

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Wednesday, November 30, 2016
Eureka City Hall
Eureka Council Chambers
531 K Street
Eureka, CA 95501

ITEM: 2

SUBJECT: Public Hearing to consider adoption of Proposed 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, LLC in the Upper Elk River Watershed, Humboldt County (Proposed Order) (Jim Burke).

BOARD ACTION: Consider Adoption of Proposed Order No. R1-2016-0004.

BACKGROUND: On May 12, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) commenced a public hearing to consider adoption of the above-referenced Order No. R1-2016-0004 for Humboldt Redwood Company, LLC (HRC) in the Upper Elk River (UER) Watershed. At that hearing, the Regional Water Board heard presentations and comments from Staff, HRC and interested parties. The Regional Water Board did not vote on adoption of the Order but closed the public comment period and continued the hearing to a future date. On June 16, 2016, the hearing was continued for a second day. Again, the Regional Water Board did not vote on adoption. Based on comments made by the Regional Water Board and interested parties, staff revised the draft Order and on August 30, 2016, issued a Notice of Public Hearing to initiate a second 30-day formal public comment period, which ended on September 29, 2016. In addition, on August 30, 2016, the Regional Water Board submitted the draft Order, mitigated negative declaration, and supporting documentation (i.e. Initial Study) to the State Clearinghouse for a second 30-day CEQA review.

The Proposed Order would establish requirements as deemed necessary by the Regional Water Board in order to implement the Porter-Cologne Water Quality Control Act and water quality regulations contained in the Basin Plan. Requirements of the Proposed Order are informed in part by the *Elk River Sediment Technical Analysis* for the Upper Elk River (Technical Report), attached to the Order as Attachment B, and overwhelming evidence pointing to the lack of any assimilative capacity in the impacted reach of Elk River and associated impacts to beneficial uses and nuisance conditions. The Technical Report provides the technical basis for the Action Plan for Upper Elk River Sediment Total Maximum Daily Load (TMDL Action Plan), which the Regional Water Board adopted on May 12, 2016. The TMDL Action Plan was adopted by the Regional Water Board to achieve sediment related water quality standards, including the protection of beneficial uses of water in the UER watershed, and prevention of nuisance conditions. It will become part of the Regional Water Board's Basin Plan following State Water Resources Control Board, Office of Administrative Law, and USEPA approval.

The Regional Water Board received written comments from six submitters, including representatives from HRC, California Department of Forestry and Fire Protection (CAL FIRE), environmental groups, and Elk River residents. Similar to the previous comment period, the current comment letters generally fall into two strongly opposing points of view; those opposing any additional logging, or only supporting logging under additional restrictions in the upper watershed more stringent than the Proposed Order while conditions remain impaired in the impacted reach; and those commenters 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 has prepared a comprehensive response to comments document (attached). Many comments made during the August 30 – September 29, 2016 comment period duplicate previous comments. Where that is the case, the Regional Water Board staff's previous responses are duplicated in the response to comment document. Staff has prepared new responses to new comments.

DISCUSSION: Revisions to the draft Order were made in response to comments from Regional Water Board members, interested stakeholders, as well as ongoing deliberations by Regional Water Board staff. Revisions are both editorial, those changes intended to improve clarity but do not change requirements, and substantive changes. Revisions to the August 30th draft are reflected in underline/strikeout version of the Proposed Order. The following is a brief list and discussion of the substantive issues:

Subwatershed ten year harvest limit - Section I.B.3 was revised such that 2% equivalent clearcut acres averaged over any 10 year period in any subwatershed is established as a threshold of concern rather than a fixed limit. Where an individual, or multiple, THP(s) would result in an average annual harvest rate in any subwatershed above 2% equivalent clearcut acres over any 10 year period, the Executive Officer may decline to enroll the THP(s), or portions of the THP, or may require additional mitigations or monitoring as a condition of enrollment.

Harvesting in high risk subwatersheds - Section I.B.4.a has been revised to allow limited harvesting in Clapp, Tom and Railroad Gulches, McCloud Creek and the Lower South Fork Elk River subwatersheds identified as high risk of sediment discharge. At the scheduled update to the Board in five years after adoption of the Proposed Order, the Regional Water Board can consider new conditions further limiting harvest activities and provide staff direction. In the absence of changes to the Proposed Order, harvesting in high risk areas for the period beginning five years after the adoption of the Order shall be limited to the acreage proposed in the report of waste discharge (approximately 617 acres, which would equate to a single THP).

Riparian Management Zones (RMZs) - Section I.B.2-3, post-harvest conifer canopy retention within Class II and III RMZs remains largely unchanged. Proposed no harvest zones (20 feet on Class III watercourses and 30 feet on Class II watercourses) and widths (100 feet on Class III watercourses and 200 feet on Class II watercourses) for RMZs are unchanged, but the words, "or to the hydrologic divide" has been added. Proposed post-harvest canopy coverage within RMZs (minimum of 70% in Class III watercourses and 60% in Class II watercourses) is unchanged. The response to comments document provides extensive responses regarding the proposed RMZ requirements.

Wet weather requirements - Section I.E.2 was revised so that specific timber operations, including hauling, may take place outside of high risk areas from October 1 to April 30 during extended dry periods (defined as less than 0.25 inches of rain during a 72 hour period). In addition, section I.E.4 has been revised so that timber falling may be conducted throughout the winter period in the five high risk subwatersheds.

Rescission or denial of coverage - A new Section VI has been added that specifies conditions warranting rescission or denial of coverage by the Executive Officer. Conditions for rescission or denial are typically part of permit conditions and were erroneously omitted from previous versions of the Order.

Permit coverage for THPs enrolled prior to November 30, 2016 - A provision has been added specifying that permit coverage for THPs, or portions of THPs, enrolled under Order R1-2004-0030 or R1-2006-0039 prior to November 30, 2016 will retain coverage under, and be subject to the terms and provisions of, those Orders.

RECOMMENDATION: Adopt Proposed Order No. R1-2016-0004 (including the Mitigated Negative Declaration).

SUPPORTING DOCUMENTS:

1. Proposed Order No. R1-2016-0004
 - 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*
2. Proposed Order No. R1-2016-0004, underline/strikeout version
3. Notice of Public Hearing, Draft Order No. R1-2016-0004
4. Initial Study and Negative Declaration and associated documents, underline/strikeout version
5. Public Comments on Draft Order No. R1-2016-0004
6. Regional Water Board staff response to comments on Draft Order No. R1-2016-0004

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

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