Adding "as appropriate and when feasible" to the crucial requirement of a disconnect between roads and water courses.
- Exempting the 590-acre McCloud-Shaw harvest plan—permitted by the controversial "Tier 2" exemptions of the 2006 WDR—from the already limited and compromised moratorium on logging the "sensitive watersheds" of the South Fork.
- Further exempting the Railroad Gulch BMP Study from this moratorium. (We know that logging degrades water quality, that this sub-watershed has experienced serious debris flows during past winters, and that the river has zero assimilative capacity for sediment—but let's log anyway and call it science.)

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- Making the already too-high harvest limitations a “soft” 2%. This exceeds the 2006 WDR’s harvest limits, which have allowed water quality to further degrade. Also, the ten-year averaging hides some ugly exceptions, like the 4% proposed for Railroad Gulch when the BMP experiment is over.
- The revision of Finding 7, removing any hint of responsibility for Upper Elk River’s 640,000 cubic yards of sediment. Now we’re told they were not “produced by management activities,” but “accumulated in the past two decades.” Silt happens.

Further changes at your June meeting continued and amplified the spring’s deregulatory frenzy, and in the plan now before you the WDR’s few remaining teeth have been systematically removed:

- It asserts for the third time HRC’s right to log the McCloud-Shaw THP, resisting all attempts to bring this plan into conformity with the rules you’re supposed to be writing. One Board member worried you were asking HRC to give up too many trees, as if your job was to protect the billionaire who bought a used forest, found it in worse shape than his experts said, then needed every board foot of Elk River timber to make up the slack. This shows a fundamental misunderstanding of your responsibility to the public trust.
- The “temporary prohibition” on logging in the high-risk watersheds is now changed to “limited” timber harvesting. Even “temporarily refrain from” has been downgraded to “limit.” This kind of revision is the consequence of allowing the timber industry to “tailor its compliance” to state regulations.
- “Harvest restrictions” are deleted in favor of “BMP’s that include significant tree retention.” This reflects both industry and regulatory preference for statistical projection and BMP forest engineering over monitoring, observation, plain language, and common sense.
- The soft 2% harvest limit is not even a limit now. Instead, more than 2% “may cause concern.” The Executive Officer may decline to enroll such plans, but HRC has sued to deny this power and earlier revisions of the WDR have already removed his ability to hold up non-conforming timber harvest plans. Expressions of “concern” may still be allowed.
- The revised wet weather regulations are the most blatant example of incremental deregulation in the long history of your Board’s failure to control logging. Originally proposed as a return to the traditional No Winter Ops, the rule now permits winter falling and cable yarding, and prohibits ground yarding and hauling only after four inches of rain—*except* during a new season (Dry Weather During Wet Weather) when less than a quarter inch of rain falls in 72 hours. This season, mercifully, does not occur in the five “sensitive watersheds.”

Under this eviscerated WDR, Elk River will continue to be a managed disaster. Promises of restoration and recovery have little basis in reality. The first two restoration meetings were hopeful, but without a stronger regulatory commitment these efforts are doomed to the same stalemate we now see in your Salt River Project. Restoration remains in the planning stage while permitted logging adds to the

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problem. So far, with no assured future funding, as much public money has been dedicated to advertising redwood products as to restoring Elk River.

We therefore request the following:

- Reject this present draft of the WDR, and do not approve the Declaration of No Significant Environmental Impact, which is not supported by fact.
- Return the WDR to your staff, who have shown they can write good rules if the Board will let them. Even in this flawed document there are significant clarifications and improvements—like requiring that changes of harvest exemptions, or increases in harvest limits, be based on an assessment of actual river conditions, including the recovery of beneficial uses.
- Require that the WDR be consistent with the mandates of the Clean Water Act, your own adopted TMDL, and residents' long-standing petition for a ten-year moratorium on logging in Upper Elk River. It should not be tailored to the flawed business plan of a San Francisco billionaire.
- Schedule a Board retreat to resolve your conflicted priorities. Instead of assuring HRC of enough trees to cut, recognize that your mandate is to restore beneficial uses to people and fish. Without this recognition, despite any number of good intentions, your agency is betraying the public trust and should be subject to legislative inquiry and reform.

Approval of this present WDR can only lead to the plan's rejection by your governing board and/or the EPA, and the disappointment of your restoration partners and a public that is growing impatient with the state's failures to protect our resources.

Sincerely,

Jerry Martien for Friends of Elk River

cc: Elk River Residents Association
Pacific Coast Federation of Fishermen's Associations
State Assemblyman Jim Wood
State Senator Mark McGuire
Elk River Watershed Stewardship Program
North Coast Watershed Alliance