

MINUTES OF MEETING
March 23 and 24, 2004
Regional Water Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403

Chairman William Massey called the Regional Water Board Workshop to order at 1:04 p.m. on March 23, 2004.

i. Pledge of Allegiance

Pledge of Allegiance led by John Corbett

ii. Roll Call and Introductions

Board Members present: Richard Grundy, John Corbett, Bev Wasson, Gerald Cochran and William Massey

Absent: Dina Moore

Regional Water Board Staff attended: Catherine Kuhlman, Frank Reichmuth, Sheryl Schaffner, Christine Wright-Shacklett, Holly Lundborg, Dr. Ranjit Gill, Nathan Quarles, Fred Blatt, Mark Neely, Drew Bayless, David Kuszmar, Adona White, Terri Korell, and Jean Lockett

1. Public Workshop to discuss tentative Order No. R1-2004-0016, Categorical Waiver and General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region.

Nathan Quarles gave the presentation on the Categorical Waiver and General Waste Discharge for non-federal lands in the North Coast Region. Mr. Quarles stated that the goals of the workshop were to get input and direction from the Board.

The goals of the waiver are to:

- Protect the water quality of the state;
- Provide coverage under the Porter-Cologne;
- Provide outreach and to involve all stakeholders;
- Provide consistency with the existing and Upcoming TMDLs and the upcoming Basin Plan Amendment; and
- Be consistent, where possible, with the Forest Practice Rules.

Mr. Quarles discussed definitions in the waiver. He stated that the definition of *waste* received a large amount of response. The staff proposed to change "waste" to eliminate excess sunlight. Staff also proposed to change Item H. to be consistent with the basal area for the selection silvicultural method, staff recommends modifying Item H to be consistent with the Forest Practice Rules. Also, in Item I. Staff proposed to strike "harvesting" and replace it with "cutting." The concept is to encourage landowners to use practices that reduce the threat to water quality with the reward being a waiver of Waste Discharge Requirements.

Mr. Quarles covered the application procedures:

Waiver: The applicant must submit a certification notice and an addendum that list measures to protect water quality. There is 14-day review upon enrollment. If the review is not done in 14 days, the enrollment is automatic.

Waste Discharge Requirements: a waste discharge prevention plan that spells out the mitigation measures must be submitted at the time of the application for a Waste Discharge Requirements. Notification of coverage or denial of coverage is provided in writing by the Executive Officer after the application is reviewed by staff.

Mr. Quarles concluded his presentation by stating that staff is crafting a tentative order that is a combination order: proving waiver of discharge requirements if certain eligibility criteria and conditions are met, and if requirements are not met on the waiver side, then the applicant would be subject to the waste discharge requirements. He reiterated that the goal is to provide water quality protection and some regulatory certainty for the industry.

Mr. Corbett suggested that having both the waste discharge requirements and the waiver together can be confusing and therefore the waste discharge requirements should be separated out of the waiver. Mr. Quarles noted that staff was thinking the same thing and had planned to recommend just that.

Peter Ribar, representing Campbell Timberland Management, spoke for landowners that had concerns regarding the usage of information that is required by the waiver.

Dan Fisher, from Fruit Grower's Supply Company, stated that he was not supportive of the proposed order. He suggested that the CEQA document that is in the THP be modified to satisfy Porter-Cologne's requirements.

Ruth Ann Shulte, PALCO employee, voiced Pacific Lumber Company's concerns about perceived redundancies and costs. There is the TMDL process that is currently under development, and the proposed Sediment Amendment to the Basin Plan. Ms. Shulte state that the extensive monitoring requirements and the other components of the proposed waiver/WDRs would impose on every THP an additional cost of \$10,000 per THP. Ms. Schaffner thanked Ms. Shulte for providing figures and asked if the Regional Water Board could receive the inputs that were used to derive the figure of \$10,000 per THP. Ms. Shulte stated that it was an estimate, but that PALCO would be happy to provide the information.

Tom Shultz, with Mendocino Redwood Company (MRC), stated that MRC will only be able to apply the waiver on about five per cent of their annual THP acreage. He stated that MRC has problems with the basal area requirements and problems with the post harvest activities. The limitations would most likely disallow them to use the waiver. He asked that the Board reconsider the waiver.

Dave Bishale, representing California Forestry Association, stated that it is critical is to move away from a process focus and move more toward an end result focus. He asked that the process be closely coordinated with the Department of Fish and Game and California Department Forestry to ensure that there are efficiencies from permitting processes. Mr. Bishale indicated that there needs to be a way that landowners will not be required to pay for five different fees for five different permits and get five different reviews.

Bernie Bush, representing Simpson Resource Company, suggested that the process burden associated with the waiver would be huge. The waiver is somewhat duplicative to many other processes that landowners are now going through.

The Board discussed the possibility of separating the WDR and the waiver.

John Williams representing the Forest Landowners of California stated that the Forest landowners are not in support of the proposed waiver. Mr. Williams asked that the Board direct staff to not continue with the proposal. He stated that the waiver/WDR would be overly burdensome and not necessary to protect water quality. Mr. Williams submitted a letter from the Forest Landowners of California that reiterated his comments.

Johanna Rodoni, Executive Director of the Buckeye Conservancy Committee, indicated that non-industrial timber producers are vital to Humboldt County. Most landowners are rural families and practice responsible forest stewardship. She stated that the non-industrial landowners do not support the waiver.

Peter Bushman, Chairman of the Buckeye Conservancy, suggested that his property is well kept. He stated that he could not qualify for the waiver. Mr. Bushman stated that the waiver is duplicative of other processes.

John Rice, representing his family's operation, stated that the waiver would seriously affect his logging in the future and the three projects that were just approved. If the waiver is adopted his logging project can be held up, a considerable amount of money will be lost, and future projects will be lost.

Larry Mailliard, representing his family, stated that the waiver process is that of the TMDL process. Mr. Mailliard stated that it is becoming very costly to do site specific erosion control processes. He asked if he and others were required to apply for the waiver if a TMDL is already in place in the Garcia Watershed.

Lane Russ, Humboldt/Del North Co Association, voiced his concerns that his family may not be able to keep the family ranch in production and in the family's hands. His THP cost has increased 100 per cent in the last ten years, and 30 percent of his production was lost in the areas where he has THPs. This potential waiver would result in another 30 percent in lost production. He urged the Board to direct staff to sit down with the landowners to discuss language that would be beneficial to the landowners.

[The board observed a 15 break at 3:05 p.m.]

Michael Lozeau, with Earthjustice, spoke on behalf of Environmental Protection Information Center and Humboldt Watershed Council, stated that under the Federal Clean Water Act heat is defined as a pollutant and he suggested that the phrase "excessive sunlight" be replaced with the term "heat." Mr. Lozeau suggested that the environmental group prefers that the criteria for the waiver be more restrictive. He offered suggestions for both the waiver and the waste discharge requirements.

The Board discussed a number of the issues raised, including how to deal with THPs that are in the review process or have been approved before the waiver and WDRs are adopted, but have not yet been completed.

Ms. Kuhlman summarized some of the comments and suggestions for the waiver up to this point in the discussion:

- Separate the waiver from the WDRs,
- Mesh the timing of Regional Water Board's permit with the time of California Department of Forestry's timeline as much as possible;
- Staff will look at the section of Grandfather clause and come up with some better language;
- Staff will look at improving the language regarding inspections, and
- Improve the index

Michael Hyatt, with California Geological Survey, stated that CGS did not find any documentation or need for the proposed waiver requirement or scientific citations to support the waiver. Mr. Hyatt stated that he had been authorize to offer assistance to the Regional Water Board and its staff to aid in any development of scientifically supportable waiver requirements.

Cheryl Moore, requested clarification in section 3 in the waiver item A thou M that refers to "no wet weather timber harvest activities."

Ms. Wasson stated that she like the idea of broadening the waiver. Chairman Massey stated that staff should not lose sight of the small landowner. Richard Grundy stated that he agreed with Ms. Wasson to broaden the waiver. Mr. Grundy stated that the commercial and non-commercial operations needed to be distinguished. Jerry Cochran stated that he agreed with Mr. Grundy that the Regional Water Board has a unique problem and other waivers from other Regional Water Boards would not work for the North Coast Region. Mr. Cochran stated that he would like to see the Regional Water Board automatically give a waiver to those that are approved in the THP process that we don't file a non-concurrence on. There was some discussion amongst the Board Members on that proposal. Mr. Cochran asked for the definition of wet weather. Nathan Quarles stated that the definition of wet weather had not been defined yet. John Corbett stated that he also agreed with Mr. Grundy that the North Coast Regional Water has unique problems and that those problems should be addressed by the North Coast Regional Water Board. Mr. Corbett stated that the number one issue is the cumulative impacts. Mr. Corbett suggested to expand the section on the watershed and watershed sections and take a look at the Coho recovery plan before the waiver is adopted. Overall he suggested a schedule on how the regional water board will approach watersheds and keep an eye on the bigger issues.

The general sense of the Board's discussion was that a stronger waiver and WDR process was needed in the short term, with terms that impose a lesser burden on the operations that are not a significant part of the problem, with the focus of conditions being on the operations that have greater impacts on water quality. In the intermediate and longer term, however, the more effective approach, is to continue to pursue these issues on a watershed basis: through watershed wide WDRs and through TMDLs.

Chairman Massey thanked Nathan Quarles and the Regional Water Board staff for doing a great job.

The workshop adjourned at 4:40 p.m., until the next meeting on Wednesday, March 25, 2004.

Wednesday, March 24, 2004

Chairman William Massey called the Regional Water Board Meeting to order at 9:06 a.m. on March 24, 2004.

iii. Pledge of Allegiance

Pledge of Allegiance led by Gerald Cochran

iv. Roll Call and Introductions

Board Members present: Richard Grundy, John Corbett, Bev Wasson, Gerald Cochran and William Massey

Absent: Dina Moore

Regional Water Board Staff attended: Catherine Kuhlman, Frank Reichmuth, Sheryl Schaffner, Christine Wright-Shacklett, Holly Lundborg, Dr. Ranjit Gill, Nathan Quarles, Fred Blatt, Mark Neely, Drew Bayless, David Kuszmar, Adona White, Terri Korell, and Jean Lockett

v. Board Member Ex Parte Communication Disclosure

John Corbett stated that he attended the State Water Board waiver hearing in Sacramento and also participated in a meetings after the hearing. He spoke with Mr. Lozeau

Richard Grundy stated that he attended a workshop on Sediment Amendment at the Regional Water Board.

vi. Public Forum

Larry Mailliard asked if he was in a TMDL watershed would he be excluded from the waiver. He stated that he may be duplicating his efforts and spending thousands of dollars unnecessarily, if he was in a TMDL watershed and is required to participate in the waiver.

Ms. Kuhlman noted that the question regarding the interaction between the waiver/WDRs and the Garcia TMDL implementation plan, as well as future TMDL implementation plans, was a very good one, and that staff would come up with a proposal that is responsive to that question. Ms. Kuhlman noted that her initial reaction was that the TMDL's are the more focused and appropriate tool to deal with the issues at hand, and where an implementation plan is in place, compliance with that plan should meet the requirements of the waiver/WDRs.

Item 2. Approval of Meeting Minutes

MOTION: Richard Grundy moved to approve the December 2003 minutes. Bev Wasson seconded the motion. The motion was passed unanimously.

CONSENT ITEMS

Item 3. Order No. R1-2004-0012, **Exchange Bank Data Center**, Sonoma County, Issuance of Waste Discharge Requirements for nutrient injection into groundwater

Item 4. Order No. R1-2004-0013, **City of Eureka Area, Elk River Wastewater Treatment Facility**, Humboldt County, Renewal of NPDES Permit No. CA0024449, WDID No. 1B82151OHUM

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

Item 5. PUBLIC HEARING to consider adoption of a Negative Declaration and Order No. R1-2004-0015, **Categorical Waiver for Discharges Related to Timber Harvest Activities On Federal Lands Managed by the United States Department of Agriculture**, Forest Service in the North Coast Region.

Item 5 was postponed to the end of the day's agenda

Item 6. PUBLIC HEARING Order No. R1-2004-0009 Fort Bragg Wastewater Treatment Facility, Mendocino County, NPDES Permit – Renewal of NPDES Permit CA0023078, WDID No. 1B84083OMEN

Chairman Massey administered the oath to those who expected to participate in the public hearing discussion.

Charles Reed admitted the administrative file into the record and gave the presentation. The Fort Bragg Municipal Improvement District No. 1 (the Permittee) submitted information on October 26, 2000, to complete a Report of Waste Discharge for a renewal of its Waste Discharge Requirements (WDRs) for its Wastewater Treatment Facility (WWTF). These WDRs have been drafted in accordance with applicable federal and state law, and include standards for secondary treated wastewater for discharges to the Pacific Ocean, as well as other prohibitions, limitations, and provisions.

The proposed Order contained significant changes from the existing Permit. The Permittee responded with comments to the draft permit provided to them on August 5, 2003. Their comments were received on October 1, 2003. A final draft Permit was provided to the Permittee on January 16, 2004. The Permittee responded on February 19, 2004 with comments substantively similar to comments submitted on October 1, 2003. To the extent allowed by federal and state law and best professional judgement, the proposed permit was revised to incorporate the Permittee's comments. Staff recommended that the permit be adopted as proposed.

The Regional Board discussed the issues and asked questions of staff.

Mr. Grundy asked Mr. Reed to explain the permit requirements for operations and maintenance of the collection system and the requirements for assessing the impact of the discharge on receiving water quality. Mr. Reed responded that the collection system was in need of significant repair and/or rehabilitation and the City did not appear to be allocating sufficient resources to adequately operate and maintain the collection system. Mr. Reed stated that the most recent evaluation of receiving water conditions was conducted in 1972 and the impact of the City's wastewater discharge on the existing receiving water quality was unknown due to the absence of recent receiving water monitoring data.

Jere Melo, Mayor of the City of Fort Bragg, responded to Mr. Grundy and Mr. Cochran's questions. Mr. Melo stated that he and his staff did not agree with the draft Permit. He felt that Regional Water Board staff had incorrectly concluded that the City's WWTF was not eligible for effluent standards that are less stringent than federally mandated secondary standards (known as standards equivalent to secondary treatment), and did not establish the relaxed treatment standards in the draft Permit as requested by City staff. Mr. Melo requested that the Regional Water Board direct staff to change the Permit to include standards equivalent to secondary treatment.

David Jenkins, Ph.D., professor at the University of California in Berkeley, stated that he disagreed with the Regional Water Board staff's assessment of Fort Bragg's wastewater treatment plant as insufficient and deteriorating. Dr. Jenkins proceeded to give a powerpoint presentation to support his position.

Ms. Thorme, special outside counsel representing the City of Fort Bragg, addressed the Board. Ms. Thorme objected to the inclusion of late revisions of the Fact Sheet in the draft Order. She stated that City staff did not have a chance to review the late revisions because the late revisions were provided to City staff on the morning of the Board Hearing. Ms. Thorme followed her initial comments to the Board with a prepared presentation on the chronology of the Regional Water Board staff history of permitting and enforcement from 1970 to 2004, emphasizing the Regional Water Board staff's inaction in renewing the expired Permit and staff's refusal to establish effluent

standards equivalent to secondary treatment. Staff's inaction, she said, resulted in permit violations that are subject to mandatory minimum penalties and leaves the City exposed to third-party lawsuits for violations of its NPDES permit.

Gil Wheeler, senior environmental engineer, made comments on grant determinations made in 1975 by the USEPA and the SWRCB, his employer at the time, for a City of Ft. Bragg Clean Water Grant project regarding the issue of excessive infiltration and inflow (I/I). He stated that the treatment facility was determined by the SWRCB, at the time of grant approval, to have no excessive I/I and Regional Water Board staff have determined, inappropriately, that the treatment facility now suffers from excessive I/I.

Mr. Grundy stated that many of the legal arguments regarding USEPA guidelines presented by the City of Fort Bragg are more appropriately directed to the USEPA not the Regional Water Board. This hearing is to consider waste discharge requirements for the City of Fort Bragg, not whether USEPA policy and guidelines are adequate.

Mr. Grundy stated that there were implicit assumptions made by the Regional Board at the time the WWTF was approved by the USEPA and the SWRCB and the first permit was adopted that the treatment facility would be properly operated and maintained and that receiving water monitoring would occur. Mr. Grundy indicated that, based on the record prepared by staff, it doesn't appear that the City has followed through with these commitments. Mr. Grundy added that the lack of receiving water monitoring data does not allow the Board to support the City request for equivalent to secondary standards or to make the determination that the permitted discharge is not adversely affecting water quality. Mr. Grundy indicated that water quality is a paramount issue with the Regional Board, and expressed concern that a relaxation of permit requirements would give the impression that the Board was approving permit backsliding and water quality degradation or that the Board was approving requirements that were less stringent than in other permits in the region (i.e., City of Eureka WWTF).

Mr. Grundy expressed regret that the City NPDES permit had taken so long to renew, but suggested the new permit conditions requiring receiving water monitoring and documentation of the City's operation and maintenance activities will allow for a timely renewal of the permit in five years.

Doug Eberhardt with USEPA stated that the Regional Water Board staff had appropriately interpreted federal regulations in establishing the waste discharge requirements for Fort Bragg. In response to statements by Mr. Wheeler, Mr. Eberhardt added that evaluations during the process of grant approval are separate from conditions used to establish requirements in NPDES permits.

Mike Helm, Fort Bragg resident, asked the board to look at the pollutants to the ocean – lowering the standards would reduce water quality to the ocean and that would be irresponsible.

Christopher Sproul, with Ecological Rights Foundation, stated that his organization supports the Regional Water Board staff.

MOTION: Richard Grundy moved to adopt Order No. R1-2004-0009 with the staff recommendation to remove the blending language. John Corbett seconded the motion. Motion passed unanimously.

Richard Grundy requested a workshop on wet weather issues.

MOTION: John Corbett moved to adopt the changes in the errata. Bev Wasson seconded the motion. Motion passed with one abstention.

Richard Grundy– abstained
John Corbett– yes
William Massey – yes
Gerald Cochran – yes
Bev Wasson - yes

Erik Spiess suggested for the Board's consideration a clarifying motion on the subject of removing blending language from the Permit: Remove finding 24, the second sentence of General Provision H.13(a)(i) and the last sentence of General Provision 13(f).

MOTION: Richard Grundy moved to adopt Mr. Spiess' suggestion to remove finding 24, the second sentence of General Provision H.13(a)(i) and the last sentence of General Provision 13(f). Bev Wasson seconded the motion. Motion passed unanimously.

The board suggested that a workshop on wet weather be held in the near future

[The board adjourned for lunch at 12:45 to 1:45 p.m. for lunch and closed session.]

The Chairman Massey opened the board meeting to the public at 2:08 p.m. There were no reports from the closed session.

Item 7. Resolution R1-2004-0019 establishing a priority list for **State Revolving Funded** (SRF) Loans for FY 2004-05

William Winchester gave the presentation.

The North Coast Regional Water Quality Control Board is developing the FY 2004-05 State Fiscal Year Proposed Priority List for the State Revolving Fund Loan Program. The State Revolving Fund is a low interest loan program designed to fund the construction of publicly owned wastewater treatment and water reclamation facilities, to address nonpoint sources of pollution, and to fund estuary enhancement.

MOTION: Bev Wasson moved to adopt the R1-2004-0019 with the errata sheet. Cochran seconded the motion. Motion passed unanimously.

Item 8. **PUBLIC HEARING to consider the Schedule of Compliance Amendment to the Water Quality control Plan for the North Coast Region**

Lauren Clyde gave the presentation.

Schedules of compliance are a tool to obtain compliance with effluent and or receiving water limitations established to achieve water quality objectives or prohibitions adopted by the Regional Water Quality Control Board, State Water Resources Control Board or water quality criteria promulgated by the U. S. Environmental Protection Agency. Both the federal clean water act and the Porter-Cologne Water Quality control Act recognized schedules of compliance as an integral tool for bringing dischargers into compliance with new, revised or newly interpreted water quality objectives, criteria, or prohibitions. This mechanism is presently authorized statewide for non-

NPDES Waste Discharge Requirements. Schedules of compliance are also authorized statewide in NPDES permits for toxic pollutants. Schedules of compliance are not authorized for other pollutants outside of the priority pollutant category without specific language that has been approved in a Basin Plan.

Mr. Grundy commended the staff on doing an excellent job in revising the Compliance Schedule making it a clearer document.

Comments were accepted from:

Christopher Sprowl, with Ecological Rights Foundation
Brenda Adelman, with Russian River Watershed Protection Agency
Doug Eberhart, with US Environmental Protection Agency

Mr. Corbett asked Mr. Everhart if the regional board should delay adopting the Compliance Schedule until the US EPA legal staff has completed their review of the Non-NPDES Permittee and the NPDES Permittee language of other documents. Mr. Eberhart did not offer an opinion whether or not the board should delay adoption of the Compliance Schedule amendment.

Ms. Kuhlman recommended that the Board adopt the Compliance Schedule. Richard Grundy stated that there is nothing that the board is trying to do that would amend the standards that are already existing.

MOTION: Richard Grundy moved to adopt the Compliance Schedule with the errata sheet. Gerald Cochran seconded the motion with the correction of a typographical error on page 2 in chapter 4 and include the number 6 in the footnote. Motion passed unanimously.

Sheryl Schaffner request Dr. Ranjit Gill to briefly summarize the changes incorporated into the Compliance Schedule.

Item 9. Triennial Review of the Water Quality Control Plan

Written report

Item 10. Status Report on Work Efforts in Five Humboldt county Watersheds: Elk River, Freshwater Creek, Jordan Creek, Bear Creek, and Stitz Creek

Mark Neely's status reportson the five watersheds was written. David Kuszmar gave the presentation on the status of the ongoing water quality monitoring activities in the five watersheds.

Comments were accepted from:

Michael Hayette with California Geological Survey

Item 11. Executive Officer Administrative Civil Liabilities

Frank Reichmuth reported that the Hanes Ranch paid the \$100,000 currently due on the complaint that was adopted by the Board.

Item 12. Violation Report

This is a written report

Item 13. Board Member Requests for Future Agenda Items

The Board expressed an interest in policy for by-pass and wet weather. John Corbett requested to meet with staff to discuss the per-cent of suspended sediment removal in both high and low infiltration rate.

Item 14. Monthly Report to the Board

Written report

Item 15. Other Item of Interest

There were no items of interests expressed

Item 5 PUBLIC HEARING to consider adoption of a Negative Declaration and Categorical Waiver for discharges related to timber harvest activities on Federal Lands Managed by the United States Department of Agriculture, Forest Services in the North Coast Region.

Chairman Massey administered the oath to those who expected to participate in the hearing.

The North Coast Regional Water Quality Control Board (Regional Board), in accordance with CWC section 13269, waived waste discharge requirements for timber harvest activities in 1987 as set forth in Regional Board Resolution No. 87-113. This resolution included timber harvest plans and timber sales.

Amendments to CWC Section 13269 (Senate Bill 390) provide that these waivers expired effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be renewed every five years.

Nathan Quarles entered the administrative file into the record and gave a detailed account of the changes in the draft and the Errata Sheet for the Initial Study. Mr. Quarles covered the comments received on the waiver and changes that were made as a result of those comments. He discussed changes were board members expressed concerns or suggestions.

Sheryl Schaffner discussed the comments from EPIC that were submitted on March 22, 2004, which generally mirrored the comments that were submitted on the prior waiver. The comments disagreed that the negative declaration would be appropriate and the project description is too narrow and should describe every timber harvest that comes under the waiver. Ms. Schaffner stated that the Regional Water Board staff has prepared a response to address EPIC's comments.

The Board discussed the changes and the clarity of the waiver.

Comments were accepted from:
Brian Staab with U S Forestry,

Sheryl Schaffner requested that the Board make the Forest Service document: "Record of Decision" to *Remove or Modify the Survey Management Mitigation Measure Standards and Guidelines and Biological of Evaluation* documents that Brian Staab, with U S Forestry, provided to the Water Board, a part of the record.

MOTION: Gerald Cochran moved to adopt Order R1-2004-0015 as amended. John Corbett seconded the motion. Motion passed unanimously.

There being no further business to come before the meeting body, the meeting adjourned at 5:31 p.m., until the next scheduled Board Meeting for May 11, 2004.

The Secretary, Jean Lockett recorded the minutes of the March 2004, Board meeting of the North Coast Water Quality Control Board.

Chairman _____

Date: _____