

California Regional Water Quality Control Board
North Coast Region

Minutes June 27, 2002
Regional Water Board Meeting
Ukiah Valley Conference Center
200 South School Street
Ukiah, CA

Thursday, June 27, 2002

Chair William Massey called the Regional Water Board meeting to order at 9:07 A.M.

i. Pledge of Allegiance

Richard Grundy led the Pledge of Allegiance.

ii. Roll Call and Introductions

Board Members Present: Richard Grundy, Bev Wasson, Dina Moore, Shawn Harmon, and William Massey. John Corbett joined the meeting at 9:25 A.M. John Selvage was absent.

Staff Members Present: Executive Officer, Susan Warner; Assistant Executive Officer, Frank Reichmuth; Division Supervisors: Luis Rivera and Nathan Quarles; Legal Counsels: Erik Spiess and Sheryl Freeman; Seniors: Tom Dunbar, Tuck Vath and William Winchester; Technical Staff: Janice Goebel, Dean Prat, Peter Otis, and Miguel Villicana; Administrative Staff: Kathleen Daly, Terry Barnes, Greg Nash and Jean Lockett

iii. Minutes of Past Meetings

No minutes were presented for approval.

iv. Ex Parte Communication

Sheryl Freeman noted that this was an opportunity for Board members to disclose any ex parte communications they may have had regarding item(s) pending before the Board.

No ex parte communications were reported.

v. Resolution for William A. Hoy

Susan Warner introduced a Resolution for appreciation of service to William Hoy. Mr. Hoy resigned from the Regional Water Board in April 2002.

MOTION: Bev Wasson moved to approve the resolution for William Hoy. Dina Moore seconded the motion. The motion was carried unanimously.

vi. Public Forum:

George Hollistor, who introduced himself as a landowner, stated that he and other landowners believe that the TMDL is manipulated. He suggested a public workshop on TMDL.

Jerry Philbrick, a landowner, said he did not see a problem in the Albion River. The Regional Water Board staff should not implement a TMDL.

Mr. Conte, a landowner, said there is a lack of respect for landowners in the TMDL process. Government agencies make it difficult for landowners to improve the land. As improvements are made in the watersheds, regulations should decrease.

Ralph Nelson, of Del Rio Woods, said that the Del Rio Woods Dam has been installed and disassembled for the summer months with the assistance of the Marine Fishery Service and Corps of Engineers. He implied that it was illegal for the Regional Water Board to stop the construction of the dam.

Gordon Potter stated that he wrote a letter to the Regional Water Board in May advocating the construction of the Del Rio Woods Dam.

Alfred Pooche, a resident of Del Rio Woods, said the residents have been treated unfairly by the Regional Water Board and its staff. He suggested a workshop to examine the issues of the dam.

Daniel Mayers, a member of the Mendocino County Grading Commission, said a draft Ordinance to address the rivers in Mendocino County listed on the 303(d) list have been sent to the Regional Water Board staff for comments. He requested detailed comments from staff.

Richard Grundy suggested that Del Rio Woods Dam be added to the next Board meeting agenda.

Susan Warner indicated that a status report on Del Rio Woods Dam will be prepared for the September Board meeting.

**CONSENT CALENDAR
WASTE DISCHARGE REQUIREMENTS**

Chair Massey called for items 2, 4, and 5 through 8 on the Consent Calendar to be addressed.

2. **Order No. R1-2002-0055, Happy Camp, Solid Waste Disposal Site, Siskiyou County, Revision of Waste Discharge Requirements for Closure, WDID No. 1A77010OSIS**
4. **Order No. R1-2002-0065 Mendocino County Department of Transportation, East Side Potter Valley Road Bridge Replacement, Mendocino County, Recision of Waste Discharge Requirements and Monitoring and Reporting Program Order No. 98-85, WDID No. 1B97045MEN**
5. **Order No. R1-2002-0064 California Department of Transportation, Santa Rosa Municipal Services District 4, Recision of Waste Discharge Requirements and Monitoring and Reporting Program Order No. 97-119 (NPDES Permit No. CA0025038,) WDID No. 1B96056NSON**
6. **Order No. R1-2002-0066 Redwood Empire Sawmills, Philo Sawmill, Mendocino County, Recision of Waste Discharge Requirements and Monitoring and Reporting Program Order No. 97-69, WDID No. 1B23SO11105**
7. **Order No. R1-2002-0060 California Department of Transportation, Willow Creek, Humboldt County, Recision of Waste Discharge Requirements and Monitoring and Reporting Program Order No. 91-64, WDID No. 1B90017RHUM**
8. **Order No. R1-2002-0041 Humboldt Creamery Association, Humboldt County, Renewal of Waste Discharge Requirements, (NPDES Permit No. CA0005584), WDID No. 1B80185OHUM**

Richard Grundy asked for clarification on the Humboldt Creamery item, on the circumstances under which a NPDES Permit would be required.

Susan Warner replied that any discharges to land, such as surface basin holding ponds, irrigation reclamation systems, and discharges not involving surface waters does not require that a NPDES Permit be issued with the waste discharge requirements.

MOTION: John Corbett moved to approve items 2, 4, 5 through 8 of the Consent Calendar. Bev Wasson seconded the motion. Motion passed unanimously.

1. **Order No. R1-2002-0061 City of Ukiah, Solid Waste Disposal Site, Mendocino County, Revision of Waste Discharge Requirements for Closure and Corrective Action, WDID No. 1B84029OMEN was addressed separately.**

Shawn Harmon recused himself from the City of Ukiah, Solid Waste Disposal Site item.

Susan Warner advised the Board that an errata sheet be entered into the record for City of Ukiah, Solid Waste Disposal Site.

MOTION: John Corbett moved to adopt Order No. R1-2002-0061 with the changes indicated in the errata sheet.

Bev Wasson seconded the motion. Motion passed with five votes and one recusal.

3. Order No. R1-2002-0058 California Department of Transportation, Van Duzen River Bridge Repainting, Humboldt County, New Waste Discharge Requirements, WDID No. 1B02046RHUM was also addressed separately.

Dina Moore recused herself from action on the California Department of Transportation, Van Duzen River Bridge Repainting.

MOTION: Richard Grundy moved to adopt Order No. R1-2002-0058. Bev Wasson seconded the motion. Motion passed with five votes and one recusal.

9. Order No. R1-2002-0042 Sierra Pacific Industries, Inc., Arcata Division Sawmill, Humboldt County, Renewal of Waste Discharge Requirements (NPDES Permit No. CA0024520), WDID No. 1B830650HUM.

Dina Moore recused herself from action on the Sierra Pacific Industries, Inc., permit.

Dean Prat displayed slides of Sierra-Pacific Industries (SPI) located in Arcata, and discussed Waste Discharge Requirement Order No. 83-65 and Order No. 88-94 for the Arcata Division Sawmill. Mr. Prat recommended adopting Order No. R1-2002-0042 and by doing so, it will renew the NPDES Permit. SPI has upgraded several wastewater/storm water systems that makes Order No. R1-2002-0042 substantially different than Order No. 88-94. Discharges would be lower in volume, less frequent, and better quality than past discharges. The proposed Order contains effluent limitations, discharge prohibitions, and receiving water limitations that implement water quality objectives as set in the Basin Plan.

As a result of the March 25, 2002, and May 24, 2002 comment period of the draft Order, the Regional Water Board staff made significant revisions and issued a revised draft Order. Mr. Prat summarized written comments of Fred Evanson, a representative of the Ecological Rights Foundation. Mr. Evanson's comments suggested that the Coastal Commission issue a Coastal Development Permit to construct runoff control structures before Order No. R1-2002-0042 is issued. Mr. Evanson had concerns on the impact of the discharge of 144,000 gpd on wetlands and the threat to rare and endangered plants, and stated that pentachlorophenol contamination should be addressed before a permit is issued.

Danielle Fugere, with the Ecological Rights Foundation, stated Mr. Evanson did not receive the second draft in time to allow him to respond to comments. Ms. Fugere said she had in her possession additional written comments from Mr. Evanson to submit into the record in response to the revised draft waste discharge requirements. Ms. Fugere requested that the Board accept the written comments. However, these comments were not submitted to the Board.

Erik Spiess stated that the comments have not been reviewed, and if Mr. Evanson's comments were entered into the record, Title 23, Section 648.1 states that there is a legal obligation to respond to comments for NPDES Permits. Further, by accepting the comments, it would show prejudice to the Board staff, and SPI.

Mr. Corbett suggested postponing the issue to a future Board meeting to give the public an opportunity to submit their comments.

There was extensive discussion on whether or not Mr. Evanson's comments would be admitted into the record.

Scott Stever representing SPI, stated that Mr. Evanson received the draft and SPI had worked with him on his comments. However, he had no objections with tabling the item to the August 2002 Board meeting.

MOTION: Mr. Corbett moved to table Sierra-Pacific Industries item until the August 2002 Board meeting with a time certain to receive all comments by July 10, 2002. Richard Grundy seconded the motion. Shawn Harmon opposed the motion. Motion passed with a 5-1 vote.

10. Order No. R1-2002-0030 Calpine Corporation, Fourmile Hill Geothermal Exploration Drilling Project, Siskiyou County, New Waste Discharge Requirements, WDID No. 1A99019RSIS

Miguel Villicana described the proposed Calpine Corporation project as an assessment to determine the commercial viability of the Geothermal Resource in the Medicine Lake Highlands and Fourmile Hill. The waste discharge requirements would regulate drilling and flow testing of two deep exploratory wells. The potential pollutants would be geothermal fluids, heavy metals from drill cuttings, and fuels and products used in the project such as: fuels for power generating, drilling mud and concrete used in well casing. Mr. Villicana discussed the containment of potential pollutants and displayed a drawing of the typical drilling pad layout. He concluded by saying that there is low potential for impacts to surface waterbodies, and groundwater impacts would be localized, transitory and insignificant.

Mr. Grundy asked for clarification on the exploratory well.

Ms. Charlene Wardlow with Calpine briefly covered the process of the water flow testing for the two wells. She discussed the geothermal injection wells and the purpose of the exploration.

Erik Spiess indicated that additional comments were received in the form of faxes as late as 2:00 p.m., the day before the Board meeting. He advised the Board that by accepting the comments it would show prejudice to the Board staff, and Calpine.

The Board chose not to accept the seven-page letter received by the Regional Water Board staff on June 26, 2002, at 2:00 p.m.

MOTION: Richard Grundy moved to adopt Order No. RI-2002-0030 with the Errata Sheet. John Corbett seconded the motion. Motion passed unanimously

OTHER BUSINESS

11. Status report on soil and groundwater sampling of Blosser Elementary School, Baechtel Grove Middle School, and Boys and Girls Club parcel, Willits, Mendocino County

Jan Goebel presented the status report on Blosser Elementary School, Baechtel Grove Middle School, and Boys and Girls Club parcel located in Willits. Members of the Willits community expressed concerns of potential groundwater contamination at Baechtel Grove School, alleged dumping at the location of Blosser Elementary School, and the Boys and Girls Club parcel. The chemicals of concern are hexavalent chromium, volatile organic compounds, petroleum hydrocarbons.

The community concerns are related to past activities of the former Remco facility, a machine shop and chrome plating facility. Regional Water Board staff requested Cleanup and Abatement funds to conduct soil and groundwater sampling at the three sites. The findings of the soil and groundwater sampling at the three sites was presented. In conclusion, Ms. Goebel stated that the results of the soil and groundwater sampling did not reveal a footprint of industrial waste dumping that has been alleged at Blosser School and the Boys and Girls Club parcel. Soil samples at Baechtel Grove found metals comparable to background concentrations, and low levels of petroleum hydrocarbons. Petroleum hydrocarbons and arsenic were also detected in groundwater at Baechtel Grove School.

Ms. Goebel concluded by stating that an update will be presented to the Willits community in an upcoming public meeting.

12. Status report on West College/Clover Drive Request to the SWRCB for funds from the Cleanup and Abatement Account for water connections in the neighborhood.

Susan Warner updated the Board on the Resolution that was forwarded to the State Water Board requesting \$300,000 of Cleanup and Abatement Account Funds. The State Water Board calendered the item for discussion for the next State Water Board meeting, but it was subsequently removed from the calendar. The State Water Board funded \$99 thousand of the \$300,000 requested. Ms. Warner stated that staff's goal is to continue to work with the community to seek the additional funds.

13. Resolution recognizing progress in water quality protection by the Sotoyome Resource Conservation District, Fish Friendly Farming Program

Ms. Warner introduced the Resolution recognizing the Sotoyome Resource Conservation District, Fish Friendly Farming Program, a grant-funded project developed a few years ago. The Resolution is to recognize the valuable work of Sotoyome Resource Conservation District.

Scott Gergus gave a brief introduction of the Sotoyome Resource Conservation District and the Fish Friendly Farming Programs. In 1997 the State Water Quality Control Board, with the cooperation of the Regional Water Quality Control Board awarded a federal Clean Water Act, section 205j grant to the Sotoyome Resource Conservation District. The Sotoyome Resource Conservation District developed the Fish Friendly Farming Program using the grant funds. Mr. Gergus discussed the Russian River Drainage Basin and the non-point source pollution that compromise surface water and its beneficial uses due to expanding acreage used for grape growing.

Carrie Williams, District Manager for the Sotoyome Resource Conservation District, described the Fish Friendly Farming Program as a series of classes, books, and one-on-one assistance to help farmers complete their Farm Plan. The program is successful because it is not restricted to the boundaries of the county and is able to have partnerships with other Resource Conservation Districts.

MOTION: John Corbett moved to adopt the Resolution. Richard Grundy seconded the motion. Motion passed unanimously.

16. Status report on mercury findings in Trinity River watershed

Peter Otis, Regional Water Board staff, displayed photos of Trinity Lake and Trinity River watersheds and discussed the USGS interagency abandoned mine lands project. Mr. Otis discussed the Trinity River watershed mercury sampling sites for the years 2000-2001, and discussed the watershed's anticipated mercury sampling sites for 2002. He stated that of the 258 fish collected, 153 of the fish were analyzed as part of the project. Black bass, catfish, and rainbow trout were collected from the Trinity Lake site. Other fish (riffle sculpins and green sunfish) analyzed were from streams and ponds sites. Mercury was detected in some fish.

The mercury originated by miners using elemental (liquid) mercury to enhance the recovery of gold from hard rock and placer mining operations. Of the 26 million tons used in California, 8 million tons were lost in the environment and remain unaccounted for to date.

The USGS project continues through 2003 with additional water quality sampling of main streams and tributaries while focusing on Altoona Mine. The Regional Water Board will continue to support USGS water quality sampling efforts through SWAMP, and the Regional Water Board will support development of fish consumption risk assessment by OEHHA.

14. Mediation

Bill Winchester informed the Board that mediation for Pacific Lumber Company and the watershed groups was suspended on June 26, 2002. Mr. Winchester, a Regional Water Board staff member, acted as the Board's liaison in the Convening Committee, facilitated by CONCUR. At the April 18-19, 2002, Board meeting, the Regional Water Board directed staff to pursue mediation as an alternative to a legal process. The Board's goal

was to try and develop a locally constructed agreement that would provide water quality protection, community protection, and timber harvesting needs for Pacific Lumber Company.

There were five meetings lasting as long as three to four hours each. The group focused on framing a Mission Statement, an Issue Statement, defining structure/composition of a Facilitated Working Group, developing proposed ground rules, identifying early implementation actions, drafting terms of reference for the scientific review panel, framing technical questions for the proposed independent scientific review team, and identifying candidates and selection criteria for the scientific review team. There was agreement on the Mission and Issue Statements. All other items were not agreed upon before the June 26 suspension.

Mr. Winchester read the Convening Committee Joint Statement as a response to the group's impasse. The Statement listed the concerns of the participants and their points of impasse. Specifically, the impasse arose from a refusal by Pacific Lumber Company to permit the independent scientific review team to discuss rates of harvest as part of the suite of questions or terms of reference. Since the mediation structure was predicated on reaching consensus, this dispute resulted in an impasse.

Given that the rate of harvest was not allowed in the Convening Committee discussions, Freshwater Working Group and other groups viewed mediation as unproductive.

Scott McCreary, of CONCUR, stated that the group accomplished a great deal. The group had considerable interest in a scientific review panel.

Mr. Corbett asked for the current cost of mediation. Ms. Warner said that \$5,000 has been spent to date. Ms. Warner estimated that \$100,000 would be needed to complete the mediation efforts.

Ken Miller indicated that Pacific Lumber Company wanted to remove the rate of cut and dredging discussions from the table. He stated that he believes that the only effective way to address the issue in the watersheds is to determine the rate of cut. He requested the Board to stop Pacific Lumber Company's operations to motivate their participation in mediation.

Traci (Bear) Thiele, spoke for the Watershed Council in Humboldt, read statements from Joyce Cook and Al King who were part of the mediation group. She thanked the Regional Water Board, Scott, and Rebecca of CONCUR for their efforts.

Attila Gyenis, resident of Freshwater, read a statement from Dr. Terry Roelofs describing his reservations of the Convening Committee. The statement indicated that Pacific Lumber Company and other groups were not able to come to an agreement to resolve the issues in the watersheds and it is now up to the Board to resolve.

Richard Gienger, Humboldt Watershed Council, said he resisted mediation with members of a group that feels they are not bounded by the decisions of the group, and who excluded certain important aspects of a resolution.

Cynthia Elkins indicated that she was skeptical about the mediation process. The point of impasse came when Pacific Lumber Company revealed that they would not address

the rate of logging questions or findings. She felt that the impasse is not a temporary position. Ms. Elkins requested the Board to take necessary action.

Jared Carter thanked everyone for their efforts in mediation. Mr. Carter stated that he was clear in his statement to the Board that Pacific Lumber would discuss what needed to be done in the areas where the residents lived. Pacific Lumber Company is the only company that has a sustained yield plan. All of the five watersheds in discussion were the subject of intense input in the sustained yield plan, and that the individual harvest plans had been filed. He stated that although he is discouraged that mediation efforts failed he will not allow EPIC or others to dictate what Pacific Lumber Company does.

There was extensive discussion on the Convening Committee, confidentiality, and the next steps to resolve the watershed issues.

Susan Warner stated that in previous Board meetings, the issues were focused on early implementation.

The Board requested to hear from Nathan Quarles on item 15 prior to completing discussions on item 14.

15 Update on TMDL activities, monitoring programs, and cleanup and abatement activities in Elk River, and Freshwater, Bear, Jordan, and Stitz Creeks

Nathan Quarles reviewed the directives of the Board at the April 2002 Board meeting and gave the following report:

TMDL Efforts:

- Two newsletters were produced and two public workshops were conducted in May 2002 for Elk River and Freshwater.
- Workshops were to answer questions on who, what, when, and why. There were about 20 participants at the meetings.
- Identify data gaps that exist in the data received to date with the goal of requesting additional data, if it exists, and collect new data.
- Staff will continue to move forward with the existing data and draft numeric targets and sediment load down cases.
- A draft TMDL will be presented to the Board in August 2003.

Monitoring Efforts

- Pacific Lumber and staff have agreed on a monitoring program for Timber Harvest Plan 1-01-201 HUM.
- Pacific Lumber Company disagrees with staff that THP 030 and 219 are appropriate for monitoring.
- Other THP's will be reviewed and ranked to determine appropriateness of monitoring, including THP 030 and 219, and where these plans fall in the ranking system.

In the course of doing preharvest inspections staff identified two cleanup and remediation sites outside of the watersheds. Staff has sent a letter to Pacific Lumber Company requesting information on potential cleanup and remediation sites. Pacific Lumber Company agreed to work with staff on the request.

Richard Gienger cited Forest Practice Rules regarding sediment impact on Salmon species.

Ken Miller, Humboldt Watershed Council, said that the Regional Water Board staff has done a wonderful job.

(Item 15 was interrupted to return to discussion of Item 14 on mediation)

Phil Wyels indicated that scientific review is important and would help the Board a great deal. He suggested that the watershed issues are interactive and should be put on the table to look for long and short-term solutions. Mr. Wyels suggested changing the mediation process by using CONCUR, stakeholders, scientific review panel, and appropriate Regional Water Board staff, as a part of the process. This would convert the process from a mediation requiring consensus into a facilitated stakeholder working group that could continue if full consensus is not achieved and provide recommendations to the Board.

Chair Massey suggested that the Board pursue the scientific review panel and put Scott McCreary in a facilitative position to meet with Susan. Board members William Massey, Richard Grundy, Dina Moore, and Executive Officer, Susan Warner, will meet to focus on and discuss the process and course of mediation. Richard Grundy moved that the Board follow the suggestions of Phil Wyels. Dina Moore restated the motion as "Susan and her staff and CONCUR facilitate stakeholders meetings to identify early actions for implementing TMDLs. This Board would like to establish a joint fact finding panel. The Board acknowledges the Executive Officer's authority to take urgent regulatory action as necessary."

MOTION: The maker of the motion, Richard Grundy, agreed with Ms. Moore's statement of the motion. Bev Wasson seconded the motion.

Chair Massey requested that Ms. Moore restate the motion for clarification. Ms. Moore stated that "Susan, her staff and CONCUR will facilitate stakeholder meetings to build consensus to address early actions in the TMDL. In addition, this Board would like to establish a scientific review panel and/or a joint fact finding group to review all questions and issues that the facilitated stakeholders come up with. The Executive Officer has the authority to take urgent regulatory action, as she deems necessary." It was suggested that the motion state the facilitated stakeholder meeting would be to identify and address early actions and TMDL implementation and the Board acknowledges the authority of the Executive Officer to take regulatory actions as necessary. Extensive deliberation on the motion continued. It was suggested that Phil Wyels return with a draft of the purposed resolution towards the end of the Board meeting. The item was continued until later in the meeting.

17. Status report on implementation of SB 390 on waivers of waste discharge requirements

Ben Kor requested the Board's consensus on scheduling the hearing for SB 390 waivers at the September 26, 2002, Board meeting, to address all waivers. The California Water Code says that the Regional Water Board has the authority and the responsibility to prescribe waste discharge requirements for anyone who can impact water in the region. It also has a waiver provision that says the Board can waive the discharge requirements provided that it is within the public interest to do so. The SB 390 waivers require the Board to:

- 1) Review the terms, conditions, and the effectiveness of the waivers that the Board has already issued.
- 2) The waivers will automatically sunset unless renewed by January 2003.
- 3) A public hearing must be held before the waivers are renewed.
- 4) A compliance program must be formed to determine if the waivers are adequate.
- 5) Lastly, the law requires that this process take place every five years.

There are two different kinds of waivers that the Board adopted over the years. The first is the Basin Plan that has waiver conditions for three different types of operations. There were also resolutions adopted by the Board that lay out waiver categories. The Regional Water Board staff reviewed all waivers included in the resolutions and has divided them into three groups.

Susan Warner gave a history of the existing waiver policy. She suggested adopting a new and modified waiver.

Richard Geinger said that he wanted to emphasize that the hearing on timber harvest waivers should be for scoping purposes and wished to ensure that the problem areas were dealt with. He recommended that a task force be formed to address the issues.

Traci (Bear) Thiele, stated that the Board of Forestry has ignored the Regional Water Board's staff. She stated that the waste discharge waivers are the worst things that have happened to the watersheds.

6:42 P.M.

12. (Mediation discussion resumed)

Phil Wyels returned with a proposed motion:

- 1) Accept the report from the Convening Committee and express appreciation for their efforts to date.
- 2) Direct staff to initiate a facilitated scientific review process and a facilitated watershed-working group
- 3) Direct staff to invite the members of the existing Convening Committee and representatives from Elk River to assist staff in finalizing an initial set of terms of reference and a Scientific Review Panel within 2-3 weeks for the purpose of

addressing any actions that can be initiated in the short term, in all five watersheds.

4) Direct staff to expand the existing convening committee to a facilitated watershed working group to make recommendations regarding all water quality issues and actions in all five watersheds, including identifying other issues to be referred to the Scientific Review Panel.

5) The Board recognizes that their Executive Officer has existing delegated authority to take any actions that she deems appropriate.

MOTION: Dina Moore moved to adopt the proposed motion. John Corbett seconded. Motion adopted unanimously.

The Chair called for a motion to adjourn.

MOTION: Richard Grundy moved to adjourn the meeting. Bev Wasson seconded. Motion passed.

There being no further business to come before this meeting body, the meeting adjourned at 6:49 p.m., until the next scheduled Board meeting on August 8 and 9, 2002.

The Secretary, E. Jean Lockett recorded the minutes of the North Coast Water Quality Control Board meeting, to be approved by the Board at its next meeting.

_____ Chair

_____ Date