



September 28, 2016

Mr. John Corbett, Chairman  
North Coast Regional Water Quality Control Board  
And Board Members  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403-1072

Dear Chairman Corbett and Members of the Board:

Humboldt Redwood Company greatly appreciates the opportunity to provide additional comments to the board regarding the proposed Elk River Watershed Waste Discharge Requirements (WWDR). You have demonstrated a great commitment to ensure substantial evidence exists to justify the additional restrictions being proposed by the WWDR.<sup>1</sup> We have expressed significant objection to certain aspects of the proposed WWDR and were disappointed to see those issues are substantially unchanged in this revision. We have been very impressed with the depth of investigation the board has engaged on this issue and are disappointed to see largely the same WWDR we discussed at the Board hearing on June 16, 2016.

We were equally disappointed when, after that meeting our offer to meet with Board staff to discuss a potential resolution of our differences was declined<sup>2</sup>. We left the Board meeting with the impression the Board was supportive of additional measures within the high risk sub-watersheds but questioned the need outside those areas. We indicated within our request our willingness to discuss this compromise. Our company strongly desires to have a WWDR adopted that is substantially supported by current information and provides the Board substantial assurance water quality objectives will not be adversely affected by our operations.

Our interactions with Board staff demonstrate a determination to implement the proposed WWDR and associated TMDL prior to adoption by the Board and State Water Board respectively<sup>3</sup>. In verbal discussions the Board's Executive Officer's explanation largely relied on staff's professional opinion as justification these additional measures were necessary to prevent negative impacts to water quality.

We begin this discussion acknowledging the Board's staff and Executive Officer have acted with the highest degree of professionalism throughout this process. We do disagree with the staff and EO with respect to the role of professional opinion in this process. While undeniably significant in the regulatory process, opinion itself does not impart regulatory authority to act. Regulatory actions are governed by the processes and procedures put in place by this Board, the State Water Board, and the State Legislature. We are in no way challenging the authority of this Board to regulate our operations but rather are objecting to regulation occurring outside those processes or without the substantial weight of evidence. We emphasize, these processes were put in place by the boards and legislature and as such there is little explanation for deviation from these procedures.

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<sup>1</sup> Humboldt Redwood Company's Report of Waste Discharge contained operational restrictions significantly above the Forest Practice Rules minimums. The WWDR proposes even further restrictions.

<sup>2</sup> Dennis Thibeault email to Fred Blatt dated 7/22/16.

<sup>3</sup> California Water Code Section 13245.

It is not new to this Board that we are required to submit a Report of Waste Discharge (ROWD) for any discharges occurring as a result of our operations including details regarding how we will mitigate those discharges to avoid detrimental impacts to water quality. If the Board finds, through its staffs' professional opinion, the measures contained within the ROWD are insufficient to avoid detrimental impacts, additional protection measures may be incorporated into the WWDR to ensure these impacts are avoided. It is reasonable to expect the professional opinion of the staff will be based on the best available science, consider verified on the ground conditions, and the professional opinions of others within the field. In fact, the Board has adopted a process allowing us the opportunity to provide evidence to demonstrate our original measures are sufficient in light of the findings of Board staff.

We and others have on several occasions provided substantial evidence to the Board regarding the impacts of our proposed operations on water quality and the adequacy of the measures contained within the ROWD. This evidence is in the form of hillslope and water quality monitoring data collected over more than a decade of similar operations within the watershed, current scientific publications, and the testimony of the most highly regarded experts in the field of geomorphology, both academic and regulatory. This process of review is ongoing, yet our operations within Elk River have been largely curtailed by Board staff's determination to implement these additional measures *prior to adoption by the board*, either by refusal to permit our operations without their inclusion, as in the case of the Mcloud-Shaw THP, or through recommendations for these WWDR proposed additional measures during the THP review process as in the case of the Bridge Too Far THP (THP 1-16-056HUM), while highlighting the authority of the Board to either deny the plan or withhold subsequent enrollment under current approved WWDRs after plan approval. This in spite of clear direction from the acting Board Chair during the last hearing to utilize the existing WWDR until this review is complete.

The Bridge Too Far timber harvest plan review process is a clear example of the determination of Board staff to implement the additional measures proposed prior to adoption. In addition, the resulting record clearly illustrates the critical shortcomings in Board staff's professional opinion regarding the necessity of additional protection measures.

The Bridge Too Far THP proposes unevenage selection management on 250 acres within the Elk River watershed. The record regarding the review of this THP is lengthy and we will limit our discussion to the aspects of the review relevant to the consideration of the proposed WWDR, specifically the Board staff recommendation to incorporate the additional riparian protection measures and winter operating restrictions proposed in the Draft WWDR into the THP, and the record of review thereafter.

The initial recommendation for incorporation of the proposed WWDR measures was made by Board staff within the Pre-Harvest Inspection (PHI) Report. The inspection report cited the Elk River TMDL<sup>4</sup>, and 7 supporting references, 5 of which are dated prior to 2003, one dated 2009, and one dated 2015. Excerpts from within these documents, or concerns drawn from these documents, were the only evidence supporting the need for the additional measures. Examples of some such expectation are:

- *"Landslides, roads and skid trails, and in-stream sources were identified as major sources of sediment in the watershed"*
- *"In-channel sources, including streamside landslides, eroding streambanks, and channels filled with debris from past logging activities, are now eroding and being transported lower down into the stream network."*

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<sup>4</sup> As noted previously, California Water Code Section 13245 prevents this amendment from becoming effective unless and until it is approved by the state board.

- *“...identified in-channel sources, such as headward channel incision, bank erosion, and streamside landslides as the most significant anthropogenic sediment sources in the upper Elk River.”*

In contrast, the actual strikingly few field observations noted in NCRWQCB PHI report found the following:

- *“The road surface is well rocked and provides a stable surface into the plan area.”*
- *“The engineering geological evaluation in THP Section 5 accurately identified vulnerable slopes. Protection measures applied to these areas in the THP, including no harvest, selection harvest zones and light harvest mark, appeared to be appropriate to avoid impacts to slope stability.”*
- *“As is typical throughout Elk River, the Class II and Class III watercourses I inspected exhibit evidence of severe disturbance from dragging logs and operating heavy equipment [in] stream channels during past logging operations. Although these streams are in a process of recovery and stabilization, they will continue to function as sediment sources and remain sensitive to additional disturbance long into the future.”*

As a result of this PHI report relying heavily on outdated theoretical information, relevant primarily to operations of almost 20 years ago, prior to implementation of the HRC Habitat Conservation Plan, and a striking lack of observations of onsite conditions within the plan area, HRC objected to the inclusion of these measures. Our objections caused additional agency review of the proposed operations, the onsite ground conditions both within the proposed THP and recently harvested areas in close proximity, and the justification for the recommendation made by NCRWQCB staff.

This led to a second focused PHI on August 17, 2016 involving HRC, CalFire, Board staff, CA Geological Survey (CGS), and CDFW. This additional inspection and the resulting reports provide clear evidence the Board staff recommendation for this THP is not warranted. This also provides additional support to our position regarding the Elk River WWDR and TMDL being largely based on outdated science and unrepresentative of contemporary on the ground conditions and impacts.

Board staff issued a second report after this visit describing on site conditions. The description of which is in such stark contrast to all supporting evidence originally referenced to justify the additional measures I have excerpted it here in its entirety:

*“Channels observed during the inspection were representative of low order tributary streams throughout those portions of the Elk River watershed underlain by bedrock of the undifferentiated Wildcat Group. Stream side slope gradients were generally between 30% and 50% and covered with a thick layer of duff, low lying vegetation, and scattered conifers and hardwoods. Stream channels were rough and discontinuous with large numbers of fallen trees, both cut logs from past logging operations as well as naturally recruited, entrained within the channel. In-stream woody material is so prevalent as to be nearly continuous along the entire length of channels and is likely a significant channel forming feature, functioning to route and store sediment, bridge large voids, and deflect streamflow. Large logs were dragged down many of the low order channels during early logging operations and tractors were driven in and adjacent to watercourse channels; however, we did not observe conclusive evidence that this occurred. As is typical of low order tributary watercourses in Elk River, channels were a chaotic jumble of wood and earthen debris, often covering and obscuring the channel bed, large in-channel voids, exposed bedrock in places, and bank failures in varying stages of healing. We did not observe significant evidence of recent channel instability, such as bare vertical banks, headward channel incision or gullies, fresh sediment deposits in either proposed harvest units 1 and 2, or in the adjacent recently harvested unit.”*

It's is worth reiterating this on site description is presented by Board staff, not HRC.

In addition to the Board staff report on this THP, CalFire and CGS submitted additional reports to the record. The onsite descriptions within these reports are very detailed and again do not describe conditions even remotely similar to what one would expect based on the information presented in support of the additional WWDR measures. Again, excerpted from the CGS report and quoted by CalFire:

*The PHI team visited several Class III watercourses within the northern portion of proposed harvest Unit 2. We traversed the heads of the watercourses and along the channels looking for evidence of erosion and collapsing soil macro pipes and voids. The Class III channels were well incised into the surrounding hillslope with steep side slopes and moderately steeply inclined channels. The channels contained evidence of filling and erosion. Large diameter, saw cut redwood logs were observed lying in and adjacent to the stream channels. The logs were commonly partially buried or had sediment blanketing the tops of the logs suggesting some burial and exhumation by erosion. Based on the lack of bare ground and the maturity of the vegetation along the stream channels there had not been any significant erosion within the channels for some time. It is likely the erosion occurred shortly following the last clearcut harvest cycle in the 1940's to 1960's. Much of the stream flow was contained in soil pipes and voids visible beneath the logs. We did not observe any significant plumes of sediment emerging from soil pipes.*

*We also visited a recently harvested Class III watercourse and lake protection zone (WLPZ) in portions of THP 1-13-005 HUM. The harvest unit used selection silviculture and there were scattered conifer and hardwood remaining on the slopes. The Class III watercourse was less incised than the Class III channels observed in Unit 2 and had more gently inclined sideslopes. We did not see any evidence of erosion within the Class III watercourse and surrounding WLPZ that had occurred following the recent harvest. We walked a cable corridor up the hillslope after reviewing the channel. The cable corridor was about 25-30 feet wide, contained no large timber and was littered with limbs and small diameter logs. There was a significant vegetative cover of grasses, brush, and small timber growing in the corridor. We did not observe any evidence of erosion within the cable yarding corridor.*

*We traversed a Class II to Class III watercourse in the lower portions of proposed harvest Unit 1. Within the Class II WLPZ and located on steep streamside slopes we observed a soil pipe located in a head-cut immediately upslope of an area of bare exposed soil. The area of exposed soil was about 10 feet wide and 15 feet long, and is about 20- to 25-feet upslope of the watercourse. Further investigation showed the soil pipe was emerging from the left lateral margin of a dormant-historic fill failure that initiated from a legacy skid trail. The legacy skid trail was located about 50-feet upslope of the Class II channel and is within the Class II watercourse WLPZ. As per the HRC Habitat Conservation Plan (HCP) watershed analysis prescriptions for Elk River, Class II WLPZ are no harvest from the watercourse to 30-feet. Selection harvest that retains 60% canopy cover is permitted from 30-feet to 75- or 100-feet depending on the inclination of the stream side slopes. The area of erosion was within the no harvest band and the skid trail and dormant fill failure are within the area of selection harvest*

This Calfire report goes on to draw the following conclusion:

*In summary the PHI Team did not observe any localized stream side conditions that require an increase in WLPZ width pursuant to 14 CCR 916.4(b)(5). Potential impacts from proposed THP 1-16-056 HUM appear to be well mitigated.*

CalFire took the additional steps of having their Watershed Assessment Program staff attend the second PHI and presenting their findings. This report provides the most complete synthesis of current literature, onsite conditions and regulatory authority we have seen to date in formulating a conclusion these measures are unnecessary. **We strongly urge the Board to review this report in its entirety and I note the report is attached an appendix to the comments submitted by HRC's science staff.** This report again describes on the ground conditions vastly different than one would expect based on evidence provided by Board staff to support both the TMDL and WWDR. This report is relevant in its entirety so we will limit our excerpt to the conclusion:

*Based on office and field review, as well as knowledge of the pertinent literature summarized above, water quality impacts associated with this plan are anticipated to be minor and not produce significant adverse impacts.*

We clearly do not expect all conditions within the Elk River Watershed to reflect onsite conditions of this THP. This review does demonstrate, however, the Board staff reliance on outdated literature, expected rather than actual site conditions, and expected rather than actual impacts from contemporary operations led to a conclusion vastly different from other agency experts. These agencies are also entrusted to protect the same public trust values, yet all arrive at a different conclusion than Board staff in this case.

We reiterate our previous concerns regarding riparian buffers and winter operations. These measures are proposed in response to perceived threats rather than actual observations. We appreciate the Board staff's adjustment to allow some winter log hauling however the threshold to suspend operations is much too low, equating to 30 minutes per day for 3 days from a common lawn sprinkler<sup>5</sup>. Given winter hauling primarily occurs on rocky roads, this threshold will eliminate many opportunities that would clearly not result in adverse water quality impacts.

We also appreciate the adjustment made concerning the 2% sub-watershed harvest rate, from a prohibition to grounds for the Executive Officer to decline enrollment. Given the magnitude of the differences between the Board staff and HRC and other agencies with respect to what constitutes a threat to water quality, definitive indicators by which to judge impacts associated with proposed operations that may exceed this threshold should be required.

This will be our third time before this Board with a WWDR containing measures with which we, other agencies and this Board have asked significant questions. Those questions remain largely unanswered. Clearly we, other public trust agencies and at least some Board members believe the measures contained within this WWDR are over-reaching and unnecessary to achieve water quality objectives in Elk River. Yet Board staff dogmatically persists in retaining these measures within the proposed WWDR based on their professional opinion.

As stated earlier, we acknowledge the broad authority of this board to regulate our operations to achieve water quality objectives. However with such broad authority comes great responsibility; to the regulated public, such as ourselves, and to the process. It includes accountability for all those involved and importantly accountability back to this Board when this authority is delegated to Board staff. This process has been stalled by a fundamental error in interpretation of the role of professional opinion in the process of public regulation. Professional opinion is crucial for successful regulation, but not in and of itself authority to regulate. Professional opinion must be supported by the weight of evidence. That

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<sup>5</sup> Calculated using 3 gallons per minute into a 25' radius.

evidence being the most relevant and contemporary to the issues at hand, and strongly supported by onsite indicators. Clearly more recent and relevant evidence exist which is substantially supported by onsite indicators resulting in other public trust agencies as well as HRC coming to different conclusions than Board staff.

We ask this board to affirmatively direct staff to revise the proposed WWDR to include the riparian measures contained within our ROWD and apply them to all but the previously identified high risk sub watersheds. As a result, and for the sake of reaching resolution on this issue, we would agree to the inclusion of the additional measures within those high risk sub watersheds pending the result of the Railroad Gulch paired watershed study. At which time we would ask the Board to reevaluate the necessity of those measures. We also ask the Board to direct staff to revise the winter operating plan to reflect the compromise proposed by our company<sup>6</sup>. With these few changes, we believe this WWDR would substantially satisfy our mutual goal of conducting timber operations within the Elk River watershed while avoiding detrimental effects to water quality.

Sincerely,

*/s/ Dennis Thibeault*

Dennis Thibeault  
Executive Vice President Forestry  
707-463-5112

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## **ABOUT HRC**

*Humboldt Redwood Company (HRC) was created in 2008 from lands purchased in Humboldt County with the publicly declared mission to be good stewards of the forest and at the same time run a successful business. We have made significant progress in that regard:*

- 1. Adopting policies to make HRCs forestlands FSC certified;*
- 2. Adding more than 500 million board feet of redwood and Douglas fir trees by lowering the rate of harvest;*
- 3. Defining of old growth down to the level of an individual tree, along with implementation of a policy to protect all individual old growth trees across our property;*
- 4. Elimination of traditional clear cutting from our property;*
- 5. Long term investments to improve habitat for fish across the property by controlling or holding back over 400,000 cubic yards of sediment from the coastal streams flowing through our forest;*
- 6. Upgrading of over 500 miles of roads including over 1400 watercourse crossings;*
- 7. Operating as an open and transparent business; including an open invitation to take interested individuals anywhere in the forest;*
- 8. Completing a substantial rebuild of our Scotia sawmill, assuring that Humboldt County will have infrastructure in the processing of wood products for many years to come; and*
- 9. Employing about 250 skilled employees in Humboldt County earning family-level wages and benefits.*

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<sup>6</sup> Letter to Board from HRC Forest Science staff dated 9/29/16.

- Ability to communicate / ex Parte prohibition
- Legitimacy of public process
- Role of professional opinion in the regulatory process
- Currently under Ex Parte
- CWC 13287 applies 2 part test
  - WWDR Doesn't pass test
- Appears to be an effort to control how/what information is presented to the board in a manner that undermines the public process
- What 2<sup>nd</sup> point or question
- What does it say about the legitimacy of the process when the proposed regulations are being implemented and have been starting with McLeod Shaw.
- When I've questioned this - Professional opinion.
  - Is not authority to regulate - important part
- Body of evidence
  - Current on the ground conditions
  - Most recent & relevant scientific literature
  - Opinions of other experts
  - Regulatory framework & authorities
- Opinions thus far fail in all those lines of evidence
- Most importantly the board hasn't granted authority
- Headed for another hearing ...