

California Regional Water Quality Control Board
North Coast Region

Minutes May 16 & 17, 2002
Eureka City Council Chambers
531 K Street
Eureka, CA

Thursday, May 16, 2002

Chair Massey called the Regional Water Board meeting to order at 9:11 a.m.

i. Pledge of Allegiance

John Corbett lead the pledge of allegiance

ii. Roll Call and Introductions:

Board members present: Richard Grundy, John Corbett, Dina Moore, Bev Wasson, John Selvage, Shawn Harmon, and William Massey

Staff Members Present: Executive Officer - Susan Warner. Assistant Executive Officer - Frank Reichmuth. Division Supervisors – Luis Rivera, Nathan Quarles and Ranjit Gill. Legal Counsel -Erik Spiess and Sheryl Freeman. Seniors - Tom Dunbar and William Winchester. Technical Staff - Andy Baker, Cody Walker, Reg Cullen. Administrative Staff - Kathleen Daly, Julie Sayer, Drew Bayless and Jean Lockett

iii. Minutes of Past Meetings

There were no minutes presented from previous meetings.

iv. Board Member Ex Parte Communication Disclosure

Ms. Sheryl Freeman gave an explanation of the ex Parte communication as an opportunity for Board members to disclose any ex parte conversations that they may have had regarding any item (s) pending before the Board.

No ex parte communications were reported.

v. Public Forum

Mark Lovelace expressed his disappointment of the hearing last month. He stated that the Board has a responsibility to the public.

Richard Gienger submitted transcriptions of portions of the April 18 and 19, 2002, Board meeting, monitoring and study group meeting on road and crossing removal, and the joint Fish and Game Commission/Board of Forestry meeting regarding waivers.

Items 1- 6 Consent Calendar, Waste Discharge Requirements

Consent Calendar Item No. 3, Humboldt Creamery Association, was removed from the agenda. Jack Selvage recused himself from action on the consent calendar. Dina Moore recused herself from action on item number 2 of the consent calendar.

MOTION: John Corbett moved to adopt the remainder of the consent calendar, without item 2, and Bev Wasson seconded the motion. The motion carried by a unanimous voice vote, with Jack Selvage recused.

MOTION: John Corbett moved to adopt item 2, and Bev Wasson seconded the motion. The motion carried by a unanimous voice vote, with Jack Selvage and Dina Moore recused.

v. **Public Forum [resumed]**

Jan Krapelien stated that he has been bothered by the last months hearing. He asked that Ms. Moore recuse herself from the Pacific Lumber item.

Ms. Moore stated that she does not own any property adjacent to Pacific Lumber, her mother-in-law owns property.

7. **Order No. R1-2002-0046 PUBLIC HEARING to consider whether to refer to the Attorney General the matter of Lolonis Vineyards, Inc., involving a large earthen dam, reservoir, vineyard and associated access roads located at 1801 Road D, Redwood Valley**

Chair Massey administered the oath for the public hearing for Lolonis Vineyards. Andrew Baker submitted the staff report and the file into the record. He stated that Lolonis Vineyards, Inc., constructed a large earthen dam, reservoir, vineyard, and associated access roads located at 1801 Road D., Redwood Valley, in Mendocino County. The construction activities resulted in the discharge of at least 100 cubic yards of earthen waste materials into waters of the state. Construction began on or before 1997 and mostly was completed by 1999. He explained the chronology of events. The first site inspection was conducted by the Water Board staff on July 13, 2000. Staff met with downstream residents who reported increased sediment in the fish-bearing tributary A since construction of the dam began. Extensive fine sediment deposits in tributary A was observed by the Water Board Staff. It was determined that the construction resulted the discharge of sediment which is in violation of the Basin Plan Prohibitions, and staff met with the discharger and initiated staff enforcement efforts to remove earthen waste material from tributary B. Mr. Baker reviewed the steps taken by the Regional Water Board staff and Department of Fish and Game to bring the Discharger into compliance with the requirements of the agencies.

Mr. Baker discussed the general cleanup strategy to stabilize roads, remove earthen material from tributary B and develop acceptable flow release plan. He listed the agencies with enforcement authority as being Regional Water Board, National Marine Fishery Service, and California Department of Fish and Game, State Water Resource Control Board-Department of Water Rights. The potential Administrative Civil Liabilities are discharge violations for at least 100 cubic yards of earthen waste material, failure to submit adequate technical reports by required due date and

failure to submit report of waste discharge. He stated that this site has the potential of civil and criminal action from multiple agencies. He recommended that the Regional Water Board refer the matter of Lolonis Vineyard, Inc., to the Attorney General who has the ability to coordinate multiple agency requirements and consolidate enforcement actions from multiple agencies.

There was discussion on the role of the Attorney General's office and how they would represent each agency. Mr. Grundy expressed concern on the Regional Water Board's input in any decisions made by the Attorney General office. Ms. Warner informed the Board that the Board does not stop acting and the Region will continue to act and respond to violations. Mr. Corbett and Ms. Wasson both asked for clarification on the water rights permit, and the State Board's activities. Ms. Warner responded to the question, and indicated that staff would continue to work with the State Board on water rights issues.

Sheryl Freeman suggested an amendment to the Resolution R1-2002-0047 at the bottom of page 2, the last whereas to say " CWC Section 13350(h), 13002(c), and 13385" to ensure that the Attorney General has the full scope of the Regional Board's authority to require appropriate actions.

Ms. Warner stated that she would invite the Division of Water Rights to appear before the Board at a future meeting to explain how water rights activities are coordinated, in general, with Regional Board activities.

The Board observed a break at 10:35 a.m. and resumed the Board meeting 10:45

Representing Lolonis Vineyard, counsel Ginevra Chandler stated that Lolonis did not have any objection to the case being referred to the Attorney General because it had been very difficult coordinating with the many agencies. She indicated that there was no intent for Lolonis to delay the cleanup in any way, but there had been some communication issues with the Regional Water Board and Lolonis. Ms. Chandler asked that Lolonis get clarity from staff and other agencies.

Mr. Selvage asked if referring this site to the Attorney General is a little extreme. Ms. Chandler stated that if the Attorney General can get what Lolonis need issued, then she welcomes the Attorney General. Ms. Chandler stated that to comply with the water quality issues the company needed a 1603 permit from Department of Fish and Game.

Ms. Warner stated that a referral is no more extreme then other recent actions, and seems to be the preferred option when multi-agency jurisdictions are involved.

Matt O'Connor, with Lolonis, responded to Andrew Baker's presentation. He stated that this winter there was no water that had gone over the spillway in tributary B and no erosion was noticed. During a survey, requested by the Regional Water Board staff, in tributary A, the sediment size distribution of the streambed was observed, and he disagreed with the use of "sediment laden" stream when referring to the stream as a little misleading. He reiterated the difficulty coordinating between the Regional Water Board staff and Department of Fish and Game.

Gregg Lolonis spoke and said that the biggest problem had been with Department of Fish and Game and that coordination had been extremely frustrating. Dina Moore asked the approximate cost to hire consultants and conduct other activities. Mr. Lolonis stated that it has cost about \$75,000.

John Mullen, Warden with Department of Fish and Game, stated that there is a lot of documentation in 1986 on the presence of fish before the dam construction. Juvenile Steelhead were documented as being in the stream.

Richard Gienger stated that there are so many questions unanswered and recommended that the site be referred to office of the Attorney General.

MOTION: John Corbett moved to refer the Lolonis site to the Attorney General and Bev Wasson seconded the motion.

Discussion continued and Sheryl Freeman stated that to make sure the Board retained all of its options when the case is referred to the Attorney General, she suggested the following: on page 3 bottom whereas, "Whereas the Regional Water Board is authorized by the California Water Code to refer the matter to the California State Department of Attorney General for injunctive relief potential civil or criminal liabilities under CWC section 13350, 13385, and any or all available appropriate remedies provided there under."

Susan Warner recommended that the following be added to the Whereas which starts with "The agencies involved in the permit...", by adding a sentence after the last sentence in the paragraph, as follows: "The coordinated actions among the agencies are appropriate."

MOTION: The maker of the motion, John Corbett, moved to amend his motion with the above changes, and Bev Wasson seconded the motion to amend. The amended motion passed unanimously.

At 11:53 the Board broke for lunch, and the meeting resumed at 2:02 p.m.

8. Order No. R1-2002-0051 PUBLIC HEARING to consider issuance of a Time Schedule Order for continuing violations of California Water Code Section 13267(b) Order, and Order No. R1-2002-0050 threatened violations of a California Water Code Section 13304 Order, in the matter of Mr. Brian Craig, Waste Oil Spill, Blocksburg, Humboldt County

Chair Massey read and administered the Oath for the Brian Craig item. Mr. Cody Walker presented background information on the Brian Craig site. A State of California Office of Emergency Services (OES) Hazardous Materials Spill Report on May 18, 2000. On May 19, 2000, the Humboldt County Division of Environmental Health (HCDEH) responded to the OES report. Soil samples were collected and revealed the presence of Total Petroleum hydrocarbon (THP) as grease and oil at 14,000 ug/g (parts per million, or ppm) and TPH Diesel at 30,000 ppm. The Regional Water Board received a contaminant discharge report on May 30, 2000, and conducted a site inspection on June 12, 2000, at which time numerous areas of contamination was noted. On August 30, 2000, an Order pursuant to California Water Code (CWC) section 13267(b) was issued to Mr. Craig. The Order required submittal of a report describing implementation of a workplan that was due by January 5, 2001. Mr. Craig failed to submit the required report. On January 18, 2002, an Administrative Civil Liability Complaint Order was issued, which was reviewed at the February 28, 2002, hearing. After acting on the administrative civil liability in February, the Regional Board directed staff to prepare a Time Schedule Order for

consideration at the next possible hearing. The Time Schedule Order sets out tasks to implement an approved workplan.

Mr. Walker requested that the Board adopt the Time Schedule Order as proposed.

MOTION: John Corbett moved to adopt the proposed Time Schedule Order. Richard Grundy seconded the motion. Motion passed unanimously.

11. Update from the US Forest Service – Best Management Practice Evaluation Program (BMPEP)

Sharon Heywood, forest supervisor of the Shasta Trinity Nation Forest, addressed the Regional Board by discussing the history of the BMPEP development and the process of the development. Ms. Heywood indicated that the National Forest is key to clean water and the Service is committed to the goals of the Clean Water Act. The Service's evaluation study shows that when best management practices (BMPs) are implemented properly, they effectively protect beneficial uses of water quality. BMPs are evaluated and selected randomly for an evaluation of implementation effectiveness.

Jack Selvage asked if there is a program that when the successes or non-successes are shared with others. Ms. Heywood indicated that while there is no formal program, the information is shared informally through the Forests' Advisory Committees. Mr. Selvage also asked about road decommissioning, and Ms. Heywood described the decommissioning steps.

Dina Moore asked for greater descriptions of the BMPs in future presentations. Mr. Grundy asked whether the Forest Service evaluates cumulative impacts, and Ms. Heywood described their process. Mr. Corbett inquired about the degree of in-stream monitoring, and Jim Harvey, Ecosystem Staff Officer, replied that the forest has two monitoring components: (1) monitoring of in-stream work (like culverts), and (2) an instream monitoring component of BMP-EP, as an example on the South Fork Trinity River.

John Corbett asked staff how specific watersheds are addressed with general BMPs. Frank Reichmuth stated that the Forest Service has a binder with many BMPs and they use the BMP that is more specific to the watershed.

Mark Rentz, California Forestry Association, suggested that the Board get a copy of the Best Management Practices. He stated that the cumulative effect analysis does not say that you must stop operations, but increase the analysis. He suggested that the Board look at the Forest Practices Rules for Best Management Practices.

9. Progress Report on the Basin Plan Amendment for Sediment Management

Carrie Lukacic gave a presentation on the Basin Plan Amendment for discharge of sediment-related waste. Her presentation listed the beneficial uses such as: Municipal and domestic supply, cold freshwater habitat, warm freshwater habitat, rare, threatened, or endangered species, etc. The Regional Water Board has a number of watershed assessment programs. The assessments include TMDLs since 26 of the 34 watershed on the 303(d) list are sediment impaired and all technical TMDLs that have been established have confirmed that the watersheds are in fact sediment impaired. The current strategy for dealing with sediment is through the TMDL

program. Each technical TMDL requires an implementation plan. With the Garcia being the only one completed, the last implementation plans are scheduled for completion in 2013.

All units at the Regional Water Board deal with sediment issues through existing programs with different levels of effectiveness. Ms. Lukacic said that the staff's goal in the regionwide sediment amendment is to prevent sediment from reaching watercourses or receiving waters using feasible and reasonable means.

The sediment control strategy is a two-step process: revisit and revise regionwide prohibitions related to sediment discharge and develop a plan to implement the prohibitions on a watershed specific and site-specific basis. She discussed the strategy development for the Basin Plan amendment approach, which included in-house working groups, research issues, Regional Board input leading to a draft staff report and amendment package.

The Amendment process will consist of public release of the staff report and amendment package in January 2003, at least two Board Workshops between February and August 2003 on the full amendment and staff report, then staff will propose adoption at the August 2003 hearing.

12. Update on Groundwater Augmentation of Surface Water Flows in the Upper Klamath River Basin

Tom Dunbar gave a presentation on groundwater augmentation of surface water flows in upper Klamath River Basin. He displayed a map showing the flow of the water within Tulelake Irrigation District. He gave background on the winter drought of 2000/01 and stated that only 35 percent of annual rainfall was received during the entire year. The National Marine Fishery Service and the U.S. Wildlife Service came out with a couple of biological opinions in April 2001 that said that we need to have more in-stream flow in the Klamath River to support the habitat of Coho salmon. The U.S. Fish and Wildlife said that we need higher lake levels in upper Klamath to support the habitat for the Suckers. In response to the biological opinions, the U.S. Bureau of Reclamation produced an operation plan to maintain a higher lake level in Upper Klamath Lake. The endangered species will receive what water they need first, then the Indian tribes, and the farmers would be third, and lastly the wildlife refuge. Knowing the drought conditions and the water levels, it appeared that the farmers would not get the water that they needed, and the U.S. Bureau of Reclamation (USBOR) started a Water Acquisition Project around February 2001. The USBOR contracted for about 40,000 acre-feet of water from private wells owned by farmers in California and 20,000 acre-feet of water in Oregon.

The Tulelake Irrigation District now owns ten wells in California. U.S. Fish and Wildlife Service has put up money to drill seven wells and have drilled three wells around lower Klamath Lake in California. He displayed a chart giving information on the well Nos. 1 through 9 and No. 14. The information gave the depth (feet) of the production zone, and yield (GPM). Water quality issues were discussed. The preliminary data show that some wells have temperature to 180 degrees, high mercury, aluminum, and lead and high ammonia and sulfides.

The three agencies responsible for pumping water are Tulelake Irrigation District (TID), U.S. Bureau of Reclamation (BOR), and U.S. Fish and Wildlife Service, were sent letters requesting that they file for a NPDES permit. TID and BOR have not responded to the letters. He discussed other related matters of the Klamath River Basin Federal Working Group established March 1, 2002, by President Bush.

Dr. Denver Nelson stated that he thinks that the presentation just touched the surface of the Klamath problems. He encouraged the Regional Water Board to become more involved in the FERC relicensing.

Tom Dunbar stated that we have two lead staff who have been involved in the FERC relicensing meetings that happen every month. Susan Warner stated that two of the staff members will be traveling to Oregon to participate in a joint state TMDL meeting.

The meeting adjourned at 4:40 p.m., to reconvene the next day, May 17, 2002, at the Wharfinger Building.

May 17, 2002

Marina Wharfinger – Building Eureka

Chair Massey called the May 17, 2002, Regional Board meeting to order at 8:15 a.m.

Pledge of Allegiance

Shawn Harmon led the Pledge of Allegiance

Roll Call

Board members present: Richard Grundy, John Corbett, Dina Moore, Bev Wasson, John Selvage, Shawn Harmon, and William Massey

Staff Members Present: Executive Officer - Susan Warner. Assistant Executive Officer - Frank Reichmuth. Division Supervisors – Luis Rivera, Nathan Quarles and Ranjit Gill. Legal Counsel - Erik Spiess and Sheryl Freeman. Seniors - and William Winchester. Technical Staff - . Administrative Staff - Julie Sayer, Drew Bayless and Jean Lockett

The Chair continued the meeting from May 16.

10. The Regional Watershed Management Division (RWMD) and its Activities

Dr. Ranjit Gill discussed the three units of the Watershed Management Division: Planning Unit that deals with Basin Planning. David Evans supervises this unit with 6 staff members. The programs included the Triennial Review of the Basin Plan, Regional Sediment Amendment; TMDL Implementation Plans, and water quality objectives protective of salmonids in the Russian River.

TMDL Development Unit

This unit is supervised by David Leland with staff that consist of three scientists, three engineers and one geologist. In this unit there are two tasks that are related to TMDL, and they are the Clean Water Act Section 303-d list update and TMDL Development. The Unit is working on six different watersheds: Mattole Sediment and Temperature, Salmon River, Upper Lost River, Lower Lost River/Tulelake, Shasta River, Scott River. The unit is also working on contracts, GIS, and database support.

Watershed Assessment and Monitoring Unit

Robert Klamt, a Certified Fisheries Professional, supervises this unit. This Unit has one civil engineer and six scientists. In the Watershed Monitoring Unit there are three different programs in the unit; the first being the North Coast Assessment Program (NCWAP). The first assessment undertaken were Redwood Creek, Mattole River, and Gualala River. One public draft has gone through for these three assessments. Staff received extensive comments on what was done thus far. A status report was given to the legislature around May 5, 2002, and the legislature agreed to renew the funding, but gave strong directions that the public comments must be addressed. Big River and Albion River assessments will be released after completion of the first three rivers so staff can follow the same format. The Surface Water Ambient Monitoring Program (SWAMP) is being implemented from three different sections. Permanent stations throughout the region have been established to obtain baseline data. Staff in all divisions throughout the office will utilize the data. The last program in this unit is the Watershed Management Initiative Program, but the resources allocated to this program are limited.

Cynthia Elkins requested clarification on the expedited TMDL on Freshwater and Elk River. Although it seems that TMDLs are being expedited for the other watersheds, there has been no mention of Bear, Jordan and Stitz River. She wished to know what is being done to expedite the TMDL in the Eel River watershed and what reports have been given to the State Board on efforts to address those three watersheds.

Ms. Warner responded to Ms. Elkins' questions by stating that in the April staff report that the Regional Water Board staff is expediting the TMDL in Freshwater and Elk to be completed in 2003, and upon conclusion we will address the other three watersheds Bear, Jordan, and Stitz. The staff has been working with EPA to ensure that both agencies are in sync in expedition of the TMDL in the Eel River and the tributaries to it.

13. Report on State Board Initiative for Prioritization and Problem Solving

Frank Reichmuth discussed the Regional Water Boards programs being tied to the legislature and CalEPA, who require specific outputs for the funding provided. He observed that there has always been a complaint of not having the flexibility in our funding to work on important water quality projects. This problem-solving program is set up to show that we can solve the water quality problems and have positive results demonstrated for the money received. To work on this program staff looked for projects that could be completed in a year with demonstrable water quality improvements. All nine Water Board Regions met with Malcolm Sparrow and went through the strategy on how to accomplish the task at hand. The highest project chosen was one for the monitoring of pathogens in the Russian River to determine the source of elevated bacterial counts in the River. Staff is diverting funds from program areas, particularly for general fund sources, and the diversion is approximately 1.5 PYs.

14. Delegation of Authority to Assistant Executive Officer

Susan Warner introduced the resolution for delegating authority to the Assistant Executive Officer when the Executive Officer is unavailable to sign orders.

Mr. Grundy voiced his concern on documents that have legal implications and asked whether only the Board or the Executive Officer should sign, and if that is the case; the order or document might be challenged. Mr. Grundy clearly stated that he accepts the resolution but wanted his concerns on the record.

Sheryl Freeman indicated that the documents with legal implications would be orders, and if necessary in the absence of the Executive Officer, these orders would be signed by the Assistant Executive Officer on behalf of the Executive Officer. It is an orderly function of government that the Assistant Executive Officer would sign documents in the Executive Officer's absence. This is not considered improper and has not been challenged.

MOTION: John Corbett moved to adopt the proposed resolution.
Jack Selvage and Dina Moore seconded the motion.
Motion passed unanimously.

15. Budget Update

Frank Reichmuth gave a brief summary of the budget for the upcoming fiscal year 2002-2003. He reported that at the end of the 2001-2002 fiscal year there is a shortfall of about \$2 million in funds for the State Water Board. Region 1 is about ten per cent of the \$2 million dollar shortage. Region 1 is fully staffed at this time. Region 1 has had a 15 percent cut in the budget and this reduction has had an impact on the stormwater unit. There were also cuts in Region 1's travel expenses, training, and operation expense budget. There is going to be a belt tightening this year. If the State's Budget is not signed as planned, state employees will continue to receive their checks.

There is a large reduction from the State's General Fund Budget and into our programs and to replace the reduction the legislation has decided to increase the fees for waste discharge requirements. The increase is going to have a big impact; the fee for waste discharge requirements is now \$10,000 and may be increased to as high as \$50,000 or more.

16. Schedule for Board Meetings

Ms. Warner and Board members discussed dates for an informal workshop in August. Ms. Warner stated that she will keep the Board updated on the next Board meeting.

17. Violations and Enforcement Report

This report stands as written

19. Executive Officer Administrative Civil Liabilities

Susan Warner stated that there were three ACLs issued: Fairhaven Power and two ACL's for the City of Santa Rosa.

18. State and Regional Water Board Communication State and Regional Board members may update each other on recent events

Mr. Selvage said that he had received a call from an elected official stating his concerns that Mr. Selvage would be resigning from the Board. Mr. Selvage stated that he had no intentions of resigning from the Board.

Ms. Warner informed the Board that Gary Carlton was newly appointed to the State Water Resource Board in Sacramento.

Items 20, 21, and 22 stand as written

Chair Massey stated that he had several requests that the Board members be allowed to make a statement to state what they believe and how they came to be where they are.

Chair Massey gave his personal background that led to his interest in water quality. He shared his disappointment in the way the April 18 and 19 board meeting ended. He stated that he is aware that the Board has regulatory power and he is not reluctant to use it. Without additional data, he knows that Freshwater, Elk, and other watersheds are affected by sediment. He concluded by extending an invitation to those who want to resolve the water quality issue to come to the table for mediation and discuss ways to come to an agreement and resolve this issue.

Dina Moore first addressed a question the public had asked at yesterday's meeting. The question was "did Ms. Moore have a conflict of interest with Pacific Lumber Company?" Ms. Moore stated that the ranch that belongs to her husband's family is a neighbor to Pacific Lumber Company. Ms. Moore said that she or her family has never done business, had any agreements, or said hello to Pacific Lumber Company. She stated that she thought it was inappropriate to ask that she recuse herself from participating on the issue. She went on to say that after listening to those who participated in the hearing for days, she believed, as she believed most everyone would agree, that the solution to the issue at hand does not have a simple answer. However, the Regional Water Board must grapple with finding a solution that is fair and reasonable. Ms. Moore shared family stories of how Freshwater flooded in the 1950's and 60's. There were stories of how Howard Heights chronically flooded in the winter. While there is no doubt that flooding occurs, she stated that much energy could be spent debating the causes and facts about how this flooding happens. We know about the early logging practices and how detrimental those were to all of our watersheds on the coast. She stated that she believe that the Z'berg-Nejedly Act was vitally important and all of the agencies need to work together. We need to continue to examine and modify forest practices, as we become more educated about resource protection. She stated that there was a clear shift in management when Pacific Lumber Company changed ownership. Ms. Moore voiced her strong philosophical and personal investment as well as commitment to stewardship in regard to management of working landscapes. She also stated that if this Board requested a report of waste discharge requirement that harvest will be halted in the watershed for 120 days, and she expressed her concern for the little guy and the economic status of Humboldt County. She closed by saying just as she is concerned about the residents in the flooded areas, she is also concerned about the loggers, truckers, contractors and all those who depend on Pacific Lumber Company for their livelihood. The Board's action taken at the last meeting, although not popular, was forward thinking and courageous. This Board is committed to restoring these watersheds.

Shawn Harmon indicated that he was interested in solution-oriented projects developed somewhat on our own, but also in concert with the local agencies. He stated that the solution-oriented process should be cost effective, but also environmentally sensitive, too – to where everyone benefits. He indicated that he had no hidden agenda but a goal, which was to work with staff, the resource agencies, the regulated community and the public to improve our ability to protect, restore, and improve the water quality in our region. He said he recognizes that Best Management Practices have a lot of validity and are a very positive approach to dealing with the problems that we face. He also stated that a best practice today doesn't necessarily mean it is going to be the best practice tomorrow, and there is always room for making it better.

Richard Grundy indicated that he was interested in finding some solutions that produce water quality improvement while he was on the Board. He did not want solutions that dragged on and on and on. While recognizing the importance of the TMDL process, he stated that he also recognized that it has the potential for delay. He observed that there is a large amount of material that addresses not only the problem here, but also the economic issues that are here both for the people in business here and as well as for the people who live here. He also indicated his belief that we need to discuss the options that are available to us to get out of this problem. He fully supports the mediation process as an expedited way of getting out of this in lieu of litigation, or in lieu of referring this back to the State Board for delay. He indicated he was prepared to act in a way that produces long-term environmental quality improvements. He stated that one concern was with the 120 days of cessation of timber harvest because all the sediment in the river is going to be still washing down, its not going to be addressed and the long-term problem won't be solved with a 120-day cessation. The issue is winter practices and understanding the river and the river qualities. Mr. Grundy observed five points: First, in his judgement the five water bodies in the watersheds are impaired, and that is they are listed on the 303-d list, and that stimulates certain actions; Second, one of the most critical needs is for the Board to strengthen its monitoring requirements; Third, the Executive Director has the authority to impose monitoring requirements and require waste discharge reports, which may lead to waste discharge requirements, but it could be a long drawn out process with little improvement in water quality for many years to come which would be unacceptable; Fourth, the matter needs to be resolved by this Board, not by the State level and not in the courts, as this matter needs to be resolved by the affected parties; Fifth, currently waivers expire in January, at that time his concern is that everything is up for grabs statewide. With the mediation process comes a window of opportunity for the Board to find a mutual agreeable resolution and lock it in.

Bev Wasson indicated her understanding of the issues and her desire to see solutions, and litigation was not solutions. She indicated that the Board was trying very diligently to put the procedures and steps in place to accomplish our goal of water quality protection for all.

John Corbett indicated his impression that this dispute in the 5-watersheds has gone on way too long, and so that any decision made is better then no decision. He indicated his desire for the Board to make findings to eliminate the need to keep having hearings on the same topic. He would like to see a procedure developed to develop findings. He also observed that the dispute had been going on for many years and we are only now getting into monitoring to provide the data for making a decision. He stated that we should work on getting clearer agendas, clearer burden of proof and clearer findings. He also stated that to the Board needed to weigh out the pros and cons of waste discharge requirements versus monitoring to clean up and abatement.

Jack Selvage presented a summary of his background, which gave him experience in water supply and treatment, wastewater treatment, hazardous material assessment and cleanup, and stormwater runoff problems. He also indicated his firm belief in the public process and that it should be kept public, as much as possible.

Public Forum:

Mr. Selvage asked if it is acceptable for him to sit in on the public forum. Ms. Freeman stated that it would be Mr. Selvage's choice to sit in on the public forum, as board discussion of the specific items on the agenda is not a part of the public forum.

Janet Jungers left the meeting before public forum, but someone from the audience handed in a written comment for her.

Jesse Noell started his presentation giving information about Elk River and the other watersheds. He was requested to hold his comments until items 30 and 31 were up for discussion. Mr. Noel proceeded to give his thoughts on the Board's comments. He stated that Dina Moore's comment on employment was more important than the safety and health of the residents in the flooded areas. He stated that he expected to hear from Mr. Harmon on the issues, but did not.

Mr. Ken Miller thanked the Board for their statements indicating that it helped to clarify the Board's actions in April. Speaking for the Humboldt watershed council, he stated that an issue came up regarding Board member Dina Moore's potential conflict. He read an article/flyer written to oppose the TMDL non-point source regulations. The flyer listed an association that Ms. Moore is heavily involved in as one of its supporters.

Ms. Moore stated that neither she nor the organization that she is affiliated with gave anyone permission to put the organization's name on the flyer as one of their supporters. She voiced her disagreement with the content of the flyer and said she was disturbed that the Cattlemen's Association name was added without its consent.

William Bertain stated that he and others were disappointed in the Board's actions at the last April 19 Board meeting. He reiterated some of his comments of April 19 that Pacific Lumber Company logging was destroying the watersheds. He asked questions on what did the Board have in mind when the Chair allegedly stated that someone would need to pay for dredging.

Ms. Warner suggested that Mr. Bertain and she and he could spend time outside of the meeting to discuss lengthy questions on dredging, Pacific Lumber Company monitoring report, and other issues.

John Rice, a rancher, stated that everything that Ms. Moore stated regarding the flyer is correct. He and the organization had no knowledge of a flyer being printed with their organization name on as a supporter. He asked the Board, if it must make an economic assessment for the action they take.

Ms. Sheryl Freeman responded by saying the need for an economic assessment depends on the actions that the Board takes. Some board actions require economic assessments, while others do not.

Ms. Warner stated that there are many actions that this Board takes that an economic assessment is not required. However, there are other actions such as adopting a TMDL implementation plan, Administrative Civil Liability that the Board is required to take an economic assessment into consideration just as there are many that the Board does not consider economic, for example adopting routine permits or waste discharge requirements.

Mr. Selvage ask if the staff could give the Board a presentation on when economic assessment is considered and the process used to arrive at an amount. Ms. Warner stated that she will put the item on the August agenda.

Tracy Thiele said that part of Ms. Moore's public statement touches on a personal issue that she had. Her husband was a mill worker and the family depended on that income and the mill closed and moved away. The reason the mill closed was because the company over cut the rate of

harvest. She expressed that she wished someone would have stepped in and got involved and saved her husband's job.

Shirley Shelburn stated that MAXXAM PL current level of harvest is not based on upon any cumulative watershed analysis, but on rates of 1998 before any water impacts were considered. She read from a memorandum and several newspaper articles that gave information on Pacific Lumber's rate of harvest and a possible investment in real estate.

Attila Gyenis addressed the Board by telling a story. He stated that he received a letter telling him that he was going to have a visitor and the visitor never showed up after three promises. His point was that words without actions are not to be trusted. He urged the Board to do the right thing.

Lawrence Dwight, a rancher, voiced his concerns for water and his concerns that statements are being made that there are no fish in the watershed. He stated that he has seen hundreds of small fish the day before the meeting. It has taken years for the rangers and the timber businesses to get where they are in this point and time. He urged the Board to give directives to the staff and not take their recommendation.

Jan Kraepelien stated that monitoring stations need to be placed in areas where they will give the most information and not all over the place giving small results.

The Chair stated that items 30 and 31 will be discussed. Jack Selvage recused himself from action on these items.

30. Report on Status of Monitoring in Elk River, and Freshwater, Jordan, Bear, and Stitz Creeks

Ms. Warner stated that information distributed at the May 7th public meeting, where CONCUR presented the process and discussed mediation for PALCO and the 5 Watersheds, was sent to the Board. She introduced Scott McCreary, who thanked the Board and public for their interest in the matter. Mr. McCreary gave background on the conflict assessment and CONCUR's role in the assessment. CONCUR interviewed 24 people for their potential participation in the mediation process. The interviewees included the petitioners, PALCO, residents of the watersheds, small landowners/non-industrial timber interests, and agency staff. The assessment was conducted over a period of three weeks. Scott McCreary reviewed the key questions covered in the interviews. He briefly characterized the problem as sedimentation and flooding in the watersheds.

Mr. McCreary discussed the prospects for mediation by outlining some of the concerns, such as: backdrop of long running controversy and lack of mutual trust; a concern that mediation could stall needed regulatory action; the economic pressures facing PALCO/community; and the issue further complicated by actions at state and federal levels. He discussed steps to build agreements through mediation, such as define focused mission/objectives, establish ground rules to guide group behavior and protocols for reporting back to the broader community, conduct joint fact-finding to build technical agreement and create binding agreements with protocols for implementation. The alternative models discussed were adversary science model where a non-technical judge or hearing officer is forced to pick a winner after hearing the opposing counsels, competing experts seeking to undermine each other. Another model is the blue ribbon Panel, where only scientists participated. The Alternative Model, Joint Fact-finding is a face-to-face

dialogue. With a shared understanding of the scientific information, parties are more likely to produce a credible agreement.

Mr. McCreary discussed CONCUR's assessment and said that for mediation to be successful the parties will need to make the following commitments: The Regional Water Board commits to a Convening Committee shortly after May 17 Board Meeting and commits to assign one or more representatives to the mediation process. All parties will need to commit to negotiate in good faith within a 90-day timeframe, and commit to reach tentative agreement on slate of potential early implementation actions as outcome of a mediation process. Mr. McCreary discussed the pros and cons of open and confidential meetings. If a confidential process is chosen, it will have the benefit of a more focused and efficient meeting versus an open meeting that is less efficient and may take longer to reach agreement. However, he suggested that there be interim open meetings to inform the public/community of the progress to a resolution.

Dina Moore read a prepared statement. She stated her belief that in order to build regulations and guide activities to protect resources, there must be participation at a local level. She believed that in order to resolve resource issues a collaborative effort must be undertaken by all of the parties. She reiterated her belief that mediation is a process that would involve all of the parties that could come to a resolution that will be mutually agreeable.

There was discussion and questions on the convening committee's participants and how those participants would be chosen.

Ken Miller pointed out that if mediation takes place the watersheds will be at a disadvantage. Pacific Lumber Company has no motivation to work out a solution.

Attila Gyenis stated that he has attended the Regional Water Board meetings for five years. He urged the Board to consider waste discharge reports. He also stated that mediation does not meet his needs.

Richard Gienger stated that a convening meeting should have scientists involved.

Jan Kraepelien stated that unless Pacific Lumber Company agrees to stop logging in the watersheds for a period of time, he and others would not participate in the mediation. He also expressed that money should not be taken from other sources to pay for the mediation.

Jim Brannon with Pacific Lumber Company, expressed that Pacific Lumber Company believes that EPIC should not be a part of the mediation process, because of legal issues. He suggested that Freshwater be dealt with separate from the other three watersheds because the issues are very different in Freshwater than they are in other watersheds.

Tracy (Bear) Thiele stated that she believes that everyone may be feeling that they have given enough to come to a solution in this matter. She referenced a 1997 transcript of a meeting with CDF regarding the watersheds. She quoted John Marshall as saying that the watershed issues should be dealt with at the Board of Forestry level. She urged the Regional Water Board to include the Board of Forestry and California Department of Fish and Game in the mediation.

Cynthia Elkins, with EPIC, gave a brief background on what she believed Pacific Lumber Company's violations since the 1990's. She believes that Pacific Lumber Company will not implement any of the resolutions that come out of the mediation. She urged the Water Board to make plans on how to handle the issues of the watersheds in case the mediation doesn't work.

Denver Nelson commented on the Corps of Engineers dredging of Humboldt Bay every year, and tracking the sediment inputs into the Bay. He stated that it would be interesting to see how much sediment was taken out of the Bay since 1990.

The Chair asked for a motion to go forward with the convening committee.

MOTION: John Corbett moved to go forward with the Convening Committee to be facilitated by CONCUR. Richard Grundy seconded the motion. The motion passed unanimously.

Chair Massey stated that he hoped that he spoke for everyone on the Board by saying that they want to see mediation done expediently as possible. He requested that the Board receive an update on the progress at the June Board meeting.

31. Report on Status of Monitoring in Elk River, and Freshwater, Jordan, Bear, and Stitz Creeks.

Nathan Quarles addressed the Board with an update on monitoring, one of the areas previously identified by the Board to resolve the issues in the watersheds. The Regional Water Board staff efforts in the instream water quality monitoring were divided into three categories: THP specific monitoring or project monitoring, watershed wide monitoring, and trend monitoring.

Project Monitoring: There were 27 timber harvest plans for monitoring programs identified. The Regional Water Board staff focused on THP 201 or the Incline THP. A draft monitoring and reporting program was submitted to Pacific Lumber Company. Pacific Lumber Company and the Regional Water Board staff discussed the draft in an effort to come to a cooperative agreement. We reached an agreement that Pacific Lumber Company would amend the monitoring plans into their THP.

Watershed Wide Monitoring: Trend water stations were reviewed in the Elk and Freshwater Creeks only. Regional Water Board objectives were submitted to Pacific Lumber Company. Pacific Lumber Company also submitted their objectives to the Water Board. Both documents were compared and are very similar. The next step is to work out details and evaluate the location of stations to be established. Information gathered from this monitoring effort will also be used in the TMDL efforts.

Trend Monitoring: Trend monitoring is very similar to watershed wide monitoring except that it expands to Pacific Lumber Company's ownership in other watersheds. Trend monitoring covers the other three watersheds not covered in watershed wide and project monitoring.

This is a good first step forward for staff and Pacific Lumber Company to come to some agreement.

State and Regional Water Board Communications This item was discussed on May 16th under item 17.

There being no other business to bring before the Board, Dina Moore moved to adjourn the meeting at 4:30 PM. John Corbett seconded the motion. Motion passed unanimously.

The Secretary, Jean Lockett recorded the minutes of the May 16 and 17, 2002, Board meeting of the North Coast Water Quality Control Board, to be approved by the Board at its next meeting.

_____ Chair

_____ Date