

California Regional Water Quality Control Board
North Coast Region

MINUTES OF MEETING
January 26, 2005
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403

Chairman Massey opened the Regional Water Board meeting at 9:06 a.m., on January 26, 2005.

i. Pledge of Allegiance

Pledge of Allegiance led by Gerald Cochran

ii. Roll Call and Introductions:

Board Members present: Gerald Cochran, Beverly Wasson, William Massey, John Corbett,
and Richard Grundy

Absent: Gary Carlton, State Board Liaison

Regional Water Board staff present:

Catherine Kuhlman, Sheryl Schaffner, Robert Tancreto, Robert Klamt,
Ranjit Gill, David Kuszmar, Cathleen Hudson, Jean Lockett

iii. Election of Officers

MOTION: John Corbett nominated Beverly Wasson as Board Chairman. Gerald Cochran seconded the motion. Motion passed unanimously.

MOTION: John Corbett personally commended William Massey for his years of service as Board Chairman. He moved to acknowledge William Massey's work as Chairman of the Board in the form of a resolution at the March 2005 Board meeting. Gerald Cochran seconded the motion. Motion passed unanimously.

MOTION: Richard Grundy nominated John Corbett as Vice-Chairman. Gerald Cochran seconded the motion. Motion passed unanimously.

iv. Board Member Ex Parte Communication Disclosure

William Massey stated that he had been in contact with state agencies and state associations to discuss the West County sewer and small district sewer issues such as Loleta.

Richard Grundy reported that he attended a State Water Board hearing in Sacramento during the week of January 18, 2005. The hearing was on Humboldt Watershed Council's challenge to the enrollment of four THPs in the General timber WDRs, and specifically regarding a request for stay of those enrollments.

v. Public Forum

Larry Mailliard presented the Board with a breakdown of his cost to implement the TMDL process within the Garcia Watershed.

There were no minutes to approve.

Consent Item

- 1. Resolution No. R1-2005-0003 (Item 2) was removed from consent calendar and placed on the agenda as an item for discussion.**

Action Item

- 2. Proposed Resolution No. R1-2005-0003 outlining cooperation between the NCRWQCB and the County of Sonoma in addressing water quality issues associated with the operation of the Central Sonoma County Waste Disposal Site.**

Richard Grundy requested clarification from staff.

Robert Tancreto indicated that at a previous Board meeting, the Regional Water Board (Board) staff had provided an update to the Board on the Sonoma County Central Landfill. The update identified a problem with leaks in the landfill's liner(s) at the new section of the solid waste site. At that time the Board gave staff and Sonoma County clear directions to resolve the problems in the new and old sites and to make sure that the new site is up to code. In June of 2004 staff brought before the Board a revised WDR that included a Time Schedule that addressed the old and new sites. Mr. Tancreto stated that Catherine Kuhlman had met with the County on several occasions and that a cooperative relationship between Board staff and Sonoma County staff has developed.

Mr. Tancreto stated that the Resolution before the Board today is to acknowledge the cooperative relationship between the Board staff and the Sonoma County staff. He indicated that there were suggested changes in the language for clarification purposes. In conclusion, Mr. Tancreto reviewed the errata sheet, and recommended that the Board consider the Resolution for adoption.

John Corbett asked for additional clarification on the purpose of the Resolution. Mr. Tancreto stated that it was just to acknowledge the efforts of cooperation for both the Board staff and the Sonoma County staff.

Mr. Grundy introduced an addendum to make it more clear that the Board recognized that the Executive Officer and her staff were working cooperatively and in good faith with the County in attempting to resolve the water quality problems presented by this site, and that the Board was simply encouraging and providing a memorialization of that effort.

MOTION: William Massey moved to adopt Resolution No. R1-2005-0003 as amended by the errata sheet. Richard Grundy seconded the motion. Motion passed unanimously.

- 3. Status report on General Waste Discharge Requirements and Waiver Enrollment for Timber Harvest Operations.**

Robert Klamt reported that there were:

- 39 THPs enrolled into the General Waste Discharge Requirements since October 15, 2004 to January 25, 2005;
- One non-industrial timber management plan enrolled under the categorical waiver; and
- One THP has been covered under the categorical waiver.

Steve Horner, with Pacific Lumber Company, spoke on the general WDRs outside of Freshwater and Elk. Mr. Horner stated that there needed to be a guidance document on how to implement the general WDRs. He indicated that the interactions between PALCO and the Regional Water Board's staff in developing Erosion Control Plans have been positive. He also stated that PALCO's ultimate goal is to get a watershed wide WDR for the whole property and get out of the GWDRs.

Jeff Hackey, with Grounds Logging, stated that he would have to lay off some of his employees if PALCO does not get their WDRs.

Ed Gomez, with Joe Cost Trucking, indicated that his company has a contract with PALCO. Mr. Gomez stated that the delay to approve the WDRs has affected his company. He requested that the Board take into consideration that further delays will affect the entire community.

Ed Lewis, with Lewis Logging, stated that he has worked for PALCO for 46-years. He submitted a copy of a petition that was sent to the Governor's office in an effort to resolve the problem.

Sal Caninici, a wildlife biologist with Pacific Lumber Company, stated that if the WDRs are not received in a timely manner they will lose the harvest of the logs for up to two to eight months, and that will have an impact on the operations of PALCO.

Julio Lopez, employee of Pacific Lumber Company, stated that his job is very important to him, because it pays more money than any place else and he had a family of seven to support.

Rafael Lopez, with Pacific Lumber Company, displayed his family portrait and stated that his daughter will be going to college soon. Mr. Lopez stated that his unemployment salary would not pay for her college fees.

Jim Holdner, an Elk River resident since 1980 and an employee of Pacific Lumber Company, stated that PALCO has changed their ways. He requested that the THPs be approved so that employees can go back to work.

Jay Parish, Mayor of Rio Dell, read a letter that the Rio Dell Council put together to support PALCO. The letter urged the Board to approve the THPs.

Laurie Shaw, employee of Pacific Lumber Company, presented the Board with 170 letters and a petition with 220 signatures from PALCO employees in support of approving the THPs.

Rex Bohn, contractor with Pacific Lumber Company, indicated that the approval of the THPs is important to PALCO employees and those who have contracts with PALCO.

Ron Sanderson, employee of Pacific Lumber Company, implied that there is a sociological effect on those who were laid off and those who fear being laid off.

Nico Kilmer, president of the Fortuna Chamber of Commerce, indicated that Fortuna and local governments depend heavily on monies generated from the timber industry. She indicated that PALCO generated roughly \$160 million dollars of purchases from local goods, services, taxes, payroll, employee benefits, and other contributions annually. This past week PALCO announced the lay-off of 38 employees brought on by the denial of THPs. The community is already noticing the impact of the lay-off. She urged the Board to overrule its staff and approve the THPs.

Hillary Will, with Steve Wills Trucking Company, suggested that 95-percent of the company's revenue comes from PALCO. If the THPs are not approved for PALCO, Steve Wills trucking will lose approximately \$600,000 in salary and wages. Ms. Wills gave details of the \$250,000 that would be lost to the community. She urged the Board to approve the THPs.

Tom Knippen, with Diablo Timber, indicated that if PALCO's THPs were not approved, his company would have to lay off or terminate employees. He suggested that it could devastate everyone if the THPs are not approved.

Mike Jani, representing Mendocino Redwood Company, asked the Board to keep other companies in mind when considering the PALCO's THPs, because it affects other companies.

Maralyn Renner, a Pacific Lumber Company employee, described what she believed would happen if the THPs for PALCO would not be approved. She indicated that the employee and their families would suffer and it would affect community.

Charles Moyer, representing Brent Lumber Company, stated that if THPs are not approved many employees will be laid off from his company.

Richard Grundy stated that it is not clear whether the testimony that had been received was addressing issues concerning Elk River, Freshwater, or the WDRs. Therefore, he requested that the testimony received for Item 3 appear as testimony for both Items 3 and 4. He stated that the Board has been dealing with this process for some time. Mr. Grundy expressed his concern that the process be one with some predictability. The situation with Freshwater and Elk River has presented special challenges. He stated that he, as a Board member, as well as the other members is committed to getting to a watershed wide approach. Mr. Grundy suggested that there is a long combination of factors, the least of which is staff's inability to get all of the information that is needed to approve some of the THPs. He indicated that we all have a shared responsibility. Mr. Grundy encouraged PALCO to work with staff in a cooperative manner. He went on to say that the Regional Water Board is committed to preserving the economy and water quality of the region on a long-term basis. He indicated that the Board's Executive Officer has the authority to enroll timber harvest plans and make decisions that the Board has given her the authority to make.

Gerald Cochran asked for clarification and the number of the THPs that are not Freshwater or Elk River THPs. Steve Horner responded.

4. Status Report on Freshwater Creek and Elk River Watershed Wide Waste Discharge Requirements

Robert Klamt provided background on the Board's direction to develop watershed-wide Waste Discharge Requirements (WWDRs) for the Elk River and Freshwater Creek watersheds in Humboldt County, and the history of obtaining a complete Report of Waste Discharge (ROWD) from Pacific Lumber Company (PALCO). The ROWD essentially is complete, and development of the WWDRs is proceeding as quickly as possible, with a target date at that time of mid-April, 2005.

Mr. Klamt described the basic approach for the WWDRs are to address cumulative watershed effects by applying effluent limits based on an empirical peak flow model, an empirical landslide model, and a sediment offset-strategy. Then Timber Harvest Plans (THPs) will be developed and enrolled consistent with the requirements of the WWDRs, and within limits for ground disturbance so that a trend towards recovery is established to ameliorate nuisance flooding conditions and other water quality impacts.

He also recounted the November 24, 2004 requests from PALCO for enrollment of 15 THPs into the General Waste Discharge Requirements for timber harvesting (GWDRs) for these two watersheds, since WWDR coverage was not available on January 1, 2005. Four THPs were enrolled in the GWDRs for these watersheds prior to December 2004. However, PALCO continues to request additional THPs in these watersheds, which staff will evaluate based on additional information and assessment of the potential for impacts.

An appeal for a stay on the decision to enroll those THPs was filed by the Humboldt Watershed Council and heard by the State Water Resources Control Board on January 19, 2005. Mr. Klamt related the decision of the hearing officer to deny the requested stay on the enrollments.

Mr. Robert Manne, PALCO President and CEO, registered his disappointment with Regional Water Board staff and its failure to approve THPs in the Elk and Freshwater watersheds beyond the four that were approved in December 2004. Mr. Manne argued that since the California Department of Forestry and Fire Protection and the Department of Fish and Game had approved all the plans contained in PALCO's request, that sediment levels in the watersheds were declining, and that PALCO had harvested below their sustained yield plan harvest rate, that the Regional Water Board staff should enroll the THPs. Mr. Manne also said that if PALCO were not able to operate on all the plans this spring, then PALCO would not be able to pay a bond and would have to file bankruptcy.

Kate Sullivan, a PALCO scientist, made a presentation on the conditions of the watershed, stating that they were in recovery from past impacts under the current level of timber harvest and current practices.

Steve Horner, PALCO Manager of Sustainable Forestry, presented testimony on PALCO's efforts to reduce sediment delivery to the two streams from timber harvest activities and other sources. He presented the point that since PALCO was fixing sediment sites and reducing potential sediment delivery volumes many times more than produced by timber harvest, that more plans should be enrolled. Mr. Horner also presented a timeline of the process of providing staff with a complete ROWD, contending that Regional Water Board staff's characterization was not factual.

The general public and additional PALCO representatives presented information during the public testimony portion of the meeting. Some residents testified regarding the damage done to their properties and lives by increased flooding and the potential for more damage to occur if additional THPs were approved. Other members of the public testified on the potential for economic consequences if additional THPs were not approved for the two watersheds. PALCO representatives testified on financial concerns, that conditions in the watersheds were improving, that the empirical peak flow model was not appropriate for the WWDRs, and the WWDR process, in general, is taking too long. Considerable testimony was also provided during the prior discussion (Item 3) regarding the issue of ongoing damage to property and the potential for more damage if THPs were enrolled, as well as the financial consequences to PALCO employees if additional THPs were not enrolled.

Watershed residents Ralph Kraus and Kristy Wrigley encouraged the Board to follow through on their commitment to address water quality problems from PALCO lands and to not approve any more THP enrollments in the General timber WDRs.

The Regional Water Board discussed the issues, urging that staff have the direction to complete the WWDRs, work towards a more cooperative approach with PALCO staff, and that the Executive Officer has the authority to decide on enrollment of additional THPs, if appropriate.

The minutes current read John Corbett suggested there needed to be some way of identifying the models in terms of reference to eliminate assumptions presented to the Board.

The minutes should read: John Corbett requested the models be named, assumptions listed in writing and presented to the Board.

Richard Grundy indicated that there is a legal concept on submission of data. He further explained that if an agency receives a document or application, it is not considered complete until an agency has determined it is a full and complete application.

5 Written Update on Development of a Regional Water Quality Control Board Mixing Zone Policy As Provided Under the State Water Board Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP).

There was a brief discussion on the mixing zone item.

David Smith, representing of dischargers to the Russian River Basin (City of Santa Rosa, City of Ukiah, City Healdsburg, Town of Windsor, and Sonoma County Water Agency), stated that all of the cities are interested in the mixing zone project and support the project. Mr. Smith thanked the staff and indicated that he is looking forward to being a part of the process.

Brenda Adleman, Russian River Watershed Protection Committee, stated that the progress is moving alone. She stated that she would like for the public to be more involved and have pulmonary involvement. Ms. Adleman suggested that many will be tracking the Mixing Zone Policy carefully, and she would like to have close contact with staff as the policy moves along.

Mr. Grundy requested additional clarification on the background of the Mixing Zone Policy proposal. He requested that the statutory text of the Federal Water Pollution Control Act; Porter Cologne Act; EPA regulations, and the State Policy that applies to mixing zones be compiled and sent to the Board before the next workshop. Mr. Grundy also requested any federal or state court cases that dealt with mixing zones to provide legal background in case issues arise.

At 12:25p.m., the Board observed a lunch hour and went into closed session.

At 1:35 p.m., the Board returned from lunch and closed session with nothing to report.

4. (Continued - Status Report on Freshwater Creek and Elk River Watershed Wide Waste Discharge Requirements)

Mark Lovelace, with Humboldt Watershed Council, had requested that the Board show a video in lieu of his personal appearance and testimony. The video showed flooding from 1997 to 2004, and excerpts from various PALCO documents regarding plans to sharply elevate the cut rate, then drop it back down significantly over time.

Michael Long, Field Supervisor for the Arcata U S Wildlife Fish and Game office, stated that the Wildlife agency believes that PALCO's implementation of their habitat conservation plan will result in overall improvement in water quality conditions in the watershed that is covered by the plan. He stated that his agency is concerned that if PALCO is unable to move forward with the THPs in the Freshwater and Elk River watersheds, it will result in a financial impact that may impair the company's ability to fully implement various resource protection measures in the THP, including some that may address water quality.

Jared Carter, former Executive Vice-President of Pacific Lumber Company, indicated that he was sympathetic towards the Board members. Mr. Carter stated that it was very difficult for the Board to resolve the disputes before them with the lack of time and expertise. He urged the Board to have a fair hearing. He further stated that if PALCO does not get the THPs approved, there would be employee layoffs.

Gary Clark read into the record an article by Standard and Poors, a credit and bond-rating agency, stating that Pacific Lumber Company had a triple C+ credit rating. The article stated that if the THPs are not approved soon Pacific Lumber Company might need to file for bankruptcy. Mr. Clark stated that if the THPs are not approved it will cost Pacific Lumber Company \$15 million dollars.

John Warren, a Pacific Lumber Company employee, urged the Board to direct staff to approve the THPs.

Jeff Barrett, with Pacific Lumber Company, entered into the record five documents: Elk River Report of Waste Discharge, Freshwater Report of Waste Discharge, Analysis of Hydrology Data of Flooding in Freshwater and Elk River, Technical Advisory Committee Report from the State Geology Board, and Analysis of Antecedent Moisture. He stated Mike Stopher sent him a copy of an email sent to the Regional Water Board's Executive Officer supporting the approval of the THPs.

Chuck Center, an employee of Pacific Lumber Company, submitted a letter from the Humboldt County Board of Supervisors addressed to the Regional Water Board voicing their concerns on the economic impact to Pacific Lumber Company and Humboldt County if the THPs are not approved. Mr. Center asked that the Board approve the THPs.

Daniel Gill, an employee of Pacific Lumber Company, indicated that the trauma that is being experienced by Pacific Lumber Company is affecting the community, the schools, and the families of Humboldt County.

Steve Horner, an employee of Pacific Lumber Company, stated that the enrollments of the 12 THPs are needed so that PALCO can continue in business.

John Clancy, representing NOAA Fishiers, discussed the benefits that he has seen in PALCO's HCPs. He stated that there are buffers in their implementation. And PALCO has voluntarily put limitation on harvest practices. Mr. Clancy indicated that it is worthwhile to trust the benefits of the HCP.

Richard Grundy reiterated that this issue has been pending before the Board for over seven-years and the Regional Water Board has been actively trying to respond to it as it relates to Freshwater and Elk River watersheds. The Board has put into place the Waste Discharge Requirement and the General Waste Discharge Requirements as a response.

John Corbett stated that he believed that the Board is fighting in the wrong place and at the wrong time. Mr. Corbett suggested that the energy needed to be channeled into the watershed permit. Mr. Corbett stated that the parties need to get past the impasse over the acreage that is being logged for the existing THPs, and until that is resolved, the Executive Officer will most likely not approve anything. So the two parties will need to get together and resolve that issue as fast as they possible could. Mr. Corbett suggested that the road redesign studies and spot dredging should be pursued.

Mr. Corbett requested that the Board require for all future certifications that the activity should be counted against activities allowed in the watershed wide permit.

William Massey stated that this is an information item and the Board cannot take any action on the item today. He concurred with Richard Grundy, who stated that the Board already gave directions to the Executive Officer in December 2003.

Gerald Cochran stated that he agreed with the other Board members. He stated that he is regretful that PALCO considers the Regional Water Board staff the "enemy". He indicated that

nothing will be accomplished until everyone comes to the table in a cooperative manner. Mr. Cochran stated that the Board gave its guidelines to the Regional Water Board staff.

6. Executive Officer Administrative Civil Liabilities

There were no reports of receipt of checks.

7. Violation Report

This item is written.

8. Board Member Requests for Future Agenda Items

John Corbett requested that the Regional Water Board write a letter to the Board of Supervisor of Humboldt County and cite the impaired nature of the Elk and Freshwater Watersheds and inquire about their current efforts to protect against sediment in existing county policies. The letter should basically ask the Board of Supervisors what they can do, on a voluntary basis, for the next five-years to protect the land's structural integrity by reducing sediment in the county roads and private roads.

Mr. Corbett requested that a sub-committee be formed in an effort to analyze streamlining the timber permit process. A letter will be forwarded to the Chairperson and Executive Officer with his request.

Richard Grundy requested a status report on the Russian River bacteriological status.

There being no further business to come before the meeting body, the meeting adjourned at 3:30 p.m., until the next Board Meeting which is scheduled for March 15 and 16, 2005.

The Secretary, Jean Lockett recorded the minutes of the January 26, 2005, Board meeting of the North Coast Water Quality Control Board.

Chair _____

Date: _____