

California Water Resource Control Board
North Coast Region

MINUTES OF MEETING
November 7, 2002
Regional Water Board Meeting
Wharfinger Building
1 Marina Way
Eureka, California

Chairman William Massey called the Regional Water Board meeting to order at 9:10 A.M.

i. Pledge of Allegiance

Richard Grundy led the Pledge of Allegiance

ii. Roll Call

Board Members present: William Massey, Richard Grundy, John Corbett, Bev Wasson, and Shawn Harmon

Board Member Dina Moore arrived at the meeting at 9:21 A.M.

Regional Water Board staff present: Executive Officer, Susan Warner; Assistant Executive Officer, Frank Reichmuth; Legal Counsel, Sheryl Freeman and Erik Spiess; Division Chief, Luis Rivera and Nathan Quarles; Seniors, Diana Henrioulle-Henry; Technical Staff: Holly Lundburg, Adona White, and Dean Prat; Administrative Staff, Kathleen Daly, Greg Nash, Terri Korell, and Jean Lockett

ii. Minutes of Past Meetings

There were no minutes presented for approval.

iv. Board Member Ex Parte Communication

Sheryl Freeman gave an explanation of the ex parte communications, indicating it was an opportunity for Board members to disclose any ex parte conversations they had regarding any item(s) pending before the Board.

There were no reports of ex parte communications.

v. Public Forum:

Alan Cook stated that he hoped that the Regional Water Board will direct its staff to take action on the watersheds.

Waste Discharge Requirements for Hearing

- I. **Order No. R1-2002-105, The Pacific Lumber Company, Elk River, Humboldt County**, Consideration of the Issuance of either New Waste Discharge Requirements or a Waiver of Waste Discharge Requirements, WDID No. 1B02133RHUM

Nathan Quarles presented an errata sheet to be entered into the record. Mr. Quarles stated that the discharger, Pacific Lumber Company, conducts timber harvesting, forestry management, road construction and maintenance, and related activities within the Elk River watershed within its ownership. The Regional Water Board staff files supports the conclusion that timber operations in the Elk River watershed have resulted in adverse discharges of earthen materials that have significantly affected downstream beneficial uses, contributing to nuisance flooding conditions, and that suggests that operations will continue to discharge earthen material to Elk River. Mr. Quarles stated that on August 5, 2002, the Executive Officer requested the Discharger to submit a Report of Waste Discharge (ROWD) for wet weather operations within the Elk River watershed. The August 5 letter stated that the intent of the waste discharge requirement was to address discharges or threaten discharges associated with operations proposed between Oct 15 and May 1 of each year starting with Oct. 15, 2002.

Mr. Quarles stated that several comments were received on Provision M that addresses notification regarding herbicide application. He stated that herbicide applications may be a part of the projects. The Regional Water Board staff will request notification of the applications so that staff can observe how the application is being conducted and or staff may conduct monitoring of the herbicides to see if it is getting into the state waters. There was a change in Provision J-noncompliance in the order, which was changed so that Pacific Lumber Company would report for non-compliance at anytime, rather than for the three reasons listed in the order.

In closing, Mr. Quarles stated that staff recommended that the Board adopt the Waste discharge requirements.

Ms. Warner briefed the Board on the location of the changes in the waste discharge requirement order. She pointed out that the changes were to the waste discharge order to finding 16 which strikes out a reference of a court action that was not relevant to the order and there was a change to 1A in the Discharge Prohibition. She stated that staff recommendation is to adopt the waste discharge requirements as amended by the errata sheet.

Richard Grundy indicated that for the purpose of clarification any actions that the Regional Water Board take at this meeting will be based on information received previously and not solely information that is presented here today. Mr. Grundy read into the record excerpts from a letter ordering reports of waste discharge written by the Regional Water Board Executive Officer to the Chief Executive Officer of Pacific Lumber Company on August 5, 2002. The letter listed four justifications for the request, and they were:

1. discharges of earthen materials to Elk River and its tributaries have resulted from logging, road construction, and related activities;
2. ongoing discharges from historic logging, road construction, and related activities continue to occur with rain events, and wintertime operations during logging, road construction; and
3. beneficial uses of Elk River and its tributaries have been adversely affected by these discharges of earthen materials; and
4. wintertime logging, road use, and related activities threaten to continue to adversely affect the beneficial uses of Elk River and its tributaries.

Robert Manne, President and CEO of the Pacific Lumber Company, stated that the watershed has been contentious for quite some time. Mr. Manne indicated that Pacific Lumber Company staff are working with the Regional Water Board staff and California Department of Forestry to design and implement a monitoring program that will give information on a timely and reliable basis with the intent to adapt Pacific Lumber Company's forest management and take advantage of new scientific knowledge. Many of the activities in the HCP are aimed at reducing the amount of sediment entering streams. He stated that Pacific Lumber Company does not want an overly duplicative, costly, and time-consuming regulatory process.

Mr. Manne suggested that the Pacific Lumber Company would accept the waste discharge requirements presented today. Pacific Lumber Company has been working with the Regional Water Board staff in the development of the Best Management Practices and ultimately the final Requirements. Mr. Manne stated that the order before the board will provide extraordinary prevention and mitigation measures to control discharges of sediment this winter, and allow the company to conduct legally approved timber harvesting activities in the watershed, and avoid layoffs and adverse economic consequences in the community. Mr. Manne stated that Pacific Lumber Company is committed to working closely with the Board and the Executive Officer and staff to resolve the complexities so that private landowners can operate with a greater degree of regulatory certainty and predictability and the public can be assured that water quality is being protected.

Don Lutherson gave an estimated account of the monies that Pacific Lumber Company contributes in taxes. He urged the Board members to adopt the waste discharge requirement order as it stands.

Steve Jorgensen, a timber worker, urged the Board to work with the timber companies by adopting regulations that will work for everyone.

Randy Anderson requested the Board to adopt the waste discharge requirements for the Elk River so that the county can keep its financial strength. The decisions of the Board will weigh heavy on the families in the county and families of Pacific Lumber Company. Mr. Anderson urged the Board to adopt the waste discharge requirements.

James Holdener, an Elk River resident for 22 years, stated that the best company that he has worked for has been Pacific Lumber Company. There was a dyke built in the river and there has not been an investigation to what degree, if any, the dyke contributes to the sediment in the river.

Ralph Krause congratulated the Regional Water Board staff on developing the waste discharge requirements. He expressed his hope that the new Pacific Lumber Company will work to give back the river.

Guy Bravo, a Pacific Lumber Company employee, the waste discharge requirement is an order that will allow the workers of Pacific Lumber Company to continue to work. He read a passage from the bible, Book of Roman chapter 1. There are employees of Pacific Lumber Company that will keep the company accountable.

John Sneed requested that the board consider the staff recommendations for the waste discharge requirement. He stated that Pacific Lumber Company recognized that there was a problem, new equipment was purchased, and specific people were hired to address the problem.

Rod Sanderson, a Pacific Lumber Company employee, believed that all of the goals for those in the room are pretty much the same. He is encouraged that staff and Pacific Lumber Company are working together. He requested that the Board adopt the waste discharge requirement as presented.

Kristy Wrigley, lives in Elk River, stated that there was a significant loss in her crop of apples. She was able to pick 80 25-pound a boxes of apples when she should have picked 1000 25-pound boxes. She requested that the board wait until the science panel before making a decision

Ron Bush, a Pacific Lumber Employee, requested the Board to adopt the waste discharge requirement. Mr. Bush gave a history of his family's residence in the Humboldt area. Pacific Lumber Company makes quality products to the safest and the least damaging way possible to the environment. He urged the Board to make the best decision possible, so that Pacific Lumber Company can operate.

Dennis Schlotzhauer encouraged the Board to accept the staff's recommendation. He asked that the agencies continue to work together and have meetings. He thanked the Executive Officer of the Regional Water Board and the administration of Pacific Lumber for their efforts.

Jessie Noell asked for clarification on what basis would the Board base their discussion on the information they have at the present. He reviewed the September 2000 staff report that cited information on landslides. Mr. Noell also asked to what extent will the Board's decision be based on economic grounds.

Mr. Grundy restated his statement of clarification on the information the Board will base their decision on today. He indicated in his previous statement that any actions the Regional Water Board take at the meeting will be based on information received previously and not solely on information that is presented here today.

Wayne Rice stated that Pacific Lumber Company was doing mitigation over and above what all other companies were doing. Past practices that have cause problem in the basin has been significantly in the past. He encouraged the Board to adopt the Order.

Adrian Miller stated that she has worked with the Regional Water Board staff and in the last six months and there has been a great improvement in communications. He discussed the habitat conservation plan.

Michael Duffy indicated that if the waste discharge requirements are necessary then they should be adopted. He read a pre-written statement advocating the Board to adopt the order.

Ken Miller stated that it is a little difficult to know what "the best available scientific information" means. Mr. Miller implied that the economic future of the county does not rely on Pacific Lumber Company.

Harriet Hill asked what constituted a controllable discharge. Frank Reichmuth responded.

Jan Krapelien gave information on what the residents of the watershed have done to bring the meetings and investigations to this point. He stated that the rate of logging is a significant issue. Mr. Krapelien requested the Board to expand on the procedures they are taking to resolve the issues in the watersheds. He invited Mr. Manne of Pacific Lumber Company to attend the residents meetings.

MOTION: John Corbett moved to adopt *Order No. R1-2002-105* the waste discharge requirement with the Errata sheet. Richard Grundy seconded the motion.

v. Public forum opened to late arrival.

Doug Smith, lives in the Little River area, indicated that he has read Simpson Timber Company's new HCP that stated that harvest activity causes sediment increase of 30 to 300 per cent. He stated that that is 10 per cent more than the Basin Plan allows. He suggested that the Board re-read Leslie Reid's report as well as his report that he had previously admitted into the record.

The Chairman opened the motion for discussion after a brief interruption for a late public forum item.

John Corbett stated that the HCP is fairly strict and the issue comes down to accumulative impact and current THPs causing a problem rather than past problems. He stated that despite many criticisms, the accumulated impact is scientifically challenged. Mr. Corbett indicated that he believes that the Board can work with the HCP to bring out existing problems. The size of this motion is historic. He stated that as we build on what happens from this day, it should be a wake up call to the Regional Water Board, CDF, and Pacific Lumber Company that we will need to address issues early and problem solve better.

Mr. Grundy stated that it was clear that this is a major step forward for the Board. He appreciated the comments made today on cooperative actions among the staff and other agencies. He would urge Pacific Lumber Company to do something with all the pending

appeals and matters that are still in abeyance by setting them aside and move forward. There is a need for trust, good faith, communication, and negotiation.

Bev Wasson supported Mr. Corbett in his statement that the issue is cumulative impact and current THP's causing a problem rather than past problems. Ms. Wasson indicated that the waste discharge requirements do not give the discharger permission to pollute. If discharge does occur, the Regional Water Board has the responsibility as a Board and Agency to fine the discharger.

Shawn Harmon referred to a comment letter dated October 30 from Steve Horner. Mr. Harmon asked Mr. Horner to elaborate on the reasons it would be a hardship to provide a 45-day notification of pesticide. Mr. Horner stated that he has since talked to Nathan Quarles and Diana Henry and came to the understanding that the waste discharge requirement referenced all/any sediment. Mr. Horner publicly rescinded his statement that the Regional Water Board staff was biased to require Pacific Lumber Company to submit a 45-day notification of pesticide.

MOTION: Motion passed unanimously.

John Selvage entered the Board meeting at 10:50 a.m.

The Board observed a 5-minute break.

Other Business

2. Resolution for John Selvage

Susan Warner read the Resolution for John R. Selvage, whose term expired on November 30, 2002.

Chairman Massey expressed his appreciation for the service of John Selvage and stated that he hopes that he will come back and visit.

Mr. Selvage stated that he better understands the challenges of the Board now, and he wished the Board the very best.

The Chairman directed Jean Lockett to inform Mr. Selvage of all the Board's dinner reservations when in the Eureka area.

MOTION: Corbett moved to adopt the Resolution and the Errata for John Selvage. Richard seconded. Motion passed with Mr. Selvage jokingly recusing himself from the item. Motion passed unanimously.

4. Executive Officer Administrative Civil Liabilities

There were no Administrative Civil Liabilities reported as issued.

3. State and Regional Water Board Communications

Susan Warner stated that Gary Carlton, State Water Board liaison was not present. However, it was a time that the Board members could update each other on items of interest.

Richard Grundy requested clarification on the section 303d list. He requested to discuss the reasons why the State Water Board overruled the Regional Water Board. Ms. Warner stated that the topic could not be discussed in depth because of a noticing issue. Ms. Warner stated that a presentation will be added to a future agenda for a full discussion. Ms. Warner suggested that the list is current.

Mr. Grundy stated that he had read the preliminary interagency agreement between the State Water Resource Board and the Department of Forestry. He stated that he needed clarification on some of the language and other areas of the draft. Mr. Grundy indicated, although the Board delegated the authority for the Executive Officer to sign the agreement, he preferred that the Executive Officer with hold her signature.

Ms. Warner responded by saying that she would not want to sign such a document that the Board did not support. She indicated that Frank Reichmuth had been assigned to represent all of the Regional Water Boards and work with the State Water Board's staff and the California Department of Forestry to modify the language.

John Corbett requested the dates that the MAA will be addressed. Ms. Warner responded by saying that she was uncertain on the dates that the State Water Board planned to address the MAA.

5. Recommendations for Agenda Items for Future Board meetings.

Richard Grundy stated his concern on not setting a date when the Board will get back to the other four watersheds.

MOTION: John Corbett moved to put on the next Board meeting agenda (schedule a public hearing) for the Board to have an update on Bear, Jordan, and Stitz Creek, and Freshwater. Bev Wasson seconded the motion. Motion passed 5-1, with Dina Moore dissenting.

There being no further business to come before this meeting body, the meeting adjourned at 12:41 P.M., until the next scheduled Board meeting on December 5, 2002.

The Secretary, E. Jean Lockett recorded the minutes of the November 7, 2002, meeting of the North Coast Water Quality Control Board, to be approved by the Board at a subsequent Board meeting.

_____ Chairman

_____ Date