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State Water Resources Control Board
1001 I Street
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Re: Proposed State Water Resources Control Board Resolution on Timber Harvest, Grazing and Fire Suppression Oversight on National Forest System Lands

The Quartz Valley Indian Reservation Environmental Protection Department has reviewed the proposed Resolution (8/4/09 Item #7) before the California State Water Resources Control Board (SWRCB) to shift responsibility for timber harvest oversight on federal lands from the regional boards to Sacramento. The review has been enabled by the Klamath Basin Tribal Water Quality Work Group, which is comprised of the leaders of the water quality and environmental departments of five federally recognized Native American Tribes (www.klamathwaterquality.com) living within the California portion of the Klamath River basin.

The Work Group has been collaborating for many years with the North Coast Regional Water Quality Control Board (NCRWQCB) to bring good quality to the waters of the Klamath River basin, water quality upon which the Tribes have relied for their sustenance since time immemorial. For the past five years the Tribes have been specifically enabled by the U.S Environmental Protection Agency to contribute water quality science work products directly into the Regional Board's Klamath basin total maximum daily load (TMDL) water quality restoration planning process (Yurok Tribe 2006, Quartz Valley Indian Reservation 2007, QVIR 2009).

The Work Group member Tribes have also provided comments on federal timber harvest pollution abatement issues with the Scott River TMDL (QVIR 2005, 2006) and the Salmon River TMDL (Karuk Tribe 2005). Landslides triggered by timber harvests and road failures on National Forest lands in these basins is a significant source of water pollution (de la Fuente and Haessig 1994; de la Fuente and Elder 1998; Kier Associates 1999) as the documents identified below bear out.

We are deeply disturbed that the SWRCB has chosen to consider such a major change in State resource protection policy with a bare ten days of public notice and not one bit of direct notification to our Tribes. While the State Board's parent agency stresses the need for

close cooperation with the Tribes through its Klamath basin Environmental Justice Program pilot project (see http://www.calepa.ca.gov/EnvJustice/Documents/2007/Klamath.pdf), assisting the Tribes to address the water quality restoration issues of our basin, including those clearly rising on federal lands, the State Board would appear, at the same time, ready to rush to marginalize our work to restore our cultural rights to a healthy forest environment, including harvestable salmon and useable water.

The State Board's proposed Forest Service resolution is completely out of touch with the work accomplished cooperatively between the Tribes and the North Coast Regional Water Quality Control Board. Neither is the wording of the resolution truthful, nor will the actions contemplated in it stand the test of the California Environmental Quality Act.

Instead of rushing this hearing, the SWRCB should determine what the problem is with the status quo before proceeding with a very cumbersome and troubling regulatory approach. A statewide EIR or other environmental review will be costly, lengthy, and will attract litigation. Other recent statewide approaches to the endangered salmon species have encountered significant environmental review needs. Regulations would have to compare the general rules, the specific forest rules against each Regional Water Quality Control Board Plan, each watershed, and each TMDL to determine compliance.

The legislature in the Dickey Act and all subsequent water quality legislation has strongly endorsed the concept that regulations need to take into account the very different environmental characteristics of different regions. The Forest Practices Act has taken the same approach. For example, Lake Tahoe has the highest level of risk of damage from sediment due to the clarity of the water. Any set of regulations sufficient for Lake Tahoe would no doubt over regulate logging in other regions. High rainfall, steep slope, loose soils watershed similarly require very different silvicultural rules. The value of the current approach is that it allows risk assessments and a targeted regulatory approach. The State Water Resources Control Board is going against nearly 50 years of California natural resource regulatory history by taking the approach outlined.

The SWRCB General Waste Discharge Approach simply ignores the entire Water Quality Watershed Planning Approach mandated by the Porter-Cologne Act and makes the T.M.D.L. process meaningless. In watersheds with major U.S.F.S. land holdings T.M.D.L. monies should be given to the U.S.F.S. rather than the Regional Boards as they will have become completely ineffectual with a waiver to U.S.F.S. regulations. Just at the very moment such watershed approaches are coming to fruition the SWCRB suggests a regulatory approach that ignores such site and watershed specific approaches.

Environmental Problems from USFS Timber Harvest and Roads

Work Group member Tribes can provide the SWRCB with an abundant amount of information that we have filed with the NCRWQCB concerning water quality problems arising from management activities on National Forest lands in northwestern California. The Klamath National Forest, for example, has mismanaged its grazing allotments and failed to monitor and demonstrate water quality trends on its lands in the lower and middle Klamath River reaches and the Scott and Salmon River sub-basins as requested by the NCRWQCB.

We wish to incorporated the information listed immediately below by reference into your deliberations on the proposed resolution, following which we provide specific reasons why the State Board should reject the proposed resolution to shift water quality control on Forest Service lands from the regional boards to Sacramento

Yurok Tribe. 2004. Letter from Yurok Tribal Chairman Howard Mc Connell to SWRCB Chair Art Baggett, NCRWQCB Executive Director Catherine Kuhlman and SWRCB Member Wm. Massey re: Yurok Tribe concerns about Klamath River water quality. August 16, 2004. Yurok Tribe, Klamath, CA. 3 p.

Quartz Valley Indian Reservation. 2004. Letter from Tribal Chairman Aaron Peters to William Massey (NCRWQCB Chair), Catherine Kuhlman (NCRWQCB EO) and Art Baggett (SWRCB Chair) re: Klamath and Scott River TMDLs. December 23, 2004. QVIR, Fort Jones, CA. 5 p.

Karuk Tribe of California. 2005. Comments from the Karuk Tribe of California regarding the Salmon River Total Maximum Daily Load. Letter from Sandy Tripp Karuk Tribe of California, Department of Natural Resources to NCRWQCB. Karuk DNR, Orleans, CA.

Kier Associates. 2005. Lower West Side Scott River Shallow Landslide Hazard Maps. Performed under contract to the Quartz Valley Indian Reservation by Dr. Jan Derksen of Kier Associates on behalf of the Klamath Basin Water Quality Work Group. September 18, 2005. Kier Assoc., Sausalito, CA. 11 p.

Yurok Tribe. 2006. Comments Concerning the Klamath River TMDL Approach and Progress to Date. Memorandum from Yurok Tribe to North Coast Regional Water Quality Control Board. Yurok Tribe, Klamath, CA.

Quartz Valley Indian Community. 2006. Comments on the Final Draft Scott River Total Maximum Daily Load (TMDL) Work Plan. Letter to the North Coast Regional Water Quality Control Board. Quartz Valley Indian Reservation, Ft. Jones, CA. 35 p.

Quartz Valley Indian Community. 2006. Comments on Draft Scott River Watershed TMDL Implementation Work Plan and North Coast Basin Plan Amendment. Quartz Valley Indian Reservation, Ft. Jones, CA. 7 p.

Quartz Valley Indian Reservation. 2006. RE: Westpoint Vegetation Treatment Project Comments. QVIR, Fort Jones, CA. 5 p.

Quartz Valley Indian Community. 2007. Comments on Klamath River Nutrient, Dissolved Oxygen, and Temperature TMDL Implementation Plan Workplan Outline for CA (NCRWQCB, 2007). QVIC, Fort Jones, CA. 30 pp.

Quartz Valley Indian Reservation. 2007. Comments on the Klamath National Forest's Draft Kidder Creek and Shackleford Allotments Livestock Grazing Management Environmental Assessment. QVIR, Fort Jones, CA. 20 p.

Quartz Valley Indian Reservation. 2009. Comments on Review Draft Water Quality Restoration Plan for the Klamath River Basin in California: Draft Scoping for TMDL Implementation. QVIR, Fort Jones, CA. 26 p.

These documents clearly describe problems with U.S. Forest Service and private timber land harvest activities in the Klamath River basin that have caused huge amounts of sediment pollution. This sediment pollution causes additional water quality problems, such as increased water temperature due to increased stream width-to-depth ratios and loss of Pacific salmon refugia (U.S. EPA 2003). Comments by Work Group member Tribes have clearly described how USFS actions since the adoption of Water Quality Management Plans (WQMP) and Best Management Practices (BMPs) (USFS 1981) have led to massive contributions of sediment to streams and to the degradation of public land meadow habitat.

These documents demonstrate the need for the NCRWQCB to tighten controls on USFS activities to prevent further degradation of stream channels, not to back away from day-to-day work with the Forest Service. To do otherwise dooms the implementation of the TMDL plans formulated over the past dozen years pursuant to PCFFA et al v. Marcus. The basin's Pacific salmon will not be restored and may well become extinct.

Congress has extensively documented that the U.S.F.S. for budget reasons has often not completed or complied with U.S.F.S. environmental and forestry regulations. This is expected to become worse due to the federal deficit. These problems are especially acute for roads and reforestation. The general rule is roads account for 70% of silvicultural discharges. This is a massive problem. The only way to insure that delayed but critically important environmental mitigations are implemented is the threat of regulating silvicultural activities.

We will provide the SWRCB with all the above documents on DVD for your CEQA analysis of this proposed action. Many of the documents may be found directly at the Work Group website (www.klamathwaterquality.com).

SWRCB staff advances incorrect information in its attempt to preempting Regional Board authority over Forest Service land management activities

The proposed August 4 resolution contains the following its attempt to justify a Sacramento take-over of USFS land management activities :

> "Originally, the WQM Plan was treated as an informal waiver of waste discharge requirements. Due to new statutory mandates regarding waivers, Regional Water Quality Control Boards (Regional Water Boards) have subsequently developed their own region-specific waivers addressing timber harvesting on NFS lands. This has given rise to regulatory redundancy and inconsistency with USFS standards, inconsistencies between regions, and increased regulatory burdens, costs, and uncertainties for USFS. There have also been changes in USFS policies.
>
> USFS has authorities, resources, and expertise that can be very valuable in controlling NPS pollution from activities on NFS lands. The State Water Board seeks to improve the efficiency and effectiveness with which pollution generated by

past and present activities on NFS land is controlled, and reduce unnecessary regulatory duplication, workload, conflict, and uncertainty."

The NCRWQCB regulatory authority is not redundant, since there has never been any significant State-level oversight of USFS activities in the Klamath Basin. The argument that regulation that differs from region to region is "inconsistent" ignores the vast geographic and geologic variability of California. The KNF has conducted lax operations on extremely steep and fragile terrain, with disastrous water quality consequences for fisheries and aquatic habitat -- in violation of its MOU with the SWRCB, other Clean Water Act provisions; the Endangered Species Act (ESA) and its own National Forest Management Act (16 U.S.C. §§ 1600-1614).

While the proposed resolution states that the "USFS has identified high quality water as the most valuable commodity to be produced from NFS lands, and it is among the highest of USFS environmental priorities", Klamath National Forest land management activities contributed to well-documented, catastrophic damage to 437 miles of stream channels on national lands (de la Fuente and Elder 1998).

At the Forest- and ranger district level, the KNF has not shown the capacity nor "expertise" to control non-point source pollution, nor to deliver monitoring reports when aquatic conditions have become impaired as a result of USFS activities, nor to predict when, if ever, water quality goals will once more be met, either through natural recovery or restoration activities (see BMPs/Cumulative Effects).

While the SWRCB may consider it bureaucratically efficient to do business between Sacramento and the Forest Service's regional office in Vallejo, this would shut out regional stakeholder and tribal participation of oversight and turns decisions over to staff unfamiliar with conditions on the ground. Tribes that are Work Group members have easy access to NCRWQCB staff and meetings of the North Coast Board are frequently held near Reservations. Work Group member Tribes, therefore, strongly object to your shifting authority away from the Regional Board removing decision-making process from State staff that is now accessible to the Tribes.

The proposed action will undermine more than a year of work by NCRWQCB with KNF and other northwestern California national forests to get a workable new Memorandum of Agreement (MOA) that insures stronger compliance with the CWA, the Basin Plan and the new TMDL implementation objectives.
We sense no explanation at this point of how Sacramento's yet-go-be-devised program will complete this MOA effort and effectively oversee its implementation in the field. Such Sacramento staff would be redundant to the NCRWQCB staff which has years of training and established personal relationships with USFS line staff that carrying out operations in the region.

Public lands in the Klamath Basin comprise over 70% of watersheds accessible to salmon and steelhead. Management of these lands must be improved in order to meet Tribal treaty rights and State and federal trust responsibilities.

Substantial proof of ineffectiveness of BMPs to prevent Klamath National Forest cumulative watershed effects and harm to endangered species

Comments by Work Group member Tribes to the USFS and NCRWQCB have stressed the need to take a risk management approach (Dunne et al. 2001) to prevent stream damage such as that which occurred during the January 1997 storm (de la Fuente and Elder 1998).

According to KNF post-flood studies, the greatest trigger of landslides and debris torrents was forest roads, followed by recent harvest activity. According to USFS hydrologists (Barry Hill personal communication), KNF had 45 watersheds above the recognized USFS threshold of concern (TOC) in 2004, based on USFS model runs.

Since 2004, two watersheds on the Klamath NF have gone over the TOC threshold due to timber harvests and 13 have gone over threshold due to wildfires. During the same period, six watersheds that were above TOC fell below threshold due to passive recovery and four watersheds fell below threshold due to road treatments. The current total of Klamath NF watersheds over TOC is, therefore, 50.

In order to prevent a huge setback for aquatic ecosystems in the middle Klamath basin, the Scott River and Salmon River, the USFS must accelerate its watershed recovery efforts and restrict its timber harvests to forest health activities that remove young, small diameter trees.

NCRWCB can help promote needed activities and prevent further degradation.

Comments by the QVIR (2007) on KNF grazing allotments showed that USFS staff was not presenting existing scientific data that showed that continuation of leases would cause decline of ESA listed bird species. KNF timber harvest and road building and subsequent landsliding caused warming of a number of lower Scott River tributaries that had formerly functioned as salmonid refugia (QVIR 2006). Similar damage to Middle Klamath Basin tributaries like Elk Creek also caused loss of refugia which the U.S. EPA (2003) and the Klamath TMDL (NCRWQCB, in press) acknowledge are critical to the protection and restoration of salmon and steelhead in the Klamath River.

The critical actions which need to be taken to make the USFS a true partner in water quality and restoration cannot be advised nor coordinated by the State Board's Sacramento staff. What is working best in the current system are voluntary M.O.A. and M..O.U.s between Regional Boards and specific U.S.F.S. forests. This approach allows water quality watershed principals to be applied on an as needed basis. Since it is negotiated with each forest supervisor there is an excellent reconciliation between general U.S.F.S. rules and specific watershed, Clean Water Act, needs. Such M.O.U. s should be the waive of the future if allowed to continue by the SWRCB. It appears that the SWRCB approach will discourage what from a water quality standpoint is working best.

With regard to fire, the USFS has shown an alarming trend of allowing out-of-State contractors to burn vast tracts of intact forest in "backfires", supposedly to prevent the spread of fire to nearby watersheds. In fact, naturally caused fires smolder and burn undergrowth and can help restore forest health while the contractor-caused backfires are often the hottest and most destructive. Individual Tribes are working with local forests on

this issue, but SWRCB and NCRWQCB staff should consider greater involvement on this issue, which has huge implications for forest health, water quality and water supply.

Conclusion

The responsibility-shift resolution before the State Board on August 4 is no trivial bureaucratic matter. It would be enormously destructive of a great deal of hard work developed collaboratively between the Klamath basin Tribes and the North Coast Regional Water Quality Control over the past several years.

If Board members have questions of how the resolution would be implemented – what, for example, if any cost savings would accrue to the State, such answers should be put before further action is taken on the resolution, not left to bureaucratic hedging after the fact.

There are a number of legal issues – CEQA compliance, agreements with U.S EPA – that need to be addressed before any further consideration is given to this ill-advised staff draft resolution. The Work Group member Tribes expect nothing less.

The Work Group formed following the Klamath River's disastrous September, 2002 adult salmon kill in order to work proactively on water quality recovery and to assist State and federal agencies concerned with programs that impact the river. We have made progress with NCRWQCB staff in working toward improving water quality and healing the Klamath River watershed and we fear that the proposed shift in authority will undermine this very progress.

Work Group member Tribes view informed State and federal Clean Water Act compliance as a key means for assuring the future of the Klamath basin's salmon and the Tribes' 10,000-year reliance on its once-vibrant fish resource. We see nothing of in the proposed resolution that will improve the information nor staff activities needed for successful compliance with the State's water quality objectives.

If the SWRCB proceeds there needs to be a complete environmental analysis, there should be advisory committee with Tribal representation, a system for sediment rationing pursuant to the TMDL 303 (d), provisions to coordinate with water quality planning are needed. A regional forest MOA or MOU system should be maintained.

Sincerely,

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Environmental Director
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