



October 20, 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:

I attended your board meeting this morning with the intention of providing comments during the Public Forum regarding concerns affecting our business arising from the implementation of proposed regulations prior to full public review and board adoption, and the roll of professional opinion in the regulatory process. I presume you are aware I was denied the opportunity to address the Board by the Executive Officer and General Counsel citing prohibition on ex parte communications. On several occasions I explained I was not there to discuss any details of the pending WDR permit before the Board but rather wanted to communicate our concerns with the public process, going so far as to produce my notes I intended to speak from in an attempt to alleviate their concerns. I have scanned and attached my notes for your review as well.

As my notes were merely notes to be used as a speaking aid, I will elaborate. Our inability to communicate with this board has been a considerable concern to us. We have been subject to an ex parte prohibition since being notified by the Executive Office on November 2, 2015. However this prolonged ex parte prohibition presumably applies solely to the proposed WDRs pending final adoption and not to our existing operations under approved Waste Discharge Requirements (Order R1-2006-0039). Based on statements made by Board members during recent prior hearings on the proposed WDRs, it is unclear to us if the entire Board is aware the proposed regulations found in Draft Order R1-2016-0004 are in fact being implemented by staff prior to Board adoption. This began with the denied enrollment of the McCloud-Shaw Timber Harvest Plan (THP 1-12-110) and has continued in various manners most recently culminating in the Executive Officers determination the HRC Bridge Too Far THP (THP 1-16-056) would violate the Basin Plan if the proposed regulations were not incorporated into the THP. This determination will require CALFIRE to deny our THP unless resolved. This leads us to ask, what is the purpose of seeking public input, holding workshops and hearings to evaluate the adoption of new regulations when those regulations are being implemented prior to the process being completed?

We have discussed this concern with the Executive Officer, who justifies these additional regulatory requirements based on staff's professional opinion. While we acknowledge professional opinion plays an important role in the regulatory process, it is not in and of itself authority to regulate. As we wrote in our earlier letter, professional opinion must be based on a body of evidence considering: current on the ground conditions; the most recent and relevant scientific literature; and the regulatory framework and authorities granted to the licensed professionals involved in the THP review process consistent with the Basin Plan. Implementing yet to be adopted regulations now by simply citing 'professional opinion', when such opinion is not clearly supported by a body of evidence, fails to meet the intent of the regulatory rule-making process. And more importantly, the authority to implement the proposed regulations rests with the Board, which has yet to adopt them.

On a personal note, I was quite surprised and somewhat embarrassed this morning when confronted by the Executive Officer and General Counsel. Although public involvement in the regulatory process can be

quite messy at times, it is an inseparable and binding principle within this process. It is the defining principle and cornerstone of CEQA, NEPA and many other laws across our state and country. To have my opportunity to speak at this morning's meeting denied based on the perception that some aspect of my testimony may violate ex parte communication prohibition only contributes to our concern.

If it is inappropriate to express my concerns regarding these matters of process to this Board directly, to whom should I direct this concern?

Sincerely,

/s/ Dennis Thibeault

Dennis Thibeault
Executive Vice President Forestry
707-463-5112

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.*

- 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 2nd 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
- Healed for another hearing ...