



Comments on the Upper Elk River Sediment TMDL Resolution Number R1-2016-0017 to SWB K. Wrigley 1-17-2017

This TMDL along with the Action Plan and WDR which authorizes more logging is a violation of our Constitutional Right. RWB should not be allowed to circumvent our Constitutional right to live safe and secure in our own homes; to be free of government authorized invasion of our homes and property by an upstream industry's controllable pollution. This physical invasion and permanent occupation of residents' properties has been extensively studied and monitored by both public and private research. The Government has known and acknowledged this severe damage by logging since 1997 yet has continued to authorize the continued activity causing the harm when they have the power to maximally control the rate of harm forced upon the downstream residents.

The Elk River TMDL may have the best of intentions but it by no means protects or begins to restore the beneficial uses of water in Elk River for the upper Elk River residents who have depended on the surface waters of Elk River for domestic and agricultural water for over a century. When coupled with the Elk River WDR it is designed to "accommodate specific economic development of logging" while systematically, deliberately, and purposefully harming residents and destroying their existing economic sources and any opportunity for expanding their existing or new agricultural activities. Without water we cannot farm and with too much water flooding destroying our land and fences we cannot farm.

This TMDL is based on good science that says Zero input of new sediment yet Government continues to externalize the harm and costs of pollution onto upper Elk River residents and the public. The TMDL ultimately describes the load allocation of Zero as "conceptual" at best; in other words we know we can't get zero so we'll just say it is conceptual and let it go at that...while we allow yet more better logging cause we think this will work this time... eventually in 20 years. RWB thinks it will work also because there are uncertain, un-designed, un-funded phantom mitigations on residents' property that may eventually increase the carrying capacity of the river. Even if that were true these imagined mitigations should be funded, designed, completed in the field and shown to have accomplished their goal before allowing continued logging which will continue the increased sediment burden on the river. Most of these un-designed, un-funded, and not executed projects are proposed to take place on residents' property so now the residents will have to have their property ravaged in the name of helping make conditions better but for whom really; the logging company so they can log even more. This is being done with no proposed compensation for the residents; oh, I can hardly wait to participate! That is not a good basis nor is it any assurance that a so called "Zero" TMDL will get to the desired water quality conditions it is designed to accomplish. The unfunded mitigations upon which government is granting permits to discharge wastes to the Waters of the United States are designed to render the taxpayer liable so that the discharger benefits. The continued logging will definitely cause increased harm downstream to residents' lives, property and water. Unfunded mitigations are not a strong foundation to attain clean water and restore beneficial uses nor do they give any assurance that water quality will be restored in a timely manner. They are a wishful squishy method to allow logging in the mind of the Board members who seem determined to allow logging at all cost to the residents.

Another proposal is for a stewards group which is supposed to come up with a plan to improve the watershed. What a burden on the residents this is without any real ability to design the direction restoration will go. It is a process that will take 2 years to finish with the agenda defined by the County and the steering committee which does not allow the cause

of the problem, logging, to be addressed in the common sense light of stopping logging till conditions are made safe for the residents, the single most important step which would restore the residents' safety in their homes, their water quality and historical property the quickest.

The Government has and is causing direct physical harm to upper Elk residents, and with this TMDL implementation plan will extend the duration of residents' harm for at least another twenty years and that is the minimum extension if their calculations and best guesses are correct. Their calculations and best estimates have never been right in the past and I do not see anything different with this document. Not only does it seem wrong on face value for the Government to knowingly have caused this harm for 20 years but to then extend their so called "fix" so that more harm is experienced by these same residents for yet another 20 years. Some of us were 50 when this started and now we are 70 and they want us to wait till we are 90 for real recovery...if their fix works at best.

Residents were told for years that the real fix for our destroyed water, increased destructive flooding and personal property destruction would be the TMDL. The TMDL included the WDR up until about 6 to 9 months before the TMDL was adopted. It was split out of the TMDL for "efficiency" purposes so they could hurry up and get a TMDL passed because they felt the WDR would be difficult and add time to the process. So then residents had to face up to trying to deal with two separate Board Actions which were very difficult for most residents to understand and follow. It was apparent to some of us that the real reason the Regional Board made this change was because it was hard for the Regional Board members to OK more logging in the upper Elk River watershed with the zero TMDL so they decided that revising the existing WDR was the way to go. [WQ also gave the "opportunity" for the longest involved member of the Elk River analysis, Adona White to go elsewhere and brought in a new staff member, Jim Burke, to write the WDR. He had almost no interaction with the residents and certainly not the 10 plus years that Adona had, plus he was friendly with the lumber company and they liked him better.] It was easy to see why WQ chose to do this because the Board members have always been sensitive to accommodating logging and have not been interested in taking the steps necessary to protect water for small unimportant citizens of upper Elk River. Though residents labored consistently and hard to work with the Regional Water Board to abate the harm residents have experienced residents were never able to succeed in their 20+ years of continuous involvement. The Board members' sympathy was always about the economic interest upstream of residents [logging] which is and has caused all the water quality and flooding problems. An economic analysis to analyze the damage to residents was never conducted that I know of. If the government did an analysis of overriding economic value I have never seen or heard of it. We residents are assumed to be negligible when compared with timber though some of us have conducted a farm/orchard for over 100 years and made a living from such endeavor before being destroyed by logging. [Today it would equal \$50,000 to \$100,00 and could generate \$100,000 to \$200,000 on the retail market. And no that is not from growing pot; it is from growing apples as we have historically been able to do.] it may not be a requirement but at this point it should be a necessary part of understanding the full picture of damages and costs of logging in Elk River. WQ may not have to but they should certainly lobby for it in the name of honesty and fairness for the public interest in water that they are supposedly protecting.

This TMDL does not right nor compensate residents for any of the wrongs caused by government permitted logging experienced by the residents of upper Elk River. All of the harm is just allowed to keep accumulating because logging created sediment deposition is not controlled. We did not have deposition in the mid 1980's until Maxxam came along. That damage was allowed to stay on our land and CDF[ along with other State agencies] declared our watershed significantly adversely affected by logging in 1997, yet CDF and Water Quality have continued a very high rate of logging that the State knew or should have known would cause more harm. They were told by residents that it would when they reinstated more new logging in 2002 and it did. WQ then put a WDR in place [after much struggle] in 2006 and they were told by residents once again that it would not control sediment deposition, nor stop the increased flooding. Once again the residents were right. We started telling WQ in 2010 that the WDR was not working as planned and were told the TMDL will correct the problem once and for all. There were options easily within reach of the RWB which would have decreased the harm to residents such as stopping all the so called Tier 2 logging in both the North and South Fork Elk River watersheds. The Board never directed the EO to take those measures nor did they back him with much support when things got so terribly bad that it was obvious a THP was going to flood people even more than they already were.[subsequently the Board directed the EO to approve a plan to log over 100 acres in a small watershed that has been hammered and flows directly into Elk River across for an already flooding house...as if being an experiment makes it exempt from sediment deposition or maybe to them it is worth it because to CDF [and now WQ] the residents lives and property really don't amount to much. [We have an estimate by an engineer that damages in Elk River are upwards of \$40 Million.] It took until late 2016 after 18 years on the 303d list and at least a dozen years after the it should have been done to even get a TMDL for sediment in upper Elk River and it did not include the promised measures to stop sediment deposition because the WDR was removed. Unfortunately that WDR is instrumental in being able to address this TMDL yet it is not a part of it. Even if this TMDL was adequate the new revised, revised, revised WDR allows so much logging that more deposition will continue to cause even more harm and more flooding onto residents' downstream property. Note that Chairman John Corbett acknowledged in the hearing on the re-revised doubly dumbed down WDR that the only entity that had been right in their predictions was not the Board, not the staff, not the models but THE RESIDENTS. Most people with any common sense know that the people intimately watching and totally dependent on the river for 40, 50, 60 to 100 years are the ones that know the most about the river. The manual on the TMDL process advocates that the staff of the Regional Boards call on and listen carefully to residents with special knowledge of the area. They tried to do that in the TMDL but then when it comes to the WDR WQ staff relied heavily on the polluter [HRC]to consider what measures needed to be taken...which was a grave disadvantage to the residents. WQ WDR staff knew or should have known that their measures as revised several times by Board members and by the industry would be inadequate. It is extremely difficult to comment solely on the TMDL when the outcome is dependent on the WDR.

This TMDL may call for zero input but it is a very calculated and convoluted zero and not a real zero input. It is very difficult to understand especially for the residents who have the real knowledge of what is happening on their property and in the river but with little or no technical expertise. Plain English should be the order of the day when the Government issues orders that will severely and detrimentally affect residents' lives, water and property, especially after 20+ years of residents continuously experiencing increasing harm. We see no end to that harm as this TMDL is being

executed. Zero is something like well we have calculated how much sediment the river can carry and so the amount of logging that creates that sediment can be called zero new inputs...or something like that. I am still not sure what this so call "zero new inputs" is defined and executed to be. I know it is not the closest they could actually get to zero if they chose to use their power of cease and desist to stop logging in the Elk River watershed till beneficial uses were restored and residents did not suffer unreasonable invasion of their homes by pollution from logging.

The RWB knows logging and only logging has caused destroyed water quality and so called "nuisance" [read severe] flooding of residents' homes and property; it has cut off their access to and from their homes because it now frequently and severely floods public roads; it makes homes unlivable because they flood so frequently; it destroys long established agricultural businesses; it destroys fences, crops, septic systems, foundations, tanks and carries fecal contamination onto downstream properties and flood insurance costs go up. All born by the property owner who did nothing wrong ever and who gets the beejeesuz scared out of them when their home is surrounded by water and still rising. Yet the RWB does not use the tools available to them to stop the activity causing the problems. We upper Elk River residents have nowhere to go but to our so called public trust agencies to protect us from harm by a specific activity. This TMDL along with the Action Plan and WDR will prolong this harm.

It is difficult to understand how the heightened level of turbidity in the Elk River will be brought down to 120% of background even in 20 years while maintaining a quantity of logging equal to up to 2% of the watershed. RWB staff needs to use real background turbidity known in Corrigan Creek in the South Fork watershed or even the Little South Fork throughout their analysis of Elk River turbidity not a contrived definition of 15 year old logged levels which we see in the WDR.

Elk River residents have been standing up and asking for help for over 20 years and the obvious damage from logging has been well known by WQ staff since the early 1990s. Reports show that Old PL under the Murphy family before Maxxam took over, logged t 75 to 150 acres a year [RWB Staff Report.] Those were the years that the upper Elk [North Fork] slowly improved from the logging of the 1940' & '50s which was nowhere near what came with the Maxxam era of logging. In the '50s and '60s we did not have pristine water we did have muddy water when it rained heavily but by the mid 1980's water would clear in 2 to 3 days, the river bottom was all gravel, not mud and we had deep pools 5 ft., 6 ft. and 8 ft. deep around the apple farm here on the North Fork Elk River. We had fish in the early Spring that were 6 to 8 inches long in every pool; we had riffles at the head of all the pools and we could use the water directly from the river for domestic and agricultural purposes. Our watershed has very sensitive dissolvable soils and it took 35 years to heal the soil and grow the trees big enough to really protect the soil with fallen duff and dense cover. Science can't be relied to know every watershed but the people living directly below will and do know through direct observation and their reliance on the surface water in Elk River. Once the damage was acknowledged in 1997, no more than 100 acres should ever have been allowed to be logged in Elk River. 300 acres selection logging in the North Fork Elk River watershed was way too much as observed here at the Ranch. When that was done sometime in the 1980's my father and I observed sediment deposits on the side bottom of the river bed. Old PL did not log for two years after that and the deposition was not observed by the 3<sup>rd</sup> year here at the apple ranch just below PL owned lands in the North Fork Elk River. It is obvious

that the amount of logging allowed in the WDR [up to 2% of the sub-watersheds which adds up to 2% of the watershed which is approximately what is being done now. We all know that is not restoring water quality or reducing flooding. That amount of logging will undermine water quality, continue nuisance flooding, the invasion of flood water into our homes, and violate the TMDL. Careful better logging does not improve already devastated conditions that have gotten continually worse for 20+ years from continued logging. Observation and good science verifies that stopping logging produces the fastest recovery; this is what was seen when CDF did stop all new plans in Elk River from 1997 to 2002...it was obvious to residents water quality was improving, rock was returning to the river bars, maximum turbidity decreased, and water cleared more quickly toward the end of that time frame. Once logging was resumed the cycle of increased turbidity and deposition returned. A clear picture needs to be shown that the goal of restoring water quality will be able to be achieved in direct clear steps. I do not see the steps outlined achieving the goal of the TMDL.

Best management practices need to be carefully monitored to make sure that they are restoring the water quality not just blindly followed. They often do not achieve the desired end as we have seen over the past 20+ years in Elk River. Logging may have gotten better but water quality and conditions for the residents have always gotten worse though the measures instituted were supposed to make desired improvements. The rate at which conditions are getting worse may have decreased from the maximum but conditions are still spiraling in a deteriorating direction for the residents' water, property and lives.

At this point it is hard to imagine just what the residents would have to experience or do to get their government to act to protect them from obvious logging damages. We have consistently spoken of the damage [listed earlier in this comment letter] starting in 1995; we cautioning about increases in logging because SURFACE WATER in Elk River is our only source of domestic and agricultural water; we addressed the Headwaters Deal and said the same thing. Yet authorities went ahead with huge increases in logging and with the Headwaters Deal when they knew full well both would be extremely damaging to water quality. We have been addressing the Regional Water Board and CDF continuously since then through the THP process and many other forums and conferences. CDF always says damages are less than significant from this THP, meaning anything that happens to the residents doesn't really matter to them. We had slightly more effect with RWB but we have had to participate and participate ad infinitum every time a new staff or Board member or EO came on line or a new forum was being held. We established a sediment lab here in Elk River, set up two turbidity triggered monitoring stations in Elk River and two in Freshwater; ran thousands of samples through the lab for almost 10 years and produced some of the most "robust" science on logging and turbidity ever...but still more "better" logging is the answer to past "bad" logging to this day. The Board members are the most egregious group of weak, inept or out and out ignorant, unconcerned for residents' safety and water quality group that can be imagined. Or I am truly missing out on some knowledge they have that they are not willing to share...would it be that they are appointed by the governor to just enable logging at any and every cost to the residents, fish and water quality. By hiding behind ignorance disguised as a need for unnecessary knowledge of the minutest detail to know where every single grain of sediment came from, they refuse to protect water quality and citizens' lives and property. What do residents have to experience or do for the RWB to act to protect us. Was there some kind of Deal made with the Headwater's Deal and then remade with HRC the successor to Maxxam Corporation who gutted the upper watershed in the first place and

which now HRC continues to do under the guise of "we are not clear cutting per se; we are doing selective logging so we are the 'good' guys." Maybe good guys but their logging is devastating to the downstream residents, just like any logging can be and is Elk River. When you disturb over 100 acres a year of ground, remove trees, you do it in fall and through winter, you drive on roads just before and after it rains even when they are rocked and you follow all the rules you are going to cause fine suspended sediment to be transported to the stream that is already overburdened. It really is straight forward: when you have done too much damage by logging you need to stop logging; restore a balance in the watershed for water, fish and people.

This TMDL tries to address the problems caused by logging pollution but is not direct and straightforward nor effective in a timely manner. There are too many squishy words like "conceptual" zero and "where feasible" language used for this to be an effective order. We residents are desperate at this point. We deserved and needed effective measures to protect us back in 1997, we have never gotten that. It is time to stop the cause of the problem, logging, get real protections in place and restore safe livable conditions to the residents before allowing more logging in the upper Elk River watershed. HRC has the ability to go somewhere else and log; residents only have their homes to go to and that is the most sacred of rights. This TMDL, Action Plan and WDR prolong the harm to residents unnecessarily to benefit a specific business, HRC logging [while maintaining the destruction of my apple farm.]

I am sure the right answer is at least stopping the logging and putting effective measures in place that have a real assurance of working to restore water quality, reduce severe prolonged flooding and institute a real margin of safety. It is hard for little citizens to know at this point how this TMDL will work; nothing has in the past that RWB or CDF have tried. This feels like another experiment and we are once again the guinea pigs. When the WDR is divided from this TMDL and when success depends on future phantom projects to increase the carrying capacity of the river for sediment it is a mystery how any of that will work to restore beneficial uses. What we do know is more logging will cause more sediment to be discharged into Elk River.

The State has spent millions ruining water and harming innocent citizens under the guise of protecting both by allowing more logging after knowing that logging has caused too much damage already. To address this situation involve first and foremost those residents that know and understand how Elk River functions...we are the best scientists available and after listening to so called industrial scientists for years I finally see that we are really more knowledgeable. Use the tools available to save the watershed, restore our water, regain our property, and recover our lives and livelihoods. Do not accept this poorly written Resolution Number R1-2016-0017 into the Basin plan. Stop the continued government sanctioned unconstitutional invasion of our homes and property by industrial pollution.

All the above comments were raised in a timely manner before the North Coast Water Board but never adequately addressed.

Thank you,  
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