

*Sent Via Certified Mail on Date Shown*

February 1, 2019

California Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Cc: North Coast Regional Water Quality Control Board  
Humboldt Redwood Company, LLC  
Green Diamond Resource Company

**In the Matter a Failure to Act by the North Coast Regional Water Quality Control Board on Directives from the State Water Resources Control Board to Ensure Consistency with Waste Discharge Requirements for Timber Operations in the Upper Elk River Watershed with the Upper Elk River Sediment TMDL and TMDL Action Plan**

Dear State Water Resource Board:

In accordance with the provisions of California Water Code section 13320 and associated implementing regulations at Title 23, California Code of Regulations section 2050 et seq., the Environmental Protection Information Center (“EPIC”), Pacific Coast Federation of Fishermen’s Associations (“PCFFA”), Institute for Fisheries Resources, (“IFR”), Coast Action Group (“CAG”), the Sierra Club, Redwood Chapter, North Group, and Humboldt Baykeeper, (“Baykeeper”), hereafter, “Petitioners,” hereby Petition the California Water Resources Control Board (“State Board”) to Review the North Coast Regional Water Quality Control Board (“Regional Board”) Failure to Act as directed by the State Board to revise, as necessary to ensure consistency of Waste Discharge Requirements (“WDRs”) for Humboldt Redwood Company (“HRC”), (Order No. R1-2016-004), and Green Diamond Resource Company (“Green Diamond”), (Order No. R1-2012-0087) and its Attachment-C, South Fork Elk River Management Plan (“SFERMP”) with the Total Maximum Daily Load (TMDL) for the Upper Elk River Watershed, and with the Upper Elk River TMDL Action Plan, and the Water Quality Control Plan for the North Coast Region (“Basin Plan”).

Additionally, Petitioners request a Stay of the Effect of Order No. R1-2016-004, and Order No. R1-2012-0087, Attachment-C, South Fork Elk River Management Plan, until a public hearing before the State Board can be held in accordance with Title 23, California Code of Regulations section 2052(c). (*See also:* Title 23, California Code of Regulations section 2050.6.) The Motion to Stay the Effect of these Orders and supporting Declaration of Kristi Wrigley, are included herein.

## **I. Identification of Petitioners:**

Environmental Protection Information Center--(EPIC)

Attn: Rob DiPerna

145 G Street, Suite A

Arcata, CA 95521

(707) 822-7711

[rob@wildcalifornia.org](mailto:rob@wildcalifornia.org)

Pacific Coast Federation of Fishermen's Associations (PCFFA)

Institute for Fisheries Resources (IFR)

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P.O. Box 29370

San Francisco, CA 94129-0370

(415) 561-5080

[noah@ifrfish.org](mailto:noah@ifrfish.org)

Coast Action Group

Att. Alan Levine

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[alevine@mcn.org](mailto:alevine@mcn.org)

North Group of the Redwood Chapter of the Sierra Club

Attn: Felice Pace, Water Chair

28 Maple Road

Klamath, CA 95548

(707) 954-6588

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Humboldt Baykeeper

Attn: Jennifer Kalt, Director

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(707) 499-3678

[www.humboldtбайkeeper.org](http://www.humboldtбайkeeper.org)

## **II. Action or Failure to Act being Petitioned:**

Petitioners hereby request that the State Board Review the Failure to Act by the Regional Board upon directives issued by the State Board in Resolution No. 2017-0046. Petitioners further request that the State Water Board exercise its authority after a public hearing, to Act in place of the Regional Board to revise the WDRs for HRC and Green Diamond to attain and ensure

attainment of parity and consistency of the Orders with the TMDL, TMDL Action Plan, and the supporting Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015) and with an anthropogenic Load Allocation of zero by 2031, consistent with the State Board's Resolutions adopting the Upper Elk River Sediment TMDL and TMDL and Resolutions directing the Regional Board to revise the WDRs.

The Regional Board adopted the Upper Elk River TMDL for Sediment and accompanying TMDL Action Plan on May 12, 2016. On August 1, 2017, the State Board held a hearing at which it also adopted the Upper Elk River TMDL. In doing so, the State Board adopted Resolution No. 2017-0046.

The Failure to Act by the Regional Board is improper due to explicit and date-certain directives from the State Board as part of the State Board's Resolution adopting the Upper Elk River Sediment TMDL and TMDL Action Plan (Resolution No. 2017-0046). The Regional Board has erred and failed to comply with directives given by the State Board as contained in State Board Resolution No. 2017-0046 within the specified-timeline, January 2019. (*See*: State Board Resolution No. 2017-0046, Finding 9, page 2, Resolution 2, page 3). (A true and correct copy of Resolution No. 2017-0046 is enclosed as **Exhibit-A**).

### **III. Date of Action of Failure to Act:**

The date of the Failure to Act by the Regional Board is January 31, 2019.

### **IV. Statement of Reasons the Action or Failure to Act was Inappropriate or Improper:**

The Regional Board's Failure to Act on directives contained in State Board Resolution No. 2017-0046 are that Waters of the State in the Upper Elk River Watershed are being unreasonably degraded by continued and ongoing controllable sediment pollution discharges from industrial timber operations in the watershed Permitted and Enrolled by the Regional Board pursuant to the pre-existing WDRs for HRC and Green Diamond.

The Regional Board continues to Enroll HRC THPs and to allow Green Diamond to Enroll under WDR frameworks known to the Regional Board to be inconsistent with the Upper Elk River TMDL, TMDL Load Allocation of zero, and the Upper Elk River TMDL Action and Implementation Plan now chaptered in the North Coast Regional Basin Plan. (True and correct copies of Order No. R1-2012-0087 and Order No. R1-2016-004 are enclosed as **Exhibits B & C**).

The Regional Board's Failure to Act inappropriately enables and permits controllable sediment pollution discharges from Permitted and Enrolled industrial timber operations. Sediment pollution discharges from ongoing industrial timber operations that are feasible to control by either modifying or forgoing timber operations. Nevertheless, the Regional Board Failed to Act as directed within the timeline specified.

Finally, the Regional Board's Failure to Act is improper because it results in violations of the North Coast Basin Plan, the California Water Code, and the State Policy for Implementation

and Enforcement of the Non-Point Source Sediment Pollution Program (“NPS Policy, State Board, May 20, 2004”).

#### **V. How Petitioner is Aggrieved:**

Petitioners are aggrieved by the Regional Board’s Failure to Act as directed within the timeline specified because the Failure to Act allows continued Enrollment of timber operations for HRC, and Green Diamond continues to operate under its South Fork Elk River Management Plan (“SFERMP”). Continued timber operations by HRC and Green Diamond Permitted and Enrolled by the Regional Board allow continued controllable anthropogenic sediment pollution discharges under WDRs the Regional Board knows it must revise to be consistent with the Upper Elk River Sediment TMDL, TMDL Load Allocation, State Board Adopting Resolution No. 2017-0046, the TMDL Action Plan, and the North Coast Basin Plan.

Controllable anthropogenic sediment pollution discharges continue to degrade and further impair the quality and Beneficial Uses of Waters of the State in the Upper Elk River Watershed and continue to exacerbate and worsen the Nuisance conditions that threaten the health, safety, ingress, egress, and Real Property of Upper Elk River residents, and threaten damage to public roads and facilities. Continued failure to control these discharges is not consistent with California Water Code (*See*: California Water Code section 13241), the TMDL, TMDL Action Plan, or State Board Order No. 2017-0047 and its directives to revise the current WDRs.

Petitioning organizations all have a history of advocating for water quality in the Upper Elk River or have members who live in the Upper Elk River Watershed or utilize the Upper Elk River Watershed for recreational fishing and aesthetic enjoyment, or who utilize the portions of the South Fork Elk River contained in the Headwaters Forest Reserve for family and recreational and aesthetic enjoyment. Additionally, all Petitioning organizations have a history of advocacy for clean water and fisheries recovery in the Elk River Watershed.

Petitioners and our members are aggrieved and directly harmed by the Regional Board’s Failure to Act and herein request the State Board Review the Regional Board’s Failure to Act and to have the State Board stay the effect of the WDRs in question, and upon hearing and upon finding that the Regional Board Failed to Act, take up the matter of revisions of the WDRs in question itself Pursuant to authority at California Water Code 13248(b). (*See*: Motion for Stay and Request for Hearing, Enclosed).

#### **Petitioners Statements of Interest**

The Environmental Protection Information Center (EPIC) is a regionally-focused forest advocacy non-profit organization based in Arcata, California. EPIC is a membership organization with a 42-year history of advocacy and public engagement and strategic litigation aimed at enforcing State of California forestry and clean water laws throughout California’s North Coast. EPIC has over 30 years of history of advocacy, education, and strategic litigation invested in ensuring protection, enhancement and restoration of the Beneficial Uses of Water of the Upper Elk River Watershed.

Pacific Coast Federation of Fishermen's Associations (PCFFA) is the largest organization of commercial fishermen and women on the West Coast. For forty years, PCFFA has been leading the industry in protecting and restoring critical habitat for threatened and endangered salmon—that until recent years made up essential portions of the region's fish to market—and fighting for the long-term survival of commercial fishing as a productive livelihood and way of life.

Institute for Fisheries Resources (IFR) is a non-profit 501(c)(3) organization with headquarters in San Francisco, California. Established in 1993 by the Pacific Coast Federation of Fishermen's Associations (PCFFA), IFR is responsible for carrying out the fishery research and conservation needs of working fishing men and women. Initially, IFR helped fishermen in California and the Pacific Northwest address salmon protection and restoration issues, with particular focus on dam, water diversion, and forestry concerns.

Coast Action Group is a nonprofit public benefit corporation and an affiliate of Redwood Coast Watersheds Alliance, comprising residents of Sonoma and Mendocino Counties. Its purpose is to preserve the environmental quality of California's North Coast and to ensure that environmental laws protecting these resources are enforced. Coast Action Group members include North Coast residents with an interest in ocean, forest, and river preservation, commercial and sport fisher people, ranchers, owners of coastal-dependent businesses, and recreational users of these area resources. For three decades Coast Action Group has participated in legal actions to protect the North Coast environment, including litigation to protect the beneficial uses of waters.

North Group Redwood Chapter Sierra Club: The Elk River lies within the territory of the North Group of the Redwood Chapter of the Sierra Club. Therefore, the North Group has an interest in Elk River water quality. Over many years, the North Group has participated in efforts at the North Coast Water Board and at the State Water Board to effectively regulate sediment associated with logging, hauling and other forest management activities in the Elk River Watershed, including but not limited to commenting on regulatory proposals and testifying at North Coast Water Board meetings.

Humboldt Baykeeper works to safeguard the region's coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community, and is a member of the California Coastkeeper Alliance and the international Waterkeeper Alliance. As one of the largest Humboldt Bay tributaries, water quality—in particular sediment loads—in the Elk River is critical to the health of the Humboldt Bay population of coho salmon.

## **VI. Action Petitioners Requests the State Board Take:**

Petitioners request that the State Board hold a Public Hearing to Review the Failure to Act of the Regional Board, and upon Hearing, and finding the Regional Board Failed to Act as directed, EPIC requests that the State Board take up the matter of revising the WDRs for HRC and Green Diamond itself, pursuant to the authority provided at California Water Code section 13248(b).

Petitioners further request that the State Board Stay the Effect of both the HRC and Green Diamond WDRs operable in the Upper Elk River Watershed until such time as the required revisions to these WDRs is complete. (*See*: Motion for Stay of Effect and Request for Hearing, Enclosed).

## **VII. Statement of Points and Authorities and Rendering of Causes of this Action:**

This Petition for Review and accompanying Motion for Stay and Request for Hearing arise from a Failure to Act by the Regional Board on directives from the State Board as part of the State Board's Resolution adopting the Upper Elk River Sediment TMDL and TMDL Action Plan (Resolution No. 2017-0046).

The State Board directed the Regional Board to revisit and revise, as necessary, the WDRs for the two industrial timberland owners in the Upper Elk River Watershed by January 2019, to ensure progress toward full attainment of an anthropogenic zero Load Allocation, to the extent feasible, as soon as possible, but by no later than 2031.

In Resolution No. 2017-0046 the State Board directed the Regional Board:

“[T]o review its WDRs for the two major landowners in the Upper Elk River Watershed that conduct timber harvesting and revise the WDRs and adopt any additional orders as necessary to make them consistent with the State Water Board's understandings of how the TMDL Action Plan will be implemented as described in finding no. 9, above. The WDRs and any other orders must include interim milestones and earlier compliance requirements than 2031 where appropriate and to the maximum extent feasible. The revisions to the WDRs and the adoption of any additional orders shall be completed as expeditiously as possible, but no later than January 2019, and the North Coast Water Board shall submit written updates on its progress and the progress of the Watershed Stewardship Program to the Executive Director every six months until the revisions to the WDRs and the adoption of any additional orders are completed.” (Resolution No. 2017-0046, Resolution 2, page 3).

The Regional Board Failed to Act as directed and has not proposed or adopted revised WDRs for either HRC or Green Diamond as directed within the timeline specified. The Failure to Act by the Regional Board has and continues to result in violations of: (1) the Upper Elk River TMDL Action Plan; (2) the North Coast Basin Plan; (3) NPS Policy, and (4) the California Water Code.

### **(1). Failure to Act Violates the Upper Elk River TMDL Action Plan**

The Regional Board Failure to Act violates the North Coast Basin Plan because allowing continued feasibly controllable anthropogenic sediment discharges from industrial logging operations permitted and allowed to be Enrolled under WDRs by the Regional Board that are inconsistent with the Action Plan for the Upper Elk River Sediment TMDL. (A true and correct copy is enclosed as **Exhibit-D**).

Specifically, the Action Plan states, “[b]ecause capacity for sediment is limited by the ongoing aggradation in the impacted reaches, the loading capacity for additional sediment is defined as zero until the capacity of the impacted reaches can be expanded.” (Action Plan, at IV, 3., p. 6).

Further, the Action Plan states:

“This loading capacity will guide the program of implementation and will be maintained until the sediment loading capacity of the impacted reaches has been expanded. The zero load allocation does not constitute an effluent limitation or a waste load allocation, and the Board has discretion on how to implement it in waste discharge requirements (WDRs), waivers of WDRs (waivers) or other actions to minimize and eliminate waste discharges. Once the loading capacity has been expanded, the Regional Water Board can reevaluate the load allocation and establish a second phase of the TMDL, as appropriate.” (Action Plan, at IV, 3., p. 6-7).

The Action Plan acknowledges that the Regional Board has discretion in implementation through WDRs. However, given that the Regional Board was given a directive and a date-certain by the State Board to revise the WDRs and has Failed to Act to do so in the timeline directed, the Regional Board has prejudicially abused its discretion by Failure to Act to revise the WDRs and by Permitting and allowing Continued Enrollment of THPs under the WDRs.

The Action Plan itself acknowledges and contemplates the need for revising and updated the WDRs for HRC and Green Diamond in the Upper Elk River Watershed, stating:

“WDRs are the primary regulatory mechanism utilized by the Regional Water Board to control the nonpoint source pollution resulting from past and ongoing timber harvesting activities, the dominant land use in Upper Elk River Watershed. Existing adverse cumulative impacts from current and past land management practices combined with watershed characteristics (such as sensitive geology and altered hydrologic conditions) require that additional actions be taken beyond those currently being implemented in the Upper Elk River Watershed. Updated management actions are necessary to prevent continued impact to beneficial uses and contributions to downstream nuisance conditions that result from ongoing timberland management. The WDRs will consider the unique watershed factors that influence the discharge of sediment so as to properly update management practices and better manage watershed effects.” (Action Plan, at IV., p. 8).

The Regional Board Failure to Act as directed by the State Board within the timeline prescribed violates the Upper Elk River TMDL Action Plan, and by extension and incorporation therein, the North Coast Basin Plan in addition to violating State Board directives.

The TMDL, the TMDL Action Plan, and the zero Load Allocation are all fully supported by the Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015). (A True and correct copy is enclosed as **Exhibit-E**).

The zero Load Allocation is predicated upon the finding in the Technical Analysis of zero assimilative capacity for additional sediment inputs into the Upper Elk River Watershed without risking further impairment of the quality and Beneficial Uses of Water in the watershed.

**(2). Failure to Act Violates the North Coast Basin Plan**

The Regional Board Failure to Act also violates the North Coast Basin Plan because the Failure to Act, combined with the Permitting and Enrollment of further THPs under WDRs that require revisiting and revision, are resulting in continued, feasibly controllable anthropogenic sediment pollution discharges from ongoing timber operations in the Upper Elk River Watershed.

Specifically, the North Coast Basin Plan provides, "Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality below the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality." (North Coast Basin Plan, Chapter 3, 3.1.1, p. 3-1).

The Regional Board's Failure to Act perpetuates and exacerbates a nearly 20-years-and-counting Failure to Act to ensure controllable anthropogenic sediment pollution in amounts deleterious to Beneficial Uses of Waters of the State and Water Quality Objectives, and to prevent sediment pollution discharges in amounts that would result in Nuisance.

The Upper Elk River Watershed has a TMDL, Load Allocation, and Action Plan, and supporting Upper Elk River Watershed Technical Analysis for Sediment (Tetra Tech 2015), all identify controllable anthropogenic sediment pollution from timber operations, past and current, in amounts deleterious to Beneficial Uses of Water and that exceed Water Quality Objectives and that have resulted in Nuisance conditions as a primary driver of the impaired condition of the Upper Elk River Watershed.

The Regional Board's Failure to Act on directives from the State Board contained in Resolution No. 2017-0046 exacerbates a long-standing Failure to Act to ensure protection of Beneficial Uses of Waters of the State in the Upper Elk River Watershed from unreasonable degradation and to prevent Nuisance.

The Regional Board has prejudicially abused its discretion by its Failure to Act as directed and has compounded this failure by continuing to Enroll and allow Enrollment for HRC and Green Diamond Resource Company under WDR Orders that it has been directed to revisit and revise.

**(3). Failure to Act Violates NPS Policy**

The Failure to Act by the Regional Board also violates the NPS Policy, and specifically Key Element 1, which provides:



“An NPS control implementation program’s ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.” (NPS Policy, at p., 11).

The Upper Elk River Watershed was listed in 1998 as sediment impaired pursuant to section 303(d) of the federal Clean Water Act, with industrial logging and timber harvest identified as the major anthropogenic factor contributing to the sediment impairment. Despite this, and a 2002 MOU with the federal Environmental Protection Agency (“EPA”), the Regional Board did not adopt a Total Maximum Daily Load or Load Allocation for the Upper Elk River Watershed until 2016.

Despite WDRs, Clean-up and Abatement Orders, and Cease and Desist Orders issued by the Regional Board, sediment impairment in the Upper Elk River has either worsened, and not improved over time as shown in the Upper Elk River Technical Analysis for Sediment (Tetra Tech 2015). The only common denominator is that industrial logging has been and is ongoing.

It is now 2019, and the Regional Board Failure to Act as directed by the State Board to revise the WDRs for HRC and Green Diamond in the Upper Elk River Watershed continues a long-standing Failure to Act to arrest reasonably and feasibly controllable sediment pollution discharges into Waters of the State that continue to unreasonably degrade the Beneficial Uses of Waters of the State and perpetuate Nuisance, all in violation of the NPS Policy.

#### **(4). Failure to Act Violate California Water Code**

The Failure to Act by the Regional Board violates the Porter-Cologne Water Quality Control Act, which provides the State Policy for water quality control shall, “be consistent with the state goal of providing a decent home and suitable living environment for every Californian.” (California Water Code section 13142(c)).

The Failure to Act by the Regional Board perpetuates a 20-year-long-and-counting Failure to Act to ensure that Water Quality Objectives in the Upper Elk River Watershed are maintained, enhanced and restored, and a failure to prevent unreasonable degradation of Beneficial Uses of Waters of the State or to prevent Nuisance.

Far from “providing a decent home and sustainable living environment for every Californian,” the Failure to Act by the Regional Board has allowed and Permitted and Enrolled a nightmarish Nuisance condition that is perpetuated and exacerbated by Permitting and Enrolling still more feasibly controllable anthropogenic sediment pollution discharges in quantities deleterious to Beneficial Uses of Waters of the State in the Upper Elk River Watershed resulting from timber operations.

The long-standing and ongoing Failure to Act by the Regional Board ensure a regulatory framework that protects the quality and Beneficial Uses of waters of the Upper Elk River Watershed and that either prevent and/or abate Nuisance violates the State’s Policy for Water Quality Control as articulated at California Water Code 13142(c)).

## **Conclusion**

Petitioners and our members are aggrieved by the Regional Board Failure to Act as directed by the State Board within the timeframe prescribed in Resolution No. 2017-0046. The Regional Board's Failure to Act is improper and constitutes a prejudicial abuse of discretion, in addition to a failure to comply with and execute an affirmative and mandatory duty.

Petitioners request that the State Board Review the Regional Board Failure to Act, Stay the Effect of the WDR Orders for HRC and Green Diamond, schedule a Public Hearing on the Failure to Act, and upon Hearing, and finding that the Regional Board Failed to Act, Petitioners request that the State Board take up the matter of revising the WDRs for HRC and Green Diamond pursuant to its authority provided at California Water Code section 13248(b).

## **VIII. Statement that the Petition has been Transmitted to the Regional Board and the Discharger(s)**

True and correct copies of this Petition for Review and the attached Motion for Stay and accompanying Declaration in Support of the Motion for Stay have been transmitted to the Regional Board, Humboldt Redwood Company, and Green Diamond Resource Company via certified mail to the following addresses on February 1, 2019:

North Coast Regional Water Quality Control Board  
5550 Skylane Blvd, Suite A  
Santa Rosa, CA 95403

Humboldt Redwood Company, LLC  
C/o CSC - Lawyers Incorporating Service  
2710 Gateway Oaks Dr., Suite 150N  
Sacramento, CA 95833

Humboldt Redwood Company, LLC  
125 Main Street  
P.O. Box 712  
Scotia, CA 95565

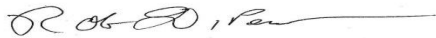
Green Diamond Resource Company  
1301 FIFTH AVENUE, SUITE 2700  
SEATTLE WA 98101

Green Diamond Resource Company  
C/o C T Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, California 90017

**IX. Statement that Issues Raised in this Petition were Presented to the Regional Board before the Regional Board Acted or Failed to Act or Explanation Why Petitioner could not Raise those Objections before the Regional Board**

All issues and objections specified and contained in this Petition for Review and the attached Motion for Stay and supporting Declaration were raised before the Regional Board prior to the Failure to Act by the Regional Board, in letters, in person, and through teleconference meetings with Regional Water Board Staff.

Respectfully submitted,



Rob DiPerna  
Environmental Protection Information Center--(EPIC)



Noah Oppenheim  
Pacific Coast Federation of Fishermen's Associations  
Institute for Fisheries Resources



Alan Levine  
Coast Action Group



Jennifer Kalt  
Humboldt Baykeeper



Felice Pace  
Water Chair,  
North Group, Redwood Chapter Sierra Club

**Exhibits**

**Exhibit-A:** State Water Board Resolution No. 2017-0046. August 1, 2017.

**Exhibit-B:** Order No. R1-2012-0087, Waste Discharge Requirements for Discharges Related to Green Diamond Resource Company's Forest Management within the Area Covered by its Aquatics Conservation Plan.

**Exhibit-C:** Order No. R1-2016-004, Waste Discharge Requirements for Nonpoint Source Discharges and Other Controllable Discharges Related to Timber Harvesting Associated with Activities Conducted by Humboldt Redwood Company LLC in the Upper Elk River Watershed.

**Exhibit-D:** Upper Elk River Sediment TMDL Action Plan, North Coast Regional Water Quality Control Board, May 12, 2016.

**Exhibit-E:** Upper Elk River Watershed Technical Analysis for Sediment, Tetra Tech, 2015.

**Exhibit-F:** Declaration of Kristi Wrigley in Support of Motion for Stay and Request for Hearing. February 1, 2019.

**Exhibit-G:** Enrolled Timber Harvest Activities in the Upper Elk River Watershed conducted by Humboldt Redwood Company LLC, and Green Diamond Resource Company under Order No. R1-2016-004, and Order No. R1-2012-0087, Attachment-C, South Fork Elk River Management Plan. North Coast Regional Water Quality Control Board, 2019.

## **X. Motion for Temporary Stay**

Pursuant to California Water Code section 13321 Petitioners request a temporary Stay of the Effect of the WDR Orders for HRC and Green Diamond in the Upper Elk River Watershed, Order No. R1-2016-004, and Order No. R1-2012-0087, Attachment-C, South Fork Elk River Management Plan portion, until a Hearing before the State Board can be held. This Motion for Stay and Request for Hearing is supported by the Declaration of Kristi Wrigley. (Enclosed as **Exhibit-F**).

Petitioners will be substantially harmed if the Motion for Stay of the Effect of the WDRs is not granted. (A Spreadsheet of Permitted and Enrolled Timber Harvest Activities in the Upper Elk River Watershed by the Regional Board is enclosed as **Exhibit-G**).

Logging under the current HRC and Green Diamond WDRs in the Upper Elk River Watershed is ongoing and will continue in the absence of a Stay of the Effect of those Orders. Logging under these WDRs is reasonably certain to result in feasibly controllable sediment pollution discharges into waters of the Upper Elk River Watershed, which will continue unreasonable degradation of Beneficial Uses of Waters of the State and exacerbate the nightmarish Nuisance conditions being faced by Upper Elk River Watershed residents.

By contrast, a Stay of the Effect of the WDRs will not affect the long-term interests of either HRC or Green Diamond, and will only minimally affect both in the short-term, if at all.

### **A. Petitioner will be Substantially Harmed if a Stay is not Granted**

This Petition and Motion for Stay centers around the Regional Board's Failure to Act and to perform affirmative and mandatory duties to exercise its authority to protect the Beneficial Uses of Waters of the State in the Upper Elk River Watershed. The Porter-Cologne Water Quality Control Act imparts this affirmative and mandatory duty pursuant to California Water Code 13000 et seq., Prime among the directives contained in the Porter-Cologne Water Quality Control Act to Regional Boards is to develop regulations that are sufficient to achieve Water Quality Objectives, including Water Quality Control Plans and Waste Discharge Requirements.

Over 20 years of evidence shows that the regulations established by the Regional Board in its Basin Plan and in WDRs have been, and continue to be, insufficient to protect, enhance, maintain and restore the quality and Beneficial Uses of Waters of the State in the Upper Elk River Watershed, have been insufficient to prevent unreasonable degradation of Waters of the State, and have been insufficient to prevent Nuisance. In this, the watershed, Beneficial Uses of Water, real people, and Real Property have, and continue to suffer damages, trespass, and feasible controllable unreasonable degradation of water quality.

Failure of the Regional Board to adopt and enforce regulations that are sufficient to protect water quality and ensure attainment of Water Quality Objectives and to prevent Nuisance is not a conceptual or esoteric problem; it affects the lives of members of Petitioner's organizations daily.

This Request for Hearing and Motion to Stay the Effect of the HRC and Green Diamond WDRs for the Upper Elk River Watershed is necessary to prevent imminent and irreparable harm and further unreasonable, feasibly controllable sediment pollution discharges resulting from ongoing and future industrial timber operations in the Upper Elk River Watershed Permitted and Enrolled by the Regional Board. (*See also*: Declaration of Kristi Wrigley, enclosed).

The Regional Board is knowingly and willfully Enrolling and allowing Enrollment of HRC and Green Diamond THPs under the current Upper Elk River WDRs, even with the knowledge of the State Board directives to revise the Orders and the same requirements contained in the Upper Elk River TMDL Action Plan.

This Motion for Stay of the Effect of the HRC and Green Diamond WDR Orders for Upper Elk River is necessary to protect water quality, prevent unreasonable and feasibly controllable further sediment pollution discharges and degradation, and to prevent the worsening of the current and ongoing Nuisance condition threatening the lives, health, safety and quality of life of everyday Californians living in the Upper Elk River Watershed.

#### **B. A Temporary Stay will not Cause Harm to Other Parties**

A Stay of the Effect of the WDRs will not affect the long-term interests of either HRC or Green Diamond, and will only minimally affect both in the short-term, if at all. Both HRC and Green Diamond are classified industrial timberland owners, both with over 200,000 acres of potentially productive timberlands located outside the Upper Elk River Watershed. HRC's Land-base is over 200,000 acres, while Green Diamond's is approximately 400,000 acres.

#### **C. The Regional Board Failure to Act Violates Numerous Laws and Policies**

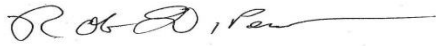
As articulated above, *supra*, The Failure to Act by the Regional Board on directives contained in State Board Resolution No. 2017-0046 within the timeline specified violates the Upper Elk River TMDL Action Plan, the North Coast Basin Plan, the State NPS Policy, and the State Water Code.

#### **D. Conclusion**

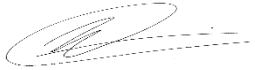
For the foregoing reasons, and on the basis of the balance of potential harms, Petitioners request that the State Board Stay the Effect of the WDRs for HRC and Green Diamond in the Upper Elk River Watershed, until such time as a Public Hearing on the Failure to Act can be scheduled and occur before the State Board.

Further, upon Hearing and finding that the Regional Board Failed to Act as directed, Petitioners request that the State Board take up the matter of revisions to the WDRs for HRC and Green Diamond in the Upper Elk River Watershed pursuant to authority provided at California Water Code section 13248(b).

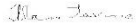
Respectfully submitted,



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