MINUTES OF MEETING
Thursday, December 5, 2002
River Lodge Conference Center of the Eel River Valley
1800 Riverwalk Drive
Fortuna, California

Chairman William Massey called the Regional Water Board Meeting to order at 9:07 a.m.

i. Pledge of Allegiance

Richard Grundy led the Pledge of Allegiance

ii. Roll Call and Introductions:

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

Regional Water Board staff: Executive Officer, Susan Warner, Assistant Executive Officer, Frank Reichmuth; Legal Counsels, Sheryl Freeman and Erik Spiess; Administrative Officer, Kathleen Daly; Interim Division Chief, Nathan Quarles; Technical staff: Ben Kor, Technical Assistant, Terri Korell; Secretary Jean Lockett

iv. Board Members Ex Parte Communication Disclosure

The Chairman called for any ex Parte communication disclosure from Board members. Sheryl Freeman to gave a brief overview/explanation of ex parte communication for Board members. Ms. Freeman stated that it was an opportunity for Board members to disclose any ex parte communications that they may have had regarding any item(s) on the agenda. The Chairman called for such disclosures from the Board members, if any.

John Giorgi indicated that a letter of recommendation was written for him by Fred Emerson, the owner of Emerson Ranch in Weed. Mr. Giorgi also reported that he participated in a field trip on the Timber Products of California lands, located in Yreka, to observe how the company's logging practices are conducted.

iii. Minutes of Past Meetings

The minutes of the June 27, 2002, and August 22, 2002 Board Meetings were presented for acceptance.

MOTION: John Corbett moved to accept the June

27, 2002 minutes. Bev Wasson seconded the motion. Motion passed unanimously.

MOTION: John Corbett moved to accept the August 22,

2002, minutes. Bev Wasson seconded the motion. Motion passed unanimously

v. Public Forum:

There were no speaker cards presented for the public forum.

CONSENT CALENDAR

 Order No. R1-2002-0110 Waste Discharges Requirements for Pierson Lumber Company, for in-situ remediation of soil and groundwater contaminated with petroleum hydrocarbons, Humboldt County WDID 1B02144RHUM

Susan Warner stated that there were no changes for this item.

MOTION: Bev Wasson moved to adopt Order No. R1-

2002-0110. John Corbett seconded the motion.

Motion passed unanimously.

OTHER BUSINESS

3. Review of Cleanup Activities related to Discharges of Pentachlorophenol and other materials at the Sierra Pacific Industries Sawmill site on Humboldt Bay.

Dean Prat gave the Board background information on the Arcata Division Sawmill that is located on Samoa Road in Arcata. The sawmill is bordered on the east by the Mad River Slough, a tidal channel that drains to the northern end of Humboldt Bay.

Mr. Pratt displayed slides to demonstrate the lay out of the sawmill as it exists today. He briefly covered the sawmill's storage procedures and treatment operations. In 1981, samples of runoff from the facility revealed that PCP and TCP were detected in some of the discharges to the Mad River Slough. A National Pollutant Discharge Elimination System (NPDES) Permit that included a time schedule was adopted to eliminate the discharges of wood treatment chemicals. The Executive Officer issued a Cleanup and Abatement Order in October 2001.

On May 1, 2002, SPI submitted a feasibility study, entitled *Interim Feasibility Study to Remediate Chlorophenols in Soil and Groundwater* (IFS). Monitoring well installation activities were scheduled for mid-November 2002. The reports of field activities were not available for today's update.

Mr. Prat reported on a report by Dr. Lappe, Consulting Toxicologist and Director of the Center for Ethics and Toxics. The report concluded that contaminants at or near the SPI site continue to pose an imminent and substantial endangerment and risk of harm to aquatic life and to any humans who routinely catch and use shellfish, crabs or fish obtained at or near the site in their diet. These reports were presented to the staff at the Humboldt County Health Department, California Department of Health Services, California Department of Fish and Game, and Cal EPA's Office of Environmental Health Hazard Assessment. The Regional Water Board staff will continue working with these agencies through the completion of the Human Health and

Ecological Risk Assessment. Mr. Prat concluded by stating that, to date, the Regional Water Board staff was not aware of any actions that other regulatory agencies have taken regarding health advisories or postings for the consumption of fish or shellfish from the vicinity of the SPI site.

Shawn Harmon asked if staff was able to identify the source of the PCP. Mr. Prat stated that staff believes that old culverts that collect surface run-off may have been responsible. SPI has since put in separators to prevent solids from being discharged and to collect floating material. The subdrain was replaced but had numerous holes in it. Staff now believes that the contaminated shallow groundwater was getting into the culvert pipes where samples are being collected.

Petra Taylor, with the Californians for Alternatives to Toxics, stated that the Department of Health Services looked at the oysters and had concerns. Ms. Taylor indicated that the Department of Health Services will conduct their own studies of the oysters. She suggested that the Regional Water Board needed more information to make an informed decision.

Ashley Bush, representing Californians for Alternatives to Toxics, stated that the Environmental Protection Agency is investigating the toxicity of dioxins and they believe that the studies will show that dioxin is more toxic then believed. Ms. Bush gave information on the effects of dioxin on infants. She requested that the Board not make a decision on SPI until the results of the Department of Health Services test are received.

Christine Ambrose, representing Coastal Advocates, stated that she hoped that the Board and the Humboldt District Attorney will not act hastily and settle prematurely with SPI. She requested that the Board ensure that SPI follow the Cleanup and Abatement Order.

Patty Clary introduced a map of the SPI sawmill to show contaminated sites identified by the Regional Water Board staff. Ms. Clary stated that the Board should be aware of penta found in the discharge areas in the surface. SPI or the Board is not aware of the full extent of the contamination and how it continues to reach water. Until the Board and SPI are aware of the full extent of the contamination, there should not be a settlement.

Richard Grundy asked how long will it take to get the results of the tests. Ms Warner stated that SPI indicated that they will have results in February 2003.

Erik Spiess stated that any settlement agreement with SPI will be subject to a 30-day public notice for comments according to Clean Water Act regulations.

Break observed at 10:10 a.m.

Dina Moore joined the Board at 10:25 a.m., and recusing herself, took no part in item number three (3).

2 Update on Central Valley Regional Board Work Efforts in Considerating a Policy Waiving Waste Discharge Requirements for Irrigation Return Flows.

Ben Kor briefly recapped the October 24 Board Meeting where the Regional Water Board reviewed and re-adopted its waiver policy. However, the Board deferred action on the categorical waivers for irrigation return waters and pesticide rinse waters from applicators. Mr. Kor stated that the day's discussion is for staff to get direction from the Board on categorical waiver.

Mr. Kor reviewed the Regional Water Board staff report that covered the Central Valley's draft waiver policy for irrigation and return waters. He stated that the draft waiver policy defines discharges from irrigated lands as tailwater, operational spills, subsurface drainage from installed drains, and stormwater runoff from irrigated lands. The Central Valley's tentative policy called for enrollment from those who request a waiver. The categories for enrollment are:

Category 1 – Watershed Working Group Enrollment and Compliance

Applies to irrigation return water dischargers who participate in a group effort on a watershed level to comply with the conditions of the waiver.

Category 2 - Individual Enrollment

Applies to individual dischargers who do not participate in a group watershed effort.

Mr. Kor covered the requirements of both categories for dischargers to be in compliance. He added that the Board left open the question of a waiver for pesticide discharge for applications and the staff continues to recommend to the Board that they not develop a categorical waiver for the catatogory discharge.

Mr. Kor discussed and compared the common and uncommon elements of both the Central Coast and the Central Valley Regional Water Boards' waivers. He discussed the steps that the two regions are taking to address issues of the waiver programs.

Mr. Kor suggested that the North Coast Region would relay on the tier 1 approach, a self-determination approach to address waiver issues. He also suggested that the Board use some of the same elements of the Central Coast and Central Valley's approaches, such as: the enrollment process, the development of plans, development of monitoring programs and annual reports. Mr. Kor discussed the staff's recommendation to prepare a draft waiver policy addressing irrigated agriculture that is consistent with the statewide efforts and on a schedule that allows for consideration of other regional water board efforts.

The Board discussed enrollments, potential meetings with the agricultural commission, concerns with irrigated waters, and the next steps to take to accomplish the adoption of the waivers.

Richard Grundy asked if Mr. Kor had an idea of the number of people that would be covered under the program. Mr. Kor said that he was sure that the number would be thousands of people.

Bev Wasson suggested that the staff get input from the Agricultural Commissioner to help implement the waivers because of the farmers having to receive a permit from the Agricultural Commissioner.

MOTION: Richard Grundy moved to direct the staff to prepare a draft waiver policy. John Corbett seconded the motion. Motion passed unanimously.

Susan Warner suggested that the Board provide a time frame for the waiver draft to be brought back to the Board. Susan Warner stated that in order to make a March deadline, work among the staff will need to be redistributed. She indicated that a meeting with the Chairman to discuss redistribution of workload among the staff would be necessary. Dina Moore suggested that the draft be brought back to the Board no later then March. She stated that she strongly believes that there needs to be an irrigated waiver in place by May 2003 when irrigation season starts, because it might be a huge liability for the dischargers, and that would not be fair.

Sheryl Freeman reminded the Board that they had several options under the Water Code of 13269.

Ms. Moore directed staff to look into Region 5's handbook.

Discussion of Draft Memorandum of Understanding Between State and Regional Water Boards and the California Department of Forestry and Fire Protection

Frank Reichmuth addressed the Board by giving a brief background on how the MOU was established. Section 208 of the Clean Water Act provided for a process where the state could designate management agencies to control non-point source discharges from timber harvest activities to waters of the state. Mr. Reichmuth discussed the Management Agency Agreement (MAA) that was approved in 1988 with the State Water Resource Control Board, Board of Forestry, and California Department of Forestry. The MAA identifies the goals of the agencies to protect water quality by achieving the water quality objectives set forth in applicable Basin Plans of the State. It identifies the Chairpersons of the Board of Forestry, State Water Board, and director of the California Department of Forestry as the interagency liaison committee. The Director of Fish and Game is also invited to serve on the interagency liaison committee.

Mr. Reichmuth stated that the main issue to establishing the Memorandum of Understand (MOU) is to have the intermediate conflict resolution. The Head-of-Agency appeal process is designed to let the Department of Fish and Game and the State Water Board appeal the approval of a THP by the CDF decision-maker to the Board of Forestry.

Mr. Reichmuth indicated that other regional boards and California Department of Forestry made comments on the first draft of the MOU and came up with areas that should be addressed in the MOU, such as:

- ◆ The application of the California Environmental Quality Act (CEQA) to the timber harvest document review process: The MOU should provide for times in the CEQA process when the Regional Water Board staff is not available, providing that the Department of Forestry would review the Basin Plan to make sure that water quality is protected.
- ◆ The use of Water Quality Standards and Basin Plan review of THPs: If regional boards staff cannot participated in the review team the harvest plans when reviewed, the application must comply with the Basin Plan.
- ◆ The cumulative impact analysis and protection of water quality in impaired water bodies on the 303(d) list: Need to go through a stepwise procedure to avoid those projects that would cause an addition to the impact of the watershed.
- ♦ The coordination of the waiver of waste discharge requirements with approval of THPs in compliance with the Basin Plans
- The Department coordinate on mutually set dates when staff can participate on the inspection so if an agency is not present recommendation would not be made that would be in conflict with that agency.

The MOU defines long term monitoring, short term monitoring, and Hillslope monitoring.

Ms. Moore asked if it would be appropriate to address cumulative watershed effects in the Basin Plan. She asked clarification on the application of CEQA for timber harvest plans and when would the Board address the issue.

Mr. Reichmuth responded that when CDF acts as the lead agency under CEQA, CDF must consider all environmental effects and may go beyond the forest practice rules to satisfy requirements of CEQA. Mr. Reichmuth stated that the Regional Water Board staff often ask that the Department consider some of the issues that come up that may be beyond the forest practice rules, but may be necessary for water quality.

John Corbett thanked the State Water Board and CDF, and the Regional Water Board staff for working on the MOU. Mr. Corbett stated for clarification that the MAA is different then the MOU, as the MAA is to implement the MOU. However, he indicated that there was one reference that may have been incorrectly stated and that was the law reference to 4514.3 of the Forest Practices Act, and the statement was that "upon EPA certification no waste discharge requirements would be issued". Mr. Corbett stated that a careful reading of the act section B 1 through 3 communicates that a waste discharge requirement can be issued if requested by the Board of Forestry.

Mr. Corbett stated that he had a few concerns:

- 1. Provisions in the MOU could preclude the use of zero net discharge, and that is in the provisions where a private land owner could not use any offsetting activities for any discharges they were responsible for.
- 2. With cumulative impacts, we need independent authority to designate cumulatively impacted watersheds on the 303(d) list.
- 3. Having adequate time to appeal is critical and the current time to appeal is not adequate.
- 4. If the MAA gets reviewed it is important that the Regional Board keep the problem solving process in effect, and we need to clarify when the MAA applies.

Mr. Corbett asked Ms. Warner to send the Board a written statement on the Board members' comments on this item and how staff understands those comments. He requested information on any conflicting statements made by Board members.

Richard Grundy stated that he was concerned that the Board had not solved the underlying problem of the Best Management Practices and to some extent the MOU. He stated that he had concerns that a MOU that is formulated in a way that limits the Regional Water Board's ability to deal with problems and deal with those problems as the Board deems necessary. Mr. Grundy suggested that there are some problems that are unique to the North Coast Region and should be handled by the region at the Board level. He also indicated his concerns with the terminology used in the MOU.

Mr. Reichmuth suggested that Mr. Grundy review a section of the MOU with the definitions of words used in the document.

6. Board Meeting schedule for 2003

Susan Warner introduced the meeting schedule for 2003. Ms. Warner informed the Board of a comment letter requesting board meetings in Siskyou, Trinity County, and other areas. There are nine meetings scheduled for the year with the possibility of additional meetings that may be added to the schedule. Ms. Warner stated that the region's budget might determine the number of meetings away from the regional board office. She recommended that the Board limit their meetings.

Bev Wasson requested that the August and September meetings be held in the Santa Rosa area. After discussion, the August Board Meeting was moved to Ukiah and the September Board Meeting was scheduled for Santa Rosa.

The Board decided to hold the goal setting meeting for Board members on the morning of January 24, 2003, and the Board sub-committee, Dina Moore and Bev Wasson, will meet with the Regional Water Board staff on January 23, 2003, and schedule a date for the Point Arena workshop.

John Giorgi informed the Board that he was not available for the October 23 Board Meeting. The October meeting was canceled and a November 6, 2003 was schedule for Yreka.

7. State and Regional Water Board Communications

Chairman Massey stated that the State Board liaison, Gary Carlton, was attending a hearing on waivers in Region 5 and was unable to attend Region 1's Board Meeting.

Those Board members who attended the Water Quality Coordinating Committee in November commented on the meeting.

Richard Grundy stated that he thought the WQCC meeting was very useful. The State Board shared their thoughts on what they felt the priorities the Regional Water Boards should be looking at. Mr. Grundy stated that it was useful information. Also, it was an opportunity to meet other Board members from other regions.

John Corbett stated that he thought that it was a useful conference and hoped that those who have an opportunity would attend. The issues discussed were those issues the Board is dealing with.

Dina reported that the Executive Officer of the State Water Board shared with Board members that the agency overall will go through a 20 percent budget cut and discussion followed regarding how the regions are going to handle the cuts. One of the important messages that Celeste Cantú relayed was that there will be programs that regional offices will not be able to do as they have done in the past, and the preference from the State Board is that the Regional Water Boards pick and choose those programs that were important and do an A+ job rather then try to do numerous programs and do C- work.

Susan Warner added that the next WQCC meeting was scheduled to be in the Lahontan Region around Lake Tahoe in April 2003.

8. Violation and Enforcement Report

Stand as written

9. Executive Officer Administrative Civil Liabilities

None issued

10. Monthly Report to the Board

Stand as written

11. Leaking Underground Storage Tanks/Sewage Spills

Stand as written

12. Proposition 65 Notifications

Stand as written

13. Others Items of Interest

None offered

14. Board Member request for future agenda items

Richard Grundy requested a briefing on the Russian River and the Public Health issues.

15. Executive Session: Closed Session items:

The Board recessed for lunch and immediately went into closed session at 12:05. The Board returned from closed session at 1:49 P.M. Chairman Massey re-introduced the Board Members. There were no reports made from closed session.

4. Consideration of State Water Resources Control Board WQO 2002-0019 in the Matter of the Petition of the Humboldt Watershed Council, Jesse Noell and Ken Miller (Petition), specifically to discuss the timeline for additional activities in Elk River and Freshwater, Jordan, Bear and Stitz Creeks.

Nathan Quarles gave background on the Water Quality Order 2002-0019 in the Matter of the Petition of the Humboldt Watershed Council. He covered 2 years of action taken by the State Water Board, Regional Water Board and Staff to respond to the petition.

Mr. Quarles stated that the Regional Water Board staff has initiated TMDLs in March 2002, developed monitoring agreements, and issued a Cleanup and Abatement Order in the summer of 2002. He covered the schedule of actions in Elk River, Freshwater Creek, and the other three watersheds.

Sheryl Freeman clarified that the petitioners have not exhausted their administrative remedies with the Regional Water Board, in response to a portion of Mr. Quarles' summary.

John Corbett complimented staff on having the in-stream trend monitoring along with the compliance monitoring.

Ms. Moore congratulated staff on a well-written presentation. Mr. Grundy asked what was the staff's priority in getting monitoring done in the five watersheds. Mr. Quarles stated that staff needed to develop a system that will identify the sources by using trend and project specific monitoring.

Jim Branham expressed Pacific Lumber Company's appreciation to the Regional Water Board staff for their communication and cooperative efforts in the last two weeks. Both Pacific Lumber Company and the Regional Water Board staff are not in agreement on everything as well they are not in disagreement on everything. However, Mr. Branham indicated that Pacific Lumber Company had serious concerns with what was being proposed at the meeting today, especially the timeframe for issuing a request for a report of waste discharge. It is Pacific Lumber Company's opinion that the actions proposed in the staff report aren't necessary to protect water quality. The state and federal government's analysis of Pacific Lumber's HCP says, "water quality conditions will improve in the watersheds as the HCP is implemented." He stated that additional actions of the Regional Water Board's regulation represent a third layer of regulations. Mr. Branham expressed several concerns. One of the concerns is the aquatic species represent one of the most significant beneficial uses of the watersheds. The responsible state and federal agencies that oversees the fishery resources has continually expressed the confidence and support that the HCP will create properly functioning habitat conditions

Dr. Kate Sullivan, with Pacific Lumber, gave the Board a brief update on the monitoring program. The Company currently has 25 sites for monitoring and 15 of the sites are being implemented. Dr. Sullivan reported that there were four different elements of the program that they were operating. The monitoring provided information for the Elk River TMDL, Freshwater Creek TMDL, and the monitoring data for the 201 and 520 THP. Dr. Sullivan gave information on the number of staff working on the monitoring stations and the preparations to prepare for the winter.

Jim Branham asked the Board to direct staff to add Pacific Lumber's submitted proposed additions for Tables 3 and 4 to the Regional Water Board staff report. Mr. Branham stated that

there were many activities going on that were not mentioned in the staff's report. He asked the Board to carefully consider the necessity for any additional orders.

John Clancy representing National Marine Fishery Services stated that the agency is very confident that the HCP will recover the aquatic species as the HCP is implemented. Under the HCP there is significant amount of monitoring that takes place. He encouraged staff to join in the monitoring program

Jessie Noel stated that the Regional Water Board is in charge of the laws that protect water quality for health and safety. There has been an enormous amount of financial losses due to the damage of homes and the water quality. The HCP does not accomplish what it needs to do to protect water quality.

Ken Miller stated that about 1800 acres has been cut. Mr. Miller cited excerpts from various staff reports with many stating that the HCP, SYP, BMP do not deal with fine sediment and water quality issues adequately.

Mr. Grundy asked Ken Miller if they had any additional suggestions on what staff has already proposed in the timeline. Mr. Miller suggested to get rid of the monitoring because the information will not be of value.

Don Luther stated that his company has always insisted on giving scientific review a chance. He requested the Board to ask for documentation of flooding in Freshwater previous to logging. This area may have been a flood plain previously.

Steve Jorgensen stated that he believes that Pacific Lumber Company is making a big effort in Freshwater.

Wayne Rice indicated that the roads are a big contributor to the sediment. He commented on one of the speaker's presentation.

Hugh Pointer stated his confusion because the Regional Water Board wanted to stop Pacific Lumbers Company's logging. He pointed out that there should be hundreds of fish in the rivers, but he believes that it is not all Pacific Lumber Company's fault. Give Pacific Lumber Company a chance.

Guy Bravo stated that Elk River flooded when he was younger and he disagreed with the action being suggested. The slowness of getting plans approved is an issue.

Jesse Franks stated that he is proud of his company and the company has come a long ways. He asked that the Board weigh things out with the science and not with staff.

Barry Dobosh discussed and spoke on the changes that are occurring and have occurred in Pacific Lumber Company. He stated that there are fish in Jordan and Bear Creeks.

Michael Duffy stated that he recently watched salmon spawn. He said that working with Pacific Lumber Company will improve the creeks and rivers.

Robert Vogt stated that the Humboldt Watershed Working Group would not be satisfied until the Pacific Lumber Company is shutdown. He suggested that the Regional Water Board and Pacific Lumber Company put all of this behind them and reach some common ground and start from there.

Dennis Schlotzhauer suggested that things were looking up for Pacific Lumber Company and the local community, because of the positive relationship that is being developed with the Regional

Water Board staff. There is progress in ending the issue at hand today. Mr. Schlotzhauer indicated that Pacific Lumber Company is being asked to do more then any other company.

Ron Bush questioned when will the Pacific Lumber Company be done with the hearings. When will the employees of Pacific Lumber Company get to the point that they can feel secure that they will have a job? He voiced his support for Pacific Lumber Company.

Sal Chinnici, the Deputy Director of Science at PALCO, works with Dr. Kate Sullivan. He stated that he reviewed the proposal for Bear, Jordan, and Stitz and thinks that it is reasonable. He stated that by the number of fish in Bear Creek, it is clear that it is recovering.

Alan Cook, a Freshwater resident, gave the conditions of the watersheds when a petition was filed with the Regional Board in April of 2000, and the conditions remain the same today.

Joyce King submitted a letter dated December 3, 2002 addressed to the Board. She stated that time is running out.

Adrian Miller stated that there needs to be a balance to where the company is going. The overlapping regulations are not necessary.

Richard Gienger stated that Pacific Lumber Company may be doing a lot but the simple and easy things that they could do are not being done. He stated that the Board needs to understand the riparian.

Jean McCovey stated that the Elk River is in hard stream. Pacific Lumber is harvesting more than they have been There is seven feet of silt gravel in the watershed.

Kristi Wrigley stated that she could no longer use the water in the Elk River as those used it many years ago. This year her apple orchard yielded 250 pounds and should have yielded 2500 pounds.

Ralph Kraus suggested that the Board take a good look at the Porter Cologne Act.

Jan Krapelien suggested that Pacific Lumber Company could do in good faith and that is to limit their clear cutting in Elk and Freshwater beginning January 1, 2003. Mr. Krapelien also suggested that Pacific Lumber contribute to the \$5,000 it will cost to move the monitoring station on Pacific Lumber Camp Road.

Steve Horner asked the Board to consider the cooperative efforts of PL when or if issuing a WDR.

Patrick Higgins stated that the watersheds may have juvenile fish in the water, but should have adult fish in the water.

Richard Grundy stated that he thought that it was important that the Board has heard the industry and the residents. He indicated that cumulative impacts need to be addressed. The Board needs to make a decision so that the public will know what to expect from the Board.

John Corbett stated that he appreciated the staff for getting the THP monitoring and compliance monitoring. He stated it is a challenge to address with limited resources and we have to pick and choose. The most troubling area that the Board will need to handle is how can we deal on a scientific basis with cumulative impacts. He stated that the Regional Water Board staff efforts are good and it is a good start.

Susan Warner stated that the panel report is scheduled to come to the Board by the January 24 Board Meeting.

MOTION: Richard Grundy moved to approve the timeline

set by the Regional Water Board staff as a working document. John Corbett seconded.

Motion passed unanimously.

MOTION: John Corbett moved to adjourn at 4:07 p.m.

Jerry Cochran seconded. Motion passed

unanimously.

There being no further business to come before the meeting body, the meeting adjourned at 4:07 p.m., until the next scheduled Board Meeting on December 10, 2002.

The Secretary, E. Jean Lockett recorded the minutes of the December 5, 2002, meeting of the North Coast Water Quality Control Board, to be approved by the Board at a subsequent Board Meeting.

Chairman _		
_		
Date:		