

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Wednesday, June 19, 2019
Eureka City Hall
Eureka Council Chambers
531 K Street
Eureka, CA 95501

ITEM: 1

SUBJECT: Public Hearing to consider adoption of Proposed Order No. R1-2019-0021, *Waste Discharge Requirements for Nonpoint Source Discharges and Other Controllable Water Quality Factors Related to Timber Harvesting and Associated Activities Conducted by Humboldt Redwood Company, LLC in the Upper Elk River Watershed, Humboldt County (Jim Burke)*.

BOARD ACTION: The North Coast Regional Water Quality Control Board (Regional Water Board) will consider adoption of Proposed Order No. R1-2019-0021 (the Proposed Order).

BACKGROUND: On November 30, 2016, the Regional Water Board adopted Order No. R1-2016-0004, *Waste Discharge Requirements For Nonpoint Source Discharges and Other Controllable Water Quality Factors Related to Timber Harvesting and Associated Activities Conducted by Humboldt Redwood Company (HRC), LLC In the Upper Elk River Watershed, Humboldt County* (the 2016 Order) and associated Initial Study and Mitigated Negative Declaration. The 2016 Order established general and specific requirements for HRC's timber harvesting and associated management activities to control sediment and temperature impacts, including best management practices intended to implement applicable water quality standards from the Water Quality Control Plan for the North Coast Region (Basin Plan).

The Regional Water Board approved the Action Plan for the Upper Elk River Sediment Total Maximum Daily Load (TMDL Action Plan) on May 12, 2016, prior to adoption of the 2016 Order. Afterwards, the State Water Resources Control Board (State Water Board) approved the TMDL Action Plan on August 1, 2017, followed by the Office of Administrative Law on March 8, 2018, and by the United States Environmental Protection Agency on April 4, 2018; the last step in the process necessary for the Action Plan to be amended into the Basin Plan.

The TMDL Action Plan includes hillslope indicators and targets, load allocation, and a program of implementation which identifies a combination of regulatory and non-regulatory actions that are designed to lead to the attainment of water quality objectives, recovery of beneficial uses, protection of high-quality waters, and prevention of nuisance conditions in the Upper Elk River Watershed. Waste Discharge Requirements (WDRs) are the primary regulatory mechanism utilized by the Regional Water Board to control the nonpoint source pollution resulting from past and ongoing timber harvesting and associated management activities in the watershed and are a mechanism to implement applicable TMDL hillslope targets and the TMDL load allocation.

In Resolution No. 2017-0046 adopting the TMDL Action Plan, the State Water Board included the finding that its "*understandings of the TMDL Action Plan's requirements and statements*

described above are (1) that hillslope indicators and numeric targets in Table 2 apply throughout a discharger's area of land ownership and not solely in areas of active harvest, (2) that the North Coast Water Board's WDRs and any other orders for the two major landowners that conduct timber harvesting will incorporate specific provisions that implement all of the hillslope indicators and numeric targets in Table 2, unless the regional board makes specific findings about why any omitted hillslope indicators or numeric targets are not appropriate or feasible, (3) the WDRs and any other orders for the two major landowners will also contain any additional specific provisions to ensure that all anthropogenic discharges of sediment are minimized and eliminated, and (4) in the absence of a future amendment to the TMDL Action Plan, including an amendment based on successful implementation of the Watershed Stewardship Program resulting in expanded sediment loading capacity in the impacted reach, the WDRs and any other orders will require the landowners to achieve the zero load allocation for all anthropogenic discharges of sediment as soon as feasible, but no later than 2031." In a letter dated October 15, 2018, the State Water Board provided the following clarification to understanding 3 above, as follows: "the WDRs and any other orders for the two major landowners will also contain any additional specific provisions to ensure that all anthropogenic discharges of sediment are ~~minimized and eliminated~~ to the extent feasible and, if not feasibly eliminated, minimized, as soon as feasible but not later than 2031" [strikeout and underline are from the original October 15, 2018 letter]. The Resolution further directed the Regional Water Board "to review its WDRs for the two major landowners in the Upper Elk River Watershed that conduct timber harvesting and revise the WDRS and adopt any additional orders as necessary to make them consistent with the State Water Board's understandings of how the TMDL Action Plan will be implemented as described in finding no. 9, above".

Following final adoption and approval of the TMDL Action Plan and in response to the State Water Board's direction, Regional Water Board staff evaluated the specific requirements of the 2016 Order to determine whether its provisions are adequate to fully implement all the TMDL hillslope indicators and numeric targets and to eliminate or minimize all anthropogenic discharges of sediment. The results of that evaluation are described in Findings 34 through 79 of the Proposed Order. Regional Water Board staff identified several provisions of the 2016 Order that may not fully implement indicators and targets and requested HRC propose additional measures consistent with the State Water Board Resolution.

Following discussions with Regional Water Board staff, HRC proposed revisions to specific provisions of the 2016 Order to implement TMDL hillslope targets and load allocation. On February 15, 2019, HRC submitted proposed revisions that included expanded riparian zone protection measures and seasonal restrictions on hauling. Regional Water Board staff reviewed the proposed revisions by HRC for enhanced riparian zone protection and wet weather restrictions, but determined additional restrictions were necessary to fully implement TMDL requirements.

As such, the proposed Order incorporates revised findings and new Specific Requirements for riparian zone protection and wet weather restrictions. The new requirements are necessary to implement water quality regulations contained in the Basin Plan, including hillslope indicators and numeric targets from Table 2 of the TMDL Action Plan and the zero-load

allocation. The additional requirements are based on information contained in the evidentiary record that supports the Proposed Order, including the Technical Report and staff report for the TMDL Action Plan and additional evidence that informed the Regional Water Board's decision to adopt the TMDL Action Plan. The revised initial study and subsequent mitigated negative declaration is substantially the same environmental analysis that was adopted by the Regional Water Board on November 30, 2016, with the exception that it includes and evaluates the potential impacts of revisions to the 2016 Order. As such, while these environmental documents function as a subsequent mitigated negative declaration, it contains a comprehensive evaluation of all potential impacts of the Order and includes all feasible mitigations for such impacts.

DISCUSSION: The Regional Water Board received 14 written comment letters during the March 14 – April 15, 2019 comment period, including from representatives of HRC, Environmental Protection Information Center (EPIC), Pacific Coast Federation of Fishermen's Associations (PCFFA), Friends of Elk River (FOER), the Native American Heritage Commission, California Board of Forestry and Fire Protection (BOF), California Department of Forestry and Fire Protection (CAL FIRE), Stanford Environmental Law Clinic, and Elk River residents. Similar to comments made prior to adoption of the 2016 Order, the comment letters generally fall into two opposing points of view: (1) those opposing any additional logging, or only supporting logging under restrictions in the upper watershed more stringent than the Proposed Order while conditions remain impaired; and (2) those who maintain that HRC's current practices are adequately protective, and that no additional upstream sediment control measures can affect meaningful improvements in the impacted reach, and that certain specific requirements of the Proposed Order are not warranted or adequately supported by the available science. Staff made a number of revisions to the draft Order in response to public comments. These revisions are summarized below and are shown in the underline/strikeout version of the Proposed Order. Staff has prepared a comprehensive response to comments document responding to all substantive comments (attached).

Significant revisions to Specific Requirements of the 2016 Order are summarized below, noting revisions made to the Proposed Order in response to comments:

Riparian Zone Protection

Under the 2016 Order, riparian zone protection outside of designated high-risk areas are subject to the Elk River/Salmon Creek Watershed Analysis Revisited (ERSC WA) prescriptions (HCP RMZs). The Proposed Order extends protections beyond the HCP RMZs to comply with the TMDL hillslope indicators and numeric targets. These expanded riparian protection zones are referred to as the "TMDL RMZs". The Proposed Order incorporates HCP RMZ prescriptions for riparian protection as minimum protection standards but includes additional requirements within the TMDL RMZs that achieve the following objectives: extend protections upslope beyond the HCP RMZ widths, provide post-harvest tree retention standards, minimize ground disturbing activities, and eliminate activities near sensitive areas. These additional protection measures within the TMDL RMZs, include:

- Primarily single tree and limited group selection silviculture in TMDL RMZs for Class I, II, and III watercourses;

- No group openings in the TMDL RMZs on slopes greater than 30% or within 150 feet of any watercourse;
- Retention of 50% post-harvest overstory canopy outside of group openings within 300 feet of Class I and II watercourses and 150 feet of Class III watercourses, or to the first hydrologic divide.

The proposed revision to the draft Order allowing groups on slopes less than 30% in the outer 150 of Class I and II TMDL RMZ was made in response to public comments.

Wet Weather Limitations

Between October 15 and May 1, hauling shall be limited to permanent rocked all-season roads that meet the HCP storm-proofed standard and shall cease for a period of 48 hours following a precipitation event that results in 0.25 inches or more of rainfall within any 24-hour period. The 2016 Order did not require cessation of hauling following precipitation events. This new requirement will reduce potential impacts from hauling during wet weather.

Road construction, reconstruction, or ground based yarding may continue after October 15 during extended dry periods with the written approval of the Regional Water Board Executive Officer, but must cease for the remainder of the wet weather period when a chance of rain of 30 percent or greater is forecast by the National Weather Service for the following day.

The Proposed Order has slightly relaxed seasonal restrictions on road construction and ground-based operations in order to provide HRC some ability to operate during the short window allowed due to seasonal wildlife restrictions for the Northern Spotted Owl and Marbled Murrelet, which prohibit timber operations until September 1st and September 15th, respectively. The seasonal shut down for road construction/reconstruction has been extended from September 15 to October 15. Between September 15 and October 15, erosion control BMPs shall be on-site and ready to deploy and shall be applied to the entire length of new road construction prior to any day for which a chance of rain of 30 percent or greater is forecast by the National Weather Service. The seasonal shut down for ground-based yarding and mechanical site preparation has been changed from October 1 to October 15.

The following revisions to section I.F, Wet Weather Limitations, have been made in response to public comments:

Road construction, reconstruction, or ground based yarding may be conducted past October 15 during extended dry periods with approval by the Regional Water Board Executive Officer, but shall cease for the remainder of the wet weather period and not resume until no earlier than May 1 of the following year when a chance of rain of 30 percent or greater is forecast by the National Weather Service for the following day.

The rainfall trigger for road and THP area inspections, which requires that HRC inspect all roads and THP areas following any storm event that generates 3 inches or more of precipitation in a 24-hour period, has been revised to 2.5 inches or more of precipitation in a 24-hour period as measured at the Woodley Island rain gauge in Eureka.

During October 15 to May 1, HRC must provide a monthly report to the Regional Water Board showing which days hauling took place and the 24-hour daily rainfall totals for the month.

RECOMMENDATION: Adopt Proposed Order No. R1-2019-0021 (including the Subsequent Mitigated Negative Declaration).

SUPPORTING DOCUMENTS:

1. Proposed Order No. R1-2019-0021 (underline/strikeout version)
 - Attachment A – Map
 - Attachment B – Elk River Sediment Technical Report (Tetra Tech, 2015) *
 - Attachment C – Master Sediment Reduction and Master Treatment Schedule*
 - Attachment D – HRC’s Report of Waste Discharge*
 - Attachment E – Upper Elk River Sediment TMDL Action Plan (TMDL Action Plan)
 - Attachment F – HRC’s February 1, 2019, response to Regional Water Board Executive Officer’s request for Revisions to Order No. R1-2016-0030.
2. Notice of Public Hearing, Draft Order No. R1-2019-0021
3. Initial Study and Subsequent Negative Declaration and associated documents, underline/strikeout version
4. Regional Water Board staff response to comments on Draft Order No. R1-2019-0021
5. Public Comments on Draft Order No. R1-2019-0021

*Document will not be included in the printed agenda package but is available on the Regional Water Board’s web page at:

http://www.waterboards.ca.gov/northcoast/water_issues/programs/timber_operations/elk_river_wdrs/