

**PETITION/APPEAL FOR ENVIRONMENTAL JUSTICE/ EQUITY**

Received  
JUL 1 2014  
Office of the  
Chief Counsel

**1. Name, Address, Telephone, and e-mail of Petitioners:**

--Kristi Wrigley: 2550 Wrigley Road, Eureka, CA 95503 (707)  
443-1496 elkrra@gmail.com  
--Jesse Noell & Stephanie Bennett: 8050 Elk River Road, Eureka,  
CA 95503 elkrra@gmail.com  
(The rest of the Petitioners are signed at the end of the Petition)

**2. The action or inaction of the Regional Board being petitioned:**

On May 7, 2014, at the North Coast Regional Water Quality Control Board ("RWB") workshop we presented Petitioners' Petition. (See attached Petition titled Environmental Equity/Justice) RWB considered it to be a comment. Then on June 19th in Santa Rosa, upon further discussion with Petitioners, RWB told Petitioners to follow the directions for filing a petition found on the State Water Board website.

**3. The Date regional Water Board last acted, last refused to act, or was last requested to act:**

June 19, 2014

**4. Statement of reasons the action or inaction was inappropriate or improper:**

- a) North Coast Regional Water Quality Control Board's (RWB) action refusing to accept Petitioners' Petition for a moratorium in a timely manner, is a denial of the right to petition government for redress. Justice delayed is justice denied to Petitioners.
- b) Rather than ensuring a margin of safety for its citizens, RWB selected a discrete group of citizens (upper Elk River residents) to receive certain increased harm by refusing to address our Petition.
- c) RWB's refusal to hear Petitioners' Petition for relief from certain threat of imminent harm, intentionally and exclusively selects Petitioners' neighborhood to bear a disproportionate burden of negative environmental impacts that are preventable by proper regulation of the dischargers' activities.
- d) RWB's act denies Petitioners equal protection under the Constitutions, Presidential Executive Orders, and Congressional intent.
- e) RWB's actions improperly or inappropriately exempt discharges from control where those discharges fill rivers with sediment, cause flooding, damage property, destroy and impair existing uses of water, and threaten health and safety.

## **5. How Petitioners are aggrieved:**

- a) Petitioners have been denied the fundamental constitutional right to petition government for redress and due process.
- b) Petitioners suffer increasing private property damage as a direct result of RWB's actions and inactions: homes made unlivable, access interfered with, frequent and severe inundation, destruction of fences and septic systems, foundations, water systems, tanks, vehicles, equipment, crops, orchards.
- c) Petitioners suffer violations of many of their other Constitutional Rights as a direct result of RWB's actions and inactions.
- d) Petitioners suffer persistent, measurable damage to their health and safety as a reasonably foreseeable result of RWB's actions and inactions.
- e) Petitioners suffer from the intentional infliction of emotional distress as a reasonably foreseeable result of RWB's actions and inactions.
- f) Petitioners are denied equal protection as a reasonably foreseeable result of RWB's policies in Elk River that rely on exemptions for silviculture and agriculture, even when these "normal farming" activities result in abnormal damages to Petitioners.

## **6. The action Petitioners request the State Water Board to take:**

- a) Immediate relief in the form of a moratorium (cease and desist) on logging and silvicultural activities until the beneficial uses of water are restored and the conveyance capacity of the river channels is recovered to the 1987 level.
- b) Immediate enforcement of environmental laws, regulations and policies to ensure the health, safety and security of upper Elk River residents' lives, homes, water and property.

## **7. Points & Authorities:**

7a) The damage to Petitioners' private properties is well known and understood by RWB. The official record for over seventeen years is replete with demonstration of damages to property in this neighborhood of upper Elk River. In fact, RWB never disputes that Petitioners' properties are damaged as a result of RWB's regulatory policies. But for RWB's actions and inactions that exempt dischargers from compliance with the Clean Water Act and CWA section 404 permitting, and the Basin Plan, Petitioners would not be damaged. The source of these damages is universally agreed upon and scientifically verified: uncontrolled sources of erosion from timber harvest activities and pathogens from cattle in upper Elk River are the exclusive cause of damage to Petitioners' property. RWB has both the duty and the authority to prevent these damages, but chooses to violate that duty so that Petitioners will suffer. (See RWB Administrative Record)

7b) The official measure of RWB's performance in Elk River shows that RWB has failed to meet its own agency performance standards. During the past seventeen

years and continuing at present, the Basin Plan Prohibitions are continuously violated, the beneficial uses are not attained, and the Federal Anti-Degradation policy is violated. Petitioners have been extensively active in expressing their anguish over this persistent and preventable damage to their private property and their rights as Americans. (Last notification: see audio recording from May 7, 2014 workshop.)

7c) RWB has stated that it cannot and will not perform its mandatory duties, thereby forcing Petitioners (the discrete neighborhood of upper Elk River) to suffer damages and the reasonably certain threat of imminent harm. RWB members Massey and Noren told Petitioners in late 2013, that much more data was needed in Elk River for the Board to be able to render good decisions. Then RWB declared through its executive officer, Matt St. John, that it was suspending monitoring of the South Fork Elk because some Elk River residents had petitioned the State Board for alternative supply.

7d) Jonathan Bishop, former State Deputy Director of Water Quality that oversees RWB, told Petitioners that North Coast Regional Water Quality was too intimidated by the timber industry to perform its duties sufficiently to protect upper Elk River Residents (Petitioners). Mr. Bishop (in the presence of his attorney, Ted Cobb) declared that RWB deliberately chose to violate Petitioners because they pose a lesser threat to RWB than the polluters whose activities necessarily must damage Petitioners. Mr. Bishop told Petitioners that the Timber & Ag Lobby was so powerful that water quality would not be protected.

7e) RWB former member Dina Moore told the public in open session, that the RWBoard's decision-making process turned on which party posed the greatest threat of lawsuits; not on upholding the mandatory duties of the agency as prescribed by the Legislature. (She said, "Gee; no matter how we decide, someone's going to sue us!") Since the timber industry has the greatest resources, RWB always decides in their favor, regardless of how wrong they are and of how much damage our disempowered community experiences as a result of RWB's policies. Dina Moore knows that the upper Elk River community has no political or economic power to confront the abuses of RWB or the timber industry.

7f) Current legal counsel for RWB, Samantha Olsen, told Petitioners that RWB will avoid litigation with the timber industry at all costs—including the (yet to be paid for) cost of violating Petitioners and their neighborhood. S. Olsen even suggested that Petitioners should just relax and accept even more damage from timber. She said, "C'mon, HRC deserves a clean slate" ...to continue its operations that have irrefutably been demonstrated to damage your private properties. When Petitioners attempt to confront these deliberate damages using public processes, S. Olsen disparages Petitioners by smearing them with the invective, "litigious." RWB Legal Counsel knows that the upper Elk River neighborhood lacks the political or economic power to confront these abuses and likewise knows that the polluters will force costly litigation if she doesn't give them what they want.

7g) The decision in Agins v. City of Tiburon, 447 U. S. 255 (1980), negates RWB's fear of a "takings suit" reprisal from polluters for restricting their hazardous activities. When a regulatory agency advances a legitimate state interest such as ensuring the health and safety of a disempowered community, the restricted party cannot prevail in claiming a regulatory takings. ("...regulation will constitute a taking when either: (1) it does not substantially advance a legitimate state interest; or (2) it denies the owner economically viable use of her land.")

Timber owns more than 20,000 acres of land in upper Elk River. Petitioners' land holdings average 1.5 acres to 40 acres. Clearly, the timber companies' extensive land holdings provide alternative opportunities for their investments. Residents have one primary use and only one opportunity: to reside every day in their homes and to use their small holdings for normal family occupancy. Timber cannot make the argument that they are denied all economically viable use of their land; the moratorium requested lasts only until the worsened conditions are abated and does not apply to the timber dischargers other hundreds of thousands of acres that are located outside Elk River.

The District of Nevada Court, 34 F. Supp. 2d, at 1239, relied on the first alternative (1) "further development on high hazard lands such.... would lead to significant additional damage to the lake" and established that moratoriums are proper, i.e. not a taking, where erosion causes damage to esthetic values. *Id.*, at 1240. The U.S. Supreme Court in its decision relies upon this opinion. TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al. v. TAHOE REGIONAL PLANNING AGENCY et al., 2002 US Supreme Ct.

7h) In Elk River, RWB's authorization of un-controlled erosion causes physical invasion and permanent occupation of residents' lands as the river channels infill. We can only guess that RWB must be relying on the "normal farming exemptions", or some other exemption, to allow this damage. Congress made clear its intent: "normal farming" is not the manner of farming that causes channels to infill resulting in flooding to neighboring private properties. In cases where farming or silviculture activity *does* cause channel infill and flooding, and does cause physical invasion and occupation of neighbors' lands, no such exemption is proper. See Kelo v. New London, U.S. Supreme Ct. —taking of a private home from one family, with due process & just compensation, and giving it to a developer---can be lawful ----but Elk River Petitioners are singled out by RWB to privately suffer losses --- **without due process and just compensation.** RWB has not demonstrated that it has eminent domain authority, and has undertaken no due process, or just compensation sufficient to comply with the Kelo Constitutional standard, or the Pumpelly v. Green Bay standard, nor the Lorretto standard, nor the Arkansas Game and Fish standard. RWB also violates Ca.Civ.Code 3334(b).

Thus, in the impaired watershed of Elk River, Section 404 regulation and permits should be required for timber operations in Elk River. Either RWB exceeds its authority by relying on improper exemptions, or Congress intends for private property to be damaged, invaded, and occupied by the discharged waste products of

privileged persons. Petitioners find no evidence that Congress intends dischargers' wastes to damage, invade, and occupy Petitioners' lands, homes, and farms.

This government-authorized physical invasion and permanent occupation of Petitioners' properties has been extensively studied and monitored by both public and private research. All credible scientists agree that timber activities have caused and will cause serious flood damage to the watershed and to Petitioners' private properties. RWB has no valid support to continue to authorize sediment-discharging activities, because at this point, any discharge harms Petitioners. RWB's tactics subject a disempowered neighborhood to tyranny.

Therefore, RWB has no valid basis to not accept Petitioner's request for a moratorium. (See the Congressional intent underlying U.S. Environmental Protection Agency and U.S. Department of the Army's Interpretive Rule Regarding the Applicability of Clean Water Act Section 404(f)(1)(A)) and Presidential Executive Orders 13406 and 12898.)

7i). RWB advances no legitimate state interest in denying Petitioners' request for a moratorium. Furthermore, this channel infill in Elk River is prohibited by the Basin Plan. RWB has failed to meet the objectives of the Basin Plan, by authorizing known, hazardous activities that infill the river and deposit on Petitioners' private properties. RWB's failure as a Public Trust Agency, is evident in its own performance record over the past two decades as well as in the documentation of extensive damages suffered by Elk River residents.

7j) The State of California "declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water", now codified as Water Code, § 1254, and explicitly directed the Water Board to be guided by this declaration of policy.

7k) By delaying enforcement for decades, RWB has deliberately degraded the water quality of Upper Elk River in direct violation of the Clean Water Act, the Basin Plan, and Environmental Protection Agency directives. RWB enables violation of these laws by allowing continuing discharges without conducting proper, transparent anti-degradation procedures. The EPA required the State of California to adopt an anti-degradation policy consistent with its model. (See 40 C.F.R. section 131.6(d)). The EPA model requires that an anti-degradation policy **shall** maintain and protect "existing instream uses and the level of water quality necessary to protect existing uses." RWB's refusal to honor the mandatory language: "existing instream uses and the level of water quality necessary to protect existing uses" cannot provide immunity for the act of deliberately harming Petitioners.

RWB, as the trustee for the waters of Elk River, cannot legitimately deny Petitioners' request for a moratorium given the overwhelming threat of increased damage that will occur without the requested moratorium.

7l) The TMDL is a certain threat of imminent harm to the upper Elk River neighborhood. In fact, the proposed TMDL specifically prescribes a measurable level of harm that only Elk River residents ("Petitioners") must suffer. Given RWB's

demonstrated animus towards this community, this TMDL amounts to a loaded gun pointed at the heads of upper Elk River residents. RWB has their finger on the trigger because they fail to use their power to stop the controllable discharges (Cease and Desist, Cleanup and Abate, and Administrative Civil Liabilities.)

7m) Furthermore, the TMDL specifically intends to *not* attain the Basin Plan Objectives (BPO) for at least twenty years into the future. The BPOs are specifically intended to protect human life and property. Therefore, the TMDL demands that Petitioners will continue to suffer illegitimate damages for decades and provides no mechanism for relief of past or future damages. (See EPA Janet Parrish admonishment to North Coast Regional Water Quality Control Board, May 2014.--- EPA agreement with RWB that TMDL would be implemented by 2002)

7n) RWB's proposed TMDL is pursuant to the Federal Clean Water Act and therefore subject to federal requirements. The Presidential Executive Order 13406: "Protecting the Property Rights of the American People" signed by George W. Bush on June 23, 2006 limits "the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensation, and for the purpose of benefiting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken."

Thus, RWB's proposed TMDL would be an action in excess of authority to the extent that the Federal TMDL inflicts damage on upper Elk River residents while benefitting private timber operations.

7o) Discharge is a privilege, not a right. RWB, as a public trust agency, has no authority to elevate anyone's privilege over the rights of others. Timber's discharges to the waters Elk River cannot legitimately supersede the vested rights of Petitioners.

7p) The official record over the past twenty years unambiguously reveals RWB's animus towards Petitioners in authorizing the privileges of timber to supersede the rights of Elk River residents. RWB routinely denies all requests from Elk River residents to restrict timber activities that knowingly will damage Elk River residents. Cal. Gov. Code 65008 renders null and void any action taken by a local government agency that denies to any individual or group of individuals the enjoyment of their residence, landownership, or tenancy.

7q) US Constitution--14, 5 (nor shall government take private property for public use without due process and just compensation), 4 (seizure/occupation of property), 8 (unusual punishment)

7r) RWB did not comply with Congress's intent that ACOE permits be obtained when it authorized discharges in Elk River to infill the channels with sediment discharged by logging. Instead, RWB continues to permit activity, knowing that channel infill will result. When channel infill was documented and obvious, RWB permitted more activity knowing that more infill would result.

7s) CA AB 685 Human Right to Water: Most upper Elk River residents rely on surface waters from Elk River for domestic use.

7t) Executive Orders 12898, 13406: Federal money is not to be used by State of California to carry out discriminatory policy directly harming Petitioners.

7u) The only State policy that has ever begun to achieve the Basin Plan performance objectives was the moratorium in 97-2002. Where police power is exercised to protect the public from dangerous deteriorated conditions and damage, not to confer economic benefits on operations, Courts have upheld the exercise, 248 U. S. 498; 239 U. S. 394; 237 U. S. 171; 225 U. S. 623; 127 U. S. 678; 123 U. S. 623. For decades the State Water Board has allowed RWB to let the deteriorating conditions fester, and the SWB has not intervened, nor has the Attorney General for California as it did in Lake Tahoe.

7v) The decision in Agins v. City of Tiburon, 447 U. S. 255 (1980), demonstrates how Plaintiffs are aggrieved: "regulation will constitute a taking when either: (1) it does not substantially advance a legitimate state interest; or (2) it denies the owner economically viable use of her land." The District of Nevada Court, 34 F. Supp. 2d, at 1239, rejected the first alternative based on its finding that "further development on high hazard lands such... would lead to significant additional damage to the lake." *Id.*, at 1240. See TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al. v. TAHOE REGIONAL PLANNING AGENCY et al., 2002 US Supreme Ct.

7w) "Long-established precedent, however, declares that courts have concurrent jurisdiction in water right controversies. The Legislature, instead of overturning that precedent, has implicitly acknowledged its vitality by providing a procedure under which the courts can refer water rights disputes to the water board as referee. We therefore conclude that the courts may continue to exercise concurrent jurisdiction, ..." National Audubon Society v. Superior Court, 33 Cal.3d 419

7x) Andrew Baker, WQ inspector, in 1991-92 warned of substantial damage from timber operations in the upper North Fork: deteriorating conditions followed- Petitioners' rights were impaired and properties were invaded and occupied by the resulting floods and pollutants. (This record demonstrates that lax RWB policy has enabled violation of Federal Anti-degradation Policy for over 22 years)

6y) A long line of decisions indicates that remedies before the Water Board are not exclusive, but that the courts have concurrent original jurisdiction. The United States Supreme Court held this in light of California v. United States (1978) 438 U.S. 645. On remand, the California Supreme Court found no federal preemption, and further held that intervenor's claim was not defeated by failure to exhaust administrative remedies. Noting that "the courts [had] traditionally exercised jurisdiction of claims of unreasonable water use" EDF II, 26 Cal.3d 183, 199

7z) Bob Klampt, RWB, declared in 2008 that the domestic standard of protection for water quality in Elk River was the operative policy as "no degradation procedure had ever been undertaken."

**8. Copies of the Petition have been sent to the Regional Board and the Dischargers:**

- a) Green Diamond Corporate Headquarters  
1301 Fifth Avenue Suite 2700  
Seattle, WA 98101-2613  
[gschuler@greendiamond.com](mailto:gschuler@greendiamond.com)
- b) California Timberlands Division  
P.O. Box 68  
Korbel CA 95550-0068  
[grynearson@greendiamond.com](mailto:grynearson@greendiamond.com)
- c) Humboldt Redwood Company, LLC  
125 Main Street  
P.O. Box 712  
Scotia, CA 95565  
[mjani@hrllc.com](mailto:mjani@hrllc.com)  
[mjani@mendoco.com](mailto:mjani@mendoco.com)
- d) North Coast Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa CA 95403-1072  
[matt.st.john@waterboards.ca.gov](mailto:matt.st.john@waterboards.ca.gov)

**9. A statement the issues raised in the Petition were raised before the Regional Board acted, or an explanation of why the Petitioners could not raise those objections before the Regional Board.**

Statement of Petitioners: For the past 17 years Petitioners continuously alerted RWB that it continues to fail to remedy worsening conditions in our public watercourses, fails to control discharges and fails to prevent accelerated erosion. Instead RWB knowingly enables worsening conditions to manifest. These conditions directly threaten the lives and health and safety of Petitioners, and directly damage Petitioners' property. In desperation, we wrote and then read the Environmental Equity/Justice Petition to the RWB on May 7, 2014 in Fortuna, CA and the issues were referenced again at the June 19 meeting in Santa Rosa, CA where RWB directed Petitioners to follow the directions for petitions (appeals) on the State Water Board website. After 17 years of trying, Petitioners find they cannot raise these issues in a manner that is treated as a proper objection before the Regional Board. At this point we can only conclude that the Regional Board exercises some unidentified discretionary basis to provide dischargers with exemptions from compliance with Basin Plan Objectives, Prohibitions, the Water Code, and the Clean Water Act.

5-7-2014

# Petition to North Coast Regional Water Quality Control Board

**"ENVIRONMENTAL EQUITY/JUSTICE: EQUAL PROTECTION FROM ENVIRONMENTAL HAZARDS FOR INDIVIDUALS, GROUPS, OR COMMUNITIES REGARDLESS OF RACE, ETHNICITY, OR ECONOMIC STATUS. THIS APPLIES TO THE DEVELOPMENT, IMPLEMENTATION, AND ENFORCEMENT OF ENVIRONMENTAL LAWS, REGULATIONS, AND POLICIES, AND IMPLIES THAT NO GROUP SHOULD BE FORCED TO SHOULDER A DISPROPORTIONATE SHARE OF NEGATIVE ENVIRONMENTAL IMPACTS BECAUSE IT LACKS POLITICAL OR ECONOMIC STRENGTH."** (Glossary of the California State Water Quality Resources Control Board)

We PETITION THE NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD for Environmental Equity and Justice in Upper Elk River.

The North Coast Regional Water Quality Control Board (RWB) must use its authority to immediately stop all logging in Upper Elk River. Logging has forced and will continue to force the Upper Elk River Community to shoulder a disproportionate share of the negative environmental impacts, which are both predictable and verifiable. No public agency can authorize one neighbor to damage another. RWB can only use its public authorization to protect the rights of all.

Therefore, in order to comply with The State's standard for Environmental equity, The North Coast Regional Water Quality Control Board must:

**IMMEDIATELY ENFORCE A MORATORIUM ON ALL TIMBER HARVEST ACTIVITIES IN UPPER ELK RIVER.**

In 1997 when the State declared Elk River and four other watersheds "significantly adversely affected by sediment from logging" we expected that the State, specifically RWB, would provide equal protection for the residents. By 2012, The North Coast Regional Water Quality Control Board declared that Elk River was "severely impacted" by sediment from logging. Government-authorized logging in Upper Elk River is government-authorized harm to the residents. We deserve and demand protection from this certain harm.

Print Name

Sign Name

Address

Date

Kristi Wrigley	Kristi Wrigley	2550 Wrigley Rd	5.4.2014
Jesse Noell	Jesse Noell	8050 Elk River Road	5/4/2014
Stephanie Bennett	Stephanie Bennett	8050 Elk River Road	5/4/2014
Ralph Kraus	Ralph Kraus	2479 Wrigley R. Eureka	5/4/2014
Nora Kraus	Nora Kraus	2479 Wrigley Rd, Eureka	5/4/2014
NORMAN PASTERIS	Norm Pasteris	2492 Wrigley Rd. Eureka	5-4-2014
Chris Pasteris	Chris Pasteris	2492 Wrigley Rd Eureka	5-4-2014
Lawana Martin	LAWANA MARTIN	2196 Wrigley Rd EKA.	5-5-14
Nancy Siewert	NANCY SIEWERT	7518 ELK RIVER RD EKA	-5-5-14
GRABOY LOWE	GRABOY LOWE	7512-13 ELK RIVER RD	5/5/14
Kim Lindlaw	Kim Lindlaw	2001 Wrigley rd Elk River rd.	5/5/14
Kathy Rocha	Kathy Rocha	2001 Wrigley rd Elk River rd.	5/5/14

2nd page for signatures

**"ENVIRONMENTAL EQUITY/JUSTICE: EQUAL PROTECTION FROM ENVIRONMENTAL HAZARDS FOR INDIVIDUALS, GROUPS, OR COMMUNITIES REGARDLESS OF RACE, ETHNICITY, OR ECONOMIC STATUS. THIS APPLIES TO THE DEVELOPMENT, IMPLEMENTATION, AND ENFORCEMENT OF ENVIRONMENTAL LAWS, REGULATIONS, AND POLICIES, AND IMPLIES THAT NO GROUP SHOULD BE FORCED TO SHOULDER A DISPROPORTIONATE SHARE OF NEGATIVE ENVIRONMENTAL IMPACTS BECAUSE IT LACKS POLITICAL OR ECONOMIC STRENGTH."** (Glossary of the California State Water Quality Resources Control Board)

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Print Name	Sign Name	Address	Date
Claire Josefina	Claire Josefina	7512-4 Elk River Rd	5/5/14
Scott Lake	Scott Lake	8080 Elk River Rd	5/6/14
Ben Levening	Ben Levening	2153 Wrigley Rd	5/6/14
Stacy Lee	Stacy Lee	2332 Wrigley Rd	
Angelatella	Angelatella	8351 Elk River Rd	5/6/14
Brett Teller	Brett Teller	8351 Elk River Rd	
Armand Denny	Armand Denny	2430 Wrigley Rd	5/4/14
Girard Rymer	Girard Rymer	7350 Elk River Rd	5/4/14
Lois June Noel	Lois June Noel	8441 Elk River Road	5/4/14
Phil Nicklas	Phil Nicklas	8094 Elk River Rd, Eureka	5/4/14



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901



June 24, 2014

Mr. Matthias St. John  
Executive Officer  
North Coast Regional Water Quality Control Board  
5500 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

Dear Mr. St. John:

EPA appreciates the progress you and your staff have made toward developing and revising the Elk River Sediment TMDL, and I am pleased to have the opportunity to clarify and complete my truncated comments from Thursday's Informational Meeting.

The point I would most like to emphasize is that EPA fully supports expedited adoption of this TMDL. This commitment was originally made in 2002, and initially included the entire Elk River watershed and Freshwater Creek. It became clear that a focus on the upper watershed, which we support, would prioritize attainment of water quality improvements and facilitate TMDL adoption and implementation. I realize there are complexities of sediment impacts and land ownership in the basin, as well as many long-standing differences of opinion on every effort your staff have made to date, but this should not preclude finalizing the documents and moving forward with implementation.

I have reviewed the analysis related to the project thus far; it is based on sound science and practical considerations for implementation. The data have also been subjected to rigorous, unbiased peer review, by scientists who were not paid to come to any particular conclusion. I have fielded incredulous inquiries from my management about the many delays for over a decade now, and I have urged and encouraged TMDL completion—using “best available data,” as required by regulation,—not the Mercedes version that some continue to strive for. We have heard rejections of *adequate* data and analysis in favor of theoretically “better” data, “better” analysis, or more recent data. Legally-mandated TMDL pacing obligations cannot be met this way.

Last Thursday's discussion in front of the Board also entertained the idea of waiting another year or two in favor of the next round of “newer” data. The conclusions have not changed substantively even with all the fine tuning of the data and analysis, because the additional information has not added additional substance. It is unclear why you would want to devote more resources or consider more delays. It would be impossible to attain water quality standards in a timely fashion if we duplicated, for all impaired watersheds, the time and resources spent on this relatively compact basin, since your time and resources are limited. I hope the calls for more delays are not intended to prevent timely remediation.

You understand the details of the impairments, and you know what needs to be done. Except for the scientific peer review, the delays are better classified as “analysis paralysis.” Every speck of sand in the river overturned and meditated upon—but still: not remediated.

Some of the delays seem to be in favor of considering more relaxed sediment targets or controls than what have been proposed in the draft technical TMDL documents, despite the scientific peer reviews concluding that the existing analysis is sound, and suggesting that any changes to be made should be toward *more* protective rather than less protective measures. Regulations pertaining to TMDLs also require a Margin of Safety, so that any errors in analysis fall on the side of protection and improvement of existing water quality conditions over the potential for further degradation; delaying further to consider more lenient measures seems counter to the data.

We applaud early implementation efforts Humboldt Redwood Company (HRC) and Green Diamond Resource Company (GDRC) have taken in the watershed, in cooperation with the Regional Water Board. HRC deserves extra praise for their efforts to develop innovative timber harvest methods, and for beginning to address Palco’s legacy. Clearly, the river would be in much worse shape without these actions. Unfortunately, however, continued degradation has been documented over the last decade. The efforts have been *worthy*, but insufficient.

We understand that calling for additional or more aggressive actions is disappointing, to say the least. But that doesn’t make it unnecessary. The need for remediation is clear, and the time is now. There is also precedence for this type of TMDL, essentially calling for a “negative loading capacity,” to address, in this case, ongoing buildup of sediment in the river channel.

You have adequate data and analysis, and a range of targets, strategies, and existing tools. Linkages between hillslope sediment production and in-channel sediment are clear. And, although it’s a difficult notion to consider, temporarily reducing the rate of timber harvest is an option that may expedite recovery; keeping this option on the table provides some protection against continued cumulative effects. Once the excess sediment is removed, loading capacity will increase, and the harvest rate option can be revisited.

Permits developed for the watershed were initially seen as a precedent-setting, creative approach. They are now somewhat inadequate to the task, but they can be modified to reflect the current state of knowledge. HCPs are excellent tools, but they are not designed to support beneficial uses, nor will they attain water quality standards on their own. TMDLs alone are just stepping stones to the goal, but they are *required* if other actions will not ensure timely attainment of water quality standards. They are not stone monuments, and the proposed adaptive management actions and cooperative stewardship program can incorporate new information consistent with water quality goals as it becomes available.

While finalizing and adopting the TMDL appears to be the best course of action, EPA will also encourage your staff to pursue more aggressive implementation, if for some reason the TMDL is not adopted in a timely manner. Alternatives that could result in removing a waterbody from the 303(d) list, working with other agencies and stakeholders, and other efforts to streamline attainment of water quality standards —*with TMDL adoption as a backstop*—are consistent with EPA’s new TMDL “Long Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program (also known as the “Vision” documents), which I have shared with your staff. Maintaining the status quo in this watershed, however, will not suffice as an “alternative,” particularly considering the additional sediment impairments that have been observed since we first began talking about his watershed 15 years ago. Until you have evidence to support the hope that remediation is successful, and

evidence to prove that the excess in-channel sediment load has largely been abated, you will continue to allow the watershed to degrade—making remediation that much more painful when you do get to it.

I understand that you have also heard arguments against the “single action” proposal in favor of a full Basin Plan Amendment. State law allows you to develop single action TMDLs. Other Regional Water Boards have successfully used this tool to conserve limited resources and efficiently meet their pacing commitments, and I have encouraged its use. It’s not appropriate for every watershed, but this is a near-perfect case. You don’t need the additional delays of a Basin Plan Amendment, OAL and State Board approval, which would change nothing, and waste resources better spent elsewhere. Remediation in the Upper Elk Watershed will likely result in “trickle down” improvements for the lower watershed, and will, at the very least, inform the process for future TMDL development and implementation.

In summary, I recommend that you facilitate completion, adoption, approval, and implementation of this single action TMDL. If that is untenable for some reason, I hope you will direct staff to append or revise the current permit, to address urgent needs for additional remediation. Either way, you have an opportunity to achieve genuine success. Lessons learned from this example—the good, the bad, and the ugly—can help streamline the process in the future, and for other impaired watersheds, including, of course, the lower Elk River and Freshwater Creek.

I am sure that you all are doing your best to reverse the continued sediment impacts in this watershed, and I am looking forward to receiving a new revision of this document soon.

Sincerely,



Janet Parrish  
TMDL Liaison  
USEPA Standards, Monitoring, and Assessment Office