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Sent via Electronic Mail to: northcoast@waterboards.ca.gov

North Coast Regional Water Quality Board
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**Re: PCFFA and IFR Comments Regarding Upper Elk River Total Maximum Daily Load
Action Plan and Basin Plan Amendment**

Dear Board and Staff Members:

We concur with the comments of Friends of Elk River, and their proposed Elk River Recovery Plan People and Fish Option; also with the comments of EPIC, and include them by reference.

Given the recent legal challenge to the Regional Water Board Executive Officer's authority by Humboldt Redwood Company to trump CalFire's approval of certain Elk River timber harvest plans, it is critical for the Water Board to assert its authority, duty and direction to act in the public interest. To deal affectively with a variety of land use problems that affect or may affect water quality and the 26 beneficial uses of the surface and groundwaters of the State, we recommend you begin the Final Action Plan with this statement from your Tetra Tech report: Cha 1.2, pg 2:

The Regional Water Board has a duty to implement the Clean Water Act, the Porter Cologne Water Quality Control Act (Porter Cologne), the *Water Quality Control Plan for the North Coast Region* (Basin Plan; Regional Water Board 2011a) and other plans and policies of the State Water Resources Control Board and Regional Water Board for the protection of water quality. The (Upper Elk River: Technical Analysis for Sediment, Oct. 21, 2015).

Moreover, several precedent setting Federal and State court decisions have reinforced that the Regional and State Water Boards have an affirmative duty to protect, enhance and maintain the public trust resources of the State (Audobon Society vs. Superior Court, 1983, including the settled case law cited or incorporated by reference therein).

The February 5 Workshop in Eureka helped explain the complex Action Plan. Clearly the staff has worked hard to be thorough in describing the sediment problem in Upper Elk River watershed. However, the Action Plan falls short of addressing the sediment problem in several significant ways.

First and foremost, it is counter-intuitive to keep adding sediment, via allowing ongoing logging operations, while just beginning the planning stages of remediation in the lower, affected reach. Priorities seem to be reversed: the first priority of the Water Board must be to uphold its affirmative duty to make an Action Plan that will attain the Water Quality Objectives, not to provide the discharger with mitigations based on the company paying for assessment of activities that have not yet been identified or described.

Logging needs to be halted until recovery of the beneficial uses is attained.

Actions that need to be taken in the upper watershed could be required of the landowner to restore the ecological functions of the forest to assimilate, infiltrate and filter water, recharge the groundwater, and meter water into the river. Requiring such would be equivalent to the treatment, for example, of cannabis growers in the Cannabis Waiver who have bought land with legacy road and sediment problems.

The Board TMDL Action Plan is supposed to be equivalent to a project subject to CEQA; therefore, it needs to contain the elements of CEQA. Actions must be described, alternatives must be described, and their possible effects described and fully mitigated. Counsel Samantha Olson stated at the Workshop that the staff had considered a full moratorium on logging in the watershed. That alternative and other alternatives should be included and analyzed as Options in the Draft Action Plan.

The CEQA compliance needs to at least include Potentially Significant Impacts from the CEQA checklist, such as:

I. AESTHETICS -- Would the project:

c) Substantially degrade the existing visual character or quality of the site and its surroundings?

II. AGRICULTURE RESOURCES: Would the project:

c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?

IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community

identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

iv) Landslides? b) Result in substantial soil erosion or the loss of topsoil?

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

(Forest topsoil/sediment smothers young fish and their food; turbidity prevents proper feeding.)

g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements?

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

- f) Otherwise substantially degrade water quality?
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- j) Inundation by seiche, tsunami, or mudflow?

IX. LAND USE AND PLANNING - Would the project:

- a) Physically divide an established community? (Headwaters Bridge)
- b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?
- c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

XV. TRANSPORTATION/TRAFFIC -- Would the project:

- e) Result in inadequate emergency access?

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

- a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
- b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
- c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

The Action Plan must also comply with the Five Key Elements of the Regional Board's own Non-Point Source Policy. There has to be certainty of the effectiveness of the mitigations. That is not possible when the mitigations have not even been described. The Draft Actin Plan should include, in summary:

- 1) Program purpose explicitly stated;
NPS pollution addressed to achieve and maintain water quality objectives and the beneficial uses
- 2) Actions described; likelihood of attaining water quality objectives assured
- 3) Time frame described, where time is needed
- 4) Feedback mechanisms designed—is it working?
- 5) Consequences of failure to attain water quality objectives made clear

Alternatively to putting all the burden of cost on the landowner, we propose that the State agencies responsible for allowing the past violations of discharge prohibitions could find funding, either through disaster relief, Prop 1 monies, AB1492, or other public sources, to hire the skilled workers of the timber companies and other affected parties to do the work needed to restore ecosystem function of the hillslopes using commonly known techniques including those from the BAERcat Manual and the Technical 19 report of the Redwood National Forest.

There are precedents for restoration jobs programs to hire the affected parties to do restoration. That would include timber company employees, neighbors, fishermen, and other stakeholders who are able to do monitoring or active restoration work. Three precedents for this type of program are:

1. Disaster relief for fishermen in 1989-91 (Northwest Emergency Assistance Program, or “Hire the Fishermen”) when ocean fishing for salmon was closed for Klamath stocks and coho, was received in the form of grants to do stream restoration, fish counts and habitat typing. This was at the request of the fishermen.
2. In the Klamath Basin Fisheries Resource Restoration Act (Klamath Act), restoration was designated to be done by affected parties: Tribes, fishermen, others whose livelihoods depend on the area’s commercial resources and were being impacted by poor water quality conditions in the river.
3. Additionally, President Reagan, in his signing statement of the Klamath Act in October 27, 1986, said:

I am pleased today to approve H.R. 4712, a bill that authorizes the Secretary of the Interior to promulgate regulations to increase the stock of fish in the Klamath River Basin and related areas. In signing this bill, I am stating my interpretation of certain of its provisions in order to make certain that the bill is implemented in a constitutional manner.

First, the bill requires that certain restoration work be performed by unemployed persons who are commercial fishermen, Indians, or other persons whose livelihood depends upon commercial resources in the area. If the reference to Indians were an express racial classification, a serious constitutional issue would be raised. I understand from the legislative history of the bill that this reference, however, is not to be viewed as a racial classification, but simply as a reference to one of the groups whose members are most likely to depend on the commercial resources of the area. Accordingly, I sign this bill understanding that the Secretary of the Interior will give preference in employment only to Indians whose livelihood depends on the area's resources.

Page 78 of the Tetra Tech analysis, Section 8.3, Watershed Stewardship, reads:

A key, and overarching, component of implementation is to convene a participatory program that engages community members, residents, scientists, land managers, and regulatory agencies in developing a collaborative planning process that seeks to enhance conditions in the Elk River watershed. The Elk River Watershed Stewardship program will include the entire Elk River watershed and will work to accomplish the following goals:

1. Promote shared understanding and seek agreements among diverse participants....

The timber industry has fixed costs and requires private investment capital. It has to be competitive to survive. Timber workers are highly skilled and want to do good work. The North Coast is still feeling the effects of the liquidated inventory of saw timber. Our area recently saw another mill close in Arcata in January this year; Sierra Pacific Industries laid off 123 employees.

“A fall-off in the amount of suitable timber for sale in this area, coupled with flat home construction in the U.S., and increased lumber imports from Canada have all played a role in our decision to close the mill” said SPI spokesman Mark Pawlicki. “But, make no mistake, the largest factor was that the type and size of logs that this mill cuts are simply not available in ample supply to continue to run the mill,” he added (Lost Coast Outpost, Jan 25, 2016).

Pacific Lumber Company knew in at least June of 1990, from the report they commissioned from Pacific Meridian to analyze the environmental impacts associated with their Timber Management Program, that if they chose the most aggressive alternative of four timber management regimes presented, which they proceeded to do, timber jobs would plummet starting around 1998. Essentially no “old growth” would remain on their land by 2003, and “residual stands after harvest” would decline to nothing by 2007. “Young growth stands remaining after harvest” would not start being cut until 2003, and “sub-merchantable stands” would slowly increase. The report said:

“With careful planning, P.L. can minimize environmental and social impacts of their timber management program, while continuing to operate profitably.”

Instead, the company chose to maximize their harvest, apparently with bankruptcy as a business plan, since the company did not pay down its debt. In January, 2007, when Pacific Lumber Company filed for Chapter 11 bankruptcy protections, the SF Chronicle reported:

Jerry Partain, a retired forestry professor and former Director of the California Department of Forestry who has often sided with Pacific Lumber, said, “To a certain extent the environmentalists have been right” because the higher rate of tree cutting “came at the expense of environmental protections.”

The same Jerry Partain was Director of CDF in 1978 when Eureka Superior Court Judge Frank Peterson found that some of P.L.’s harvest plans were approved by CDF before they were even completed, leaving the Water Quality and Fish and Game officials believing their concerns would not be considered (L.A. Times, Nov 1978.)

"It appears that California Department of Forestry rubber stamped the timber harvest plans as presented to them by Pacific Lumber company and their foresters," the judge wrote. "It is to be noted that in their eagerness to approve two of these (three) harvest plans (the department) approved them before they were completed," [Judge] Petersen said....

The judge said the "most distressing" finding was that water quality and fish and game personnel believed that the Forestry Department would not take their findings into consideration....

State Forestry Director Jerry Partain and a Pacific Lumber Co. spokesman said Tuesday they were disappointed with the decision.

In a 1985 hearing before the Assembly Subcommittee on Timber, Assembly Subcommittee on Rural Economic Development, Jerry Partain, while Director of CDF, spoke to “Job loss in the timber industry.” After the old growth is logged, there is an expected drop in employment while the young trees are growing, and a shift to other types of products than saw logs.

And whenever you harvest all of the old growth in an area as we did in the New England states and moved to the lake states, and on into the South and into the Pacific Northwest and then down here. When you go through that cycle, you harvest all the old growth, that’s where the gravy is, that’s where the big stuff is, that’s where the large volume is and once that goes on, you do have a lag period there for the second growth, the young growth to catch up and it will never come back probably to that total volume on the site.

However, you’ll harvest it more frequently so ...we will not be able to maintain the harvest rate that we’ve attained in the last...twenty years. That will decline or continue to stay flat for a while before it starts to rise after the turn of the century. “What happens in the future is you use different kinds of products.

Chip board and pecker poles, not saw logs, certainly not 30+ inch saw logs....

We propose a jobs program to help the timber company get through the tough transition predicted by the company from whom they inherited the cut-over lands while we recover the aquatic functions of the Elk River.

Thank you for considering our comments.

Vivian Helliwell
Watershed Conservation Director, PCFFA and IFR

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