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Sent via electronic mail to: northcoast@waterboards.ca.gov on date shown below

September 21, 2016

Mr. Mathias St. John
Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

RE: EPIC Comments Regarding Proposed Elk River WWDR for Humboldt Redwood Company LLC (Order No. R1-2016-004)

Dear Mr. St. John and Regional Board Staff and Members:

The following comments are submitted on behalf of the Environmental Protection Information Center (EPIC) regarding the proposed Waste Discharge Requirements for Nonpoint Source Discharges and Other Controllable Water Quality Factors Related to Timber Harvesting and Associated Activities Conducted by Humboldt Redwood Company, LLC in the Upper Elk River Watershed (ORDER NO. R1-2016-0004) (“Proposed WWDR”).

The Proposed WWDR is an improvement over the existing regulatory WWDR. EPIC supports the authority of the Regional Board in adopting regulatory controls to uphold its statutory mandate to protect the quality and beneficial uses of waters of the State, such as the proposed WWDR, as well as the necessity—and duty—to do so in the case of the Upper Elk River Watershed, given the heavily impacted watershed conditions and the unreasonable burden that these conditions place on the public, especially local residents, beneficial uses and natural resources.

For numerous years, progress in Elk River has been frustrated by heel dragging by both the Regional Board and the regulated community. Enough is enough. EPIC appreciates the commitment and rigor of Regional Board staff in preparing and revising the Proposed WWDR. EPIC further appreciates commitments made by Humboldt Redwood Company, LLC (“HRC”) in their amendment to the Report of Waste Discharge agreeing to reduce their future rate of harvest to levels below 1.5% through the year 2034 throughout the entire Upper Elk River watershed. EPIC asks that the Board act now on the Proposed WWDR.

Specific Comments Regarding Draft Order

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As outlined in the Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015), there is zero assimilative capacity for additional sediment in the “impacted reach” of the Upper Elk River. While the Regional Board has some measure of discretion in achieving water quality objectives, including permitting activities that will delay ultimate achievement of water quality objectives—here, permitting logging and associated discharges into the severely degraded Upper Elk River watershed—the Regional Board’s discretion is not without limit. As expressed in the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (May 20, 2004) (“Nonpoint Source Policy”), the Proposed WWDR may not take longer than is “reasonably necessary.” Further, the Nonpoint Source Policy contemplates that the Regional Board will continue to monitor and evaluate the effectiveness of the Proposed WWDR and will increase protective measures—and not abandon water quality objectives—should the Proposed WWDR prove insufficient.

EPIC believes the following features of the Proposed WWDR are the minimum necessary protections to help move Elk River towards recovery in a timely fashion.

1. Limitation on Harvest Activities in High-Risk Sub-watersheds

To the extent the Regional Board chooses harvest limitations over prohibitions, the harvest limitation within high-risk sub-watershed, Section I(A)(4) are reasonable in order to ensure reductions in non-point source sediment discharges from anthropogenic sources in the Upper Elk River Watershed. These high-risk sub-watersheds were identified by the Regional Board based on probabilistic landslide hazard, bedrock geology, and observed sediment production from 2000-2011. EPIC believes that a limitation on harvest is the single most effective protective measure available to the Regional Board. Because of the severely degraded condition of Elk River, and that the proposed harvesting restriction is the minimum standard necessary to move the Elk River towards attainment of water quality objectives in a time-scale reasonable to Elk River residents.

EPIC further supports a reevaluation of the effectiveness of the harvesting restrictions, as envisioned in Finding 60 of the Proposed WWDR. However, should water quality conditions not improve drastically in that time, it is imperative that the Board increase water quality protections, including the potential to implement a harvesting prohibition to ensure attainment of water quality objectives and abate nuisance conditions.

Absent drastic improvement, the Regional Board *must not* reduce the water quality protections envisioned in this Proposed WWDR. Anything else would put the Elk River further away from attaining its water quality objectives and would be in violation of the Nonpoint Source Policy, the Clean Water Act, and the Porter-

Cologne Water Quality Act and the North Coast Regional Water Quality Control Plan.

Lastly, three of the five high-risk subwatersheds subject to the harvest restrictions, McCloud Creek, Tom Gulch and Railroad Gulch, also have Green Diamond ownership. Green Diamond owns 1,900-acres in these sub-watersheds. Green Diamond's timber operations in these sub-watersheds are not constrained in any way by this Proposed WWDR. Rather, Green Diamond is currently subject to its property-wide WDR, Order No. R1-2012-0087, which includes a special South Fork Elk River Management Plan, referred to as Attachment C to the Order. The South Fork Elk River Management Plan presently allows Green Diamond to harvest as much as 75 clearcut acres-per-year, on a three year rolling average. All of Green Diamond's South Fork Elk River ownership is in three of the five "high risk" sub-watersheds, in which HRC would be prohibited from harvesting for the next five years.

After completion of the Proposed WWDR, the Regional Board should turn to examine whether Green Diamond's property-wide WDR is sufficient to move the Upper Elk River towards recovery and attainment of its beneficial uses. The Regional Board should amend or reissue a new WDR and include similar temporary no-harvest limitations if the current Green Diamond WDR is found lacking.

2. Enhanced Riparian Management Zone Prescriptions

Requirements in the Draft Order for enhanced Riparian Management Zone (RMZ) buffers beyond HCP and Watershed Analysis prescriptions that also include enhanced basal area retention requirements are an important improvement, particularly as they pertain to Class III watercourses, which, to this point, have clearly received inadequate protections. The Regional Board has long-understood that measures prescribed in the HCP and subsequent Watershed Analysis Prescriptions developed by PALCO and then HRC were not specifically designed, and not likely adequate, to protect beneficial uses of water, obtain water quality objectives, or to prevent or abate nuisance sedimentation and flooding conditions in the Upper Elk River Watershed. The results of the Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015), as well as the monitoring observations of Salmon Forever and others, clearly demonstrate that HCP and Watershed Analysis prescriptions have simply not been enough to stem the tide of sedimentation, and aggradation in the Upper Elk River Watershed resulting from contemporary timber operations.

To the extent that the Regional Board intends to permit waste discharge requirements to support ongoing timber operations, the measures contained in the Draft Order represent the bare minimum of what is necessary to curtail further sediment contributions from contemporary timber operations conducted by HRC given the well-documented degraded instream conditions in the impacted reach of

Elk River. Quite simply, more is needed to ensure that the zero load allocation attained.

3. Discretionary Enrolment

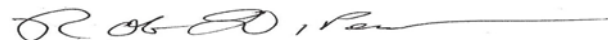
EPIC strongly supports the provisions in the Proposed Order granting the Regional Board Executive Officer discretion over enrollment of individual THPs until January 2020. Given the uncertainty of the effectiveness of permitting further waste discharge from timber operations, as well as the uncertainty of the effectiveness and implementation of instream recovery efforts, the Regional Board's Executive Officer must retain discretionary control over THP enrollment to ensure that water quality objectives are being attained, nuisance conditions are being abated, and watershed recovery is progressing in a meaningful and measureable fashion.

EPIC is concerned that the Regional Board would limit the Executive Officer's power after January 2020 years without any benchmark of improved conditions. EPIC recommends that the Regional Board discard the January 2020 timeline for a transition from discretionary enrollment to ministerial enrollment as articulated in this Draft Order, as this timeline locks in a presumption and expectation that the enrollment procedure will perfunctorily and automatically change, regardless of what the evidence may show about the effectiveness of controls during the first five-year period. Rather, EPIC suggests that the Regional Board table the prospect of future ministerial enrollment to a later date when the effectiveness of the strategies of this Draft Order, and any ongoing recovery efforts, can better inform the determination as to whether ministerial enrollment is appropriate and justified.

Conclusion

EPIC requests that the Regional Board take EPIC's comments and concerns under advisement. Please do not hesitate to contact us should there be any questions, and thank you for this opportunity.

Sincerely,



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