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Agency Secretary

California Regional Water Quality Control Board North Coast Region

William R. Massey, Chairman

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Arnold
Schwarzenegger
Governor

Notice of Public Hearing and Availability of Documents

in the Matter of
Waste Discharge Requirements
for
Timber Harvesting Plan Activities
Conducted by
Scotia Pacific Company, Salmon Creek Corporation,
and
The Pacific Lumber Company
in the
Elk River and Freshwater Creek Watersheds
Humboldt County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board) intends, barring unforeseen delays, to hold public hearings on April 24 and 25, 2006, (location to be announced) to take testimony and to consider the adoption of two Orders that would prescribe watershed-wide waste discharge requirements (WWDRs) for timber harvesting and related activities on lands in the Freshwater Creek and Elk River watersheds owned and operated by Scotia Pacific Company, Salmon Creek Corporation, and The Pacific Lumber Company (collectively "PALCO" or "Discharger").¹ Should the Regional Water Board not reach a decision at the end of the April 24-25, 2006 hearing, further consideration and possible adoption of the WWDRs is scheduled for a meeting on May 8, 2006 (location to be announced). This action was previously scheduled for hearing in September 2005 via notices dated June 27, 2005, and July 27, 2005. This notice supplements those hearing notices.

The orders and documents referenced in this notice were previously circulated on September 2, 2005, for public hearings scheduled for September 2005. Litigation filed before the September 14-15, 2005 hearing commenced resulted in the issuance of court orders that stopped the Regional Water Board proceedings on the WWDRs until December 2005. As described below, this notice announces the re-release of the WWDRs and supporting documents in the same form as they were on September 2, 2005, for an additional review period.

DESCRIPTION OF PROPOSED ACTION

The proposed action, as detailed in previous notices, is the adoption of waste discharge requirements under California Water Code section 13263, for waste discharges related to timber harvesting and related activities on lands owned and operated by PALCO, the majority landowner in the Elk River and Freshwater Creek watersheds. The WWDRs apply only to the

¹ PALCO is the majority landowner in the Freshwater Creek and Elk River watersheds, which are located in western Humboldt County.

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Discharger and its lands in these watersheds, as it owns approximately 76% of the Elk River watershed and 78% of the Freshwater Creek watershed. The Discharger has an extensive history of timber harvesting and other ground disturbing activities in the watersheds leading to currently cumulatively impacted conditions, and proposes significant ongoing timber harvest activities.

LOCATION OF AFFECTED AREA

The proposed action would apply to lands owned and operated by PALCO, the majority landowner in the Elk River and Freshwater Creek watersheds. Both Elk River and Freshwater Creek are located in western Humboldt County and are major tributaries to Humboldt Bay. For purposes of the WWDRs, those watersheds are described as follows:

The term "Elk River watershed" refers to the area comprised of the Lower North Fork Elk River (1110.000201), Upper North Fork Elk River (1110.000202), Lower South Fork Elk River (1110.000302), and Upper South Fork Elk River (1110.000301) planning watersheds (CalWater V2.2). The Elk River watershed encompasses approximately 27,500 acres of which the Discharger owns approximately 21,000 acres (76%).

The term "Freshwater Creek watershed" refers to the area comprised of the Cloney Gulch (1110.000102), Little Freshwater Creek (1110.000103), and Upper Freshwater Creek (1110.000101) planning watersheds (CalWater V2.2). The Freshwater Creek watershed encompasses approximately 19,892 acres of which the Discharger owns approximately 15,520 acres (78%).

PURPOSE AND BRIEF BACKGROUND OF PROPOSED ACTION

The Regional Water Board regulates waste discharges to the waters of the North Coast Region through Basin Plan standards and prohibitions, which are normally implemented through the issuance of waste discharge requirements, waivers thereof, and enforcement actions.

After several years of public hearings and workshops, at the December 3, 2003 Regional Water Board meeting, the Regional Water Board adopted a series of motions directing staff to develop watershed or watershed-segment waste discharge requirements as a means of addressing adverse cumulative watershed effects from timber harvesting plan activities in five impaired Humboldt County watersheds (Elk River, Freshwater, Bear, Stitz and Jordan Creeks) prior to the development and implementation of total maximum daily loads (TMDLs). In response to this direction, the Executive Officer required the Discharger to prepare a report of waste discharge, and without commenting on the content, directed her staff to carry out the Board's direction to prepare waste discharge requirements.

Because of the controversy associated with the WWDRs, the Regional Water Board determined that the Board advisory and permit preparation functions should be separated. On July 12, 2005, Regional Water Board Executive Officer Catherine Kuhlman issued a memorandum for this purpose, designating two separate teams of Regional Water Board staff and attorneys. As explained in the memorandum, the Issuance Team was tasked to prepare the WWDRs and to present them to the Regional Water Board for consideration. The Advisory Team was directed to provide technical and legal advice to the Board to assist it in managing the hearings and



evaluating the WWDRs. The memorandum listed the composition of the two teams, the memberships of which were later expanded by the Executive Officer.²

If adopted, the proposed WWDRs will be the Regional Water Board's primary mechanism for regulating PALCO's timber harvesting activities in the Elk River and Freshwater Creek watersheds in a manner calculated to address cumulative watershed effects and to ensure that 1) water quality requirements are met, and 2) the proposed activities do not impede recovery of the beneficial uses of water in the watershed. The nature and content of the proposed WWDRs are described in greater detail in the previously issued staff reports and environmental documents, which are being made available for public review as described below.

The WWDRs were originally scheduled for a September 2005 evidentiary hearing and decision by the Regional Water Board. PALCO and an interest group, the "Freshwater Creek and Elk River Watersheds Land, Ranch and Property Owners, Residents and Managers" (Owners), sought court orders ("temporary restraining orders" or TROs) to halt the proceedings. The Humboldt County Superior Court issued the TROs on September 13, 2005. After holding a second hearing on the WWDR proceedings on November 9, 2005, the Court issued an order on December 5, 2005, that lifted the TROs, allowing the Regional Water Board to resume its consideration of the WWDRs. A Status Conference was held on February 17, 2006, between the Regional Water Board Acting Chairman, the Advisory Team and Designated Parties to restart the process. At the conclusion of the Status Conference, the Issuance Team was directed to re-release the WWDRs and associated documents for a 14-day review period.

REVIEW AND COMMENT ON DOCUMENTS

The Regional Water Board will accept written comments³ relevant to the WWDRs during the review period of March 10, 2006, to March 24, 2006. Comments shall be submitted to Mark Neely either at the following mailing address:

North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A,
Santa Rosa, California, 95403
ATTN: Mark Neely

via facsimile to (707) 523-0135, or via email to mneely@waterboards.ca.gov.

² The Issuance Team consists of: Luis Rivera, Assistant Executive Officer; Robert Klamt, Chief of the Timber Division; Mark Neely, Senior Engineering Geologist, Timber Division, Special Projects Unit; Special Projects Unit staff (David Kuszmar, Water Resource Control Engineer, Matthew Buffleben, Water Resource Control Engineer, Adona White, Water Resource Control Engineer, and Joelle Geppert, Water Resource Control Engineer); and Sheryl Schaffner, Senior Staff Counsel. The Advisory Team consists of: Catherine Kuhlman, Executive Officer; Jean Lockett, Executive Secretary; David Evans, Senior Water Resource Control Engineer, Southern Cleanups Unit; David Hope, Staff Environmental Scientist and Registered Professional Forester, Timber Harvest Division; Philip Wyels, Assistant Chief Counsel; and Erik Spiess, Staff Counsel.

³ For the purpose of this notice, "comment" means any information regarding the WWDRs including testimony, other evidence, and legal argument.



Written comments by designated parties shall be submitted using the Email Service List and must be received⁴ by all persons on the Email Service List by the below deadline.⁵

Regardless of which transmittal method is used, **all written comments must be received⁶ no later than March 24, 2006, at 5:00 p.m.** Written comments received after that date will not be accepted, except at the discretion of the Regional Water Board Chair. Untimely written comments will not be accepted or incorporated into the administrative record if doing so would prejudice the Discharger, the Issuance Team, or any other designated party. The Chair may choose to modify this rule upon a showing of severe hardship (California Code of Regulations, Title 23, Sections 648.1 and 648.4).

Written comments will be accepted on all materials related to the WWDRs. Numerous written comments relevant to the WWDRs were previously received. **Written comments previously received by the Regional Water Board need not be resubmitted.** Given the extensive review and comment that has already taken place, commenters are requested to avoid duplicating prior statements or submissions. To avoid such duplication, commenters may wish to focus their attention first on the newest materials for review, which consist of comments on the WWDRs received after August 8, 2005, and the revised WWDRs⁷ originally circulated on September 2, 2005.

LOCATIONS FOR DOCUMENT REVIEW AND REPRODUCTION

Documents associated with the WWDRs are available at a variety of locations. Materials released for public review in June 2005, comments received during and after the review period ending August 8, 2005, materials prepared for the September 2005 hearings and released to the public on September 2, 2005, and new materials prepared by the Issuance Team are available in printed form for review and photocopying (for a charge) at these locations:

⁴ "Received" means that the item has actually arrived at its destination.

⁵ The Email Service List consists of the following persons:

- a. Catherine Kuhlman (ckuhlman@waterboards.ca.gov), Erik Spiess (espiess@waterboards.ca.gov) and Jean Lockett (jlockett@waterboards.ca.gov) on behalf of the Regional Water Board WWDR Advisory Team,
- b. Chuck Center (ccenter@palco.com), Adrian Miller (amiller@scopac.com) and Christopher Carr (ccarr@mofo.com) on behalf of Pacific Lumber Company et al.,
- c. Frank Bacik (fbacik@pacific.net) on behalf of the Owners,
- d. Kristi Wrigley (kwrigley@direcway.com) on behalf of Elk River Residents Association,
- e. Mark Lovelace (sheds@humboldt1.com) on behalf of Humboldt Watershed Council,
- f. Michael Lozeau (mrlozeau@lozeaulaw.com) and Sharon Duggan (foxsduggan@aol.com) on behalf of Environmental Protection Information Center,
- g. Michele Dias (micheled@cwo.com) on behalf of California Forestry Association, and
- h. Luis Rivera (lrivera@waterboards.ca.gov), Robert Klamt (rklamt@waterboards.ca.gov), Mark Neely (mneely@waterboards.ca.gov), David Kuszmar (dkuszmar@waterboards.ca.gov), and Sheryl Schaffner (sschaffner@waterboards.ca.gov) on behalf of the Regional Water Board WWDR Issuance Team.

⁶ "Received" means that the item has actually arrived at its destination.

⁷ Please note that the WWDRs contain the previously assigned order numbers and dates. Those numbers and dates will be updated and other minor changes will be made and reflected in the next public release of the WWDRs, which will follow this public comment period, and will precede the evidentiary hearings in April 2006.



Humboldt County Public Library
Main Library
1313 Third Street
Eureka, CA 95501

FedEx/Kinko's
2021 Fifth Street, Suite C
Eureka, CA 95501-0824

Humboldt County Public Library
Fortuna Branch
753 14th Street
Fortuna, CA 95501

Regional Water Board Office
5550 Skylane Boulevard, Suite A
Santa Rosa, California, 95403

All of these documents and additional information are available for review on the Regional Water Board's website (<http://www.waterboards.ca.gov/northcoast/>).

Finally, the complete administrative record (to date) for the WWDRs is also available for review at the Regional Water Board office. These materials may be inspected or copied at the Regional Water Board office during business hours. Appointments are recommended for document review. File review appointments can be made by calling (707) 576-2220.

HEARING SCHEDULE

The Issuance Team staff will prepare an agenda package for the April 2006 evidentiary hearings, containing a staff report, Response to Comments, and revised WWDRs based on comments received by the 5:00 p.m. March 24, 2006 deadline.

Barring unforeseen delays, an evidentiary hearing on the WWDRs is scheduled to occur on April 24-25, 2006, and a public meeting (if necessary) to consider adoption of revised WWDRs is scheduled for May 8, 2006. The May meeting may be unnecessary and may therefore be cancelled should the Board decide to adopt the WWDRs at the conclusion of the April evidentiary hearing.

HEARING PARTICIPATION

The hearings will be conducted according to the procedures be found in California Code of Regulations, title 23, section 647 et seq. These regulations may be obtained online at http://www.waterboards.ca.gov/water_laws/. Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq.

Participants at the hearings (excluding the Board members and the Advisory Team) are either "parties" or "interested persons." All hearing participants are expected to honor applicable time limits. The following describes the procedures governing the participation by these two groups.

Designated Parties. Designated parties may present evidentiary testimony at the evidentiary hearing, and are subject to cross-examination. Parties may also cross-examine other parties' witnesses. Because of the complexity of their participation, parties receive more time to address the Regional Water Board and cross-examine witnesses.



The following participants are designated as parties for hearings proceedings on the WWDRs:

1. North Coast Regional Water Quality Control Board WWDR Issuance Team (Issuance Team)
2. Scotia Pacific Company, Salmon Creek Corporation, and The Pacific Lumber Company (collectively PALCO);
3. Freshwater Creek and Elk River Watersheds Land, Ranch and Property Owners, Residents and Managers (Owners);
4. California Forestry Association (CFA);
5. Humboldt Watershed Council (HWC);
6. Environmental Protection Information Center (EPIC); and
7. Elk River Residents Association (ERRA).

Only designated parties will have these rights: to call and examine witnesses; to cross-examine opposing witnesses; to impeach any witness; and to rebut the evidence against him or her. Designated parties will receive special time allotments for this hearing participation to be established in the hearing procedure.

Hearing participation by designated parties will be limited to the content of comments previously submitted in writing. **Presentations at the hearing(s), made either orally or in visual aids, may summarize or explain written comments received by the above deadline or late written comments accepted by the Board Chair, but shall not add new comments. Further information concerning the time allocations for hearing participation and requirements for pre-submittal of visual aids (e.g., handouts and computer presentations) will be explained in the hearing procedure.**

Any witness who has submitted written testimony should be present at the hearing to affirm their testimony under oath. (California Code of Regulations, Title 23, Section 648.4(d).) If a person who has submitted written testimony is not present at the hearing, their written testimony may constitute hearsay evidence. Government Code section 11513 provides that hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible in a civil action notwithstanding the objection. A hearsay objection is timely if made before the close of the hearing.

Further details about hearing participation by designated parties will be contained in the hearing procedure.

Interested Persons. All others besides the above-listed designated parties may participate in the hearings as interested persons. Interested persons may present non-evidentiary policy statements that will be heard first, prior to the presentation of evidence by the parties. Interested persons are not subject to cross-examination and may not cross-examine other parties. Interested persons will receive a maximum of **3 minutes** to make their policy statements.



Interested persons will be permitted to address the Regional Water Board on April 24, 2006,⁸ and at the potential meeting scheduled for May 8, 2006. Where speakers can be grouped by affiliation or interest, such groups will be expected to select a spokesperson. Speakers are requested to avoid repeating comments of prior speakers.

To address the Board, interested persons **must sign up or submit a speaker card in advance of the beginning of the hearing, scheduled for 9:00 a.m. on April 24, 2005, and in advance of the beginning of the meeting on May 8, 2005.**⁹ For efficiency, interested persons are encouraged to submit their request in advance of the day they wish to speak. To sign up in advance, send an email request to Jean Lockett (jlockett@waterboards.ca.gov). Provide in the email the following:

1. Name (persons who wish to remain anonymous contact Jean Lockett)
2. Group, agency, or interest on whose behalf you are appearing.
3. General topic of the policy statement you plan to present.

If you do not have access to email, you may convey the above information to Ms. Lockett by telephone (707) 576-2307.

Persons may also submit a speaker card on the day of the hearing, April 24, 2006. Speaker cards will be accepted only until the Chair opens the proceedings, which is scheduled for 9:00 a.m. The same procedure applies for the meeting on May 8, 2006. **No speaker cards will be accepted after the Chair opens the proceedings on the WWDRs.**

Interested persons may submit visual aids subject to the same restrictions applicable to designated parties mentioned above and to be further explained in the hearing procedure.

For further information, please contact Jean Lockett (707) 576-2307; Catherine Kuhlman (707) 576-2220; or Advisory Team Counsel Erik Spiess (916) 341-5167.

Catherine E. Kuhlman
Executive Officer

March 8, 2006

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⁸ Although this hearing will encompass two days, April 24th and 25th, comments from interested persons will be taken only on April 24th.

⁹ Interested persons who signed up in advance of the hearing on the WWDRs scheduled for September 14-15, 2005, will be considered to have already signed up to speak at the April 24, 2006 hearing. Persons who want to ensure they are already signed up to speak as interested persons should contact Jean Lockett either via email (jlockett@waterboards.ca.gov) or by telephone (707) 576-2307.

