Siskiyou Land Conservancy

October 8, 2025

Comments: Lily Bulb Order

Greg King, Executive Director, Siskiyou Land Conservancy

We at Siskiyou Land Conservancy are grateful to the Water Board for making the trip to Del Norte County to hear the concerns of residents, scientists, tribal members, and NGOs about the ongoing crisis of contamination of the vital Smith River estuary, and the pesticide poisoning of residents in the Smith River region.

Over the past twenty-plus years I've been sort of hard on this board, and by extension on the state of California, for its failure in this case to property uphold and enforce the Clean Water Act and the state and federal Endangered Species Acts, among other statutes, thereby neglecting its legal obligation to protect the Smith River estuary from pesticide abuses. But I know it's not an easy job, and your service is appreciated.

Starting today, right now, with construction of the NPDES order for lily farmers, the state of California must make as its highest priority the full and iron-clad protection of the estuary of the most pristine, most heralded, and arguably most ecologically intact and important coastal river ecosystem on the West Coast of the United States. At this moment the state must step up to protect the Smith River estuary by retreating from an entrenched position of weak or nonexistent application of applicable laws, a position that instead protects a tiny collection of farmers who apply destructive amounts of some of the most toxic chemicals allowed by law—pesticides several of which are banned in dozens of other countries—onto the fragile and biologically critical wetlands of the Smith

River estuary, simply to grow an ornamental flower that satisfies a niche market whose point of sale period lasts two weeks.

Now is the time to move forward to remedy the lily growers' decades of abuses and the state's failures to take proper and timely action to fully forestall those abuses. What should this "moving forward" look like? It should like a lily bulb order that fully disallows any and all discharges of pesticide residues, including but not limited to copper, into the Smith River estuary and its tributaries. Were such residues found in the estuary, or were there pesticide-caused contamination of the salmonid food chain, then this order must require a cessation of pesticide-intensive farming in those watersheds. Here is some information from our attorneys that will help you to justify the most stringent waste discharge requirements allowable by law.

According to Water Code 13263, in a WDR the water board can restrict discharges of "waste" to implement the water quality objectives in the Basin Plan. The Basin Plan contains narrative Water Quality Objectives for toxicity, chemical constituents, and pesticides. In addition, the Nonpoint Source Policy and the Antidegradation Policy place additional requirements on the Regional Board: permits must have a "high likelihood" of achieving Water Quality Objectives, must have a specific time schedule with quantifiable milestones, and must have feedback mechanisms capable of ensuring the program is working (NPS policy; *Monterey Coastkeeper v. State Water Resources Control Bd.* 2018, 28 Cal.App.5th 342). They must also require "best practicable treatment and control," prevent nuisance and pollution, and ensure that any degradation is consistent with the maximum benefit to the people of the state. (Antidegradation policy; *Asociacion de Gente Unida por el Agua v. State Water Resources Control Board* (2012) 210 Cal.App.4th 1255.)

In other words, it is accurate to say that this Water Board can and must create WDRs that disallow any and all pesticide residues from reaching estuary waters, and pesticide-caused contamination of estuary waters and its tributaries.

There are many reasons and legal justifications to impose such significant restrictions on pollution of the Smith River estuary. Near the top of these reasons is the understanding that there are no "best management practices" that can possibly prevent lily pesticides from reaching estuary waters. This is because—as pointed out both by

NMFS fisheries biologist Dan Free, and Cal Poly Humboldt chemistry professor Dr. Matt Hurst—lily crops are grown on seasonal wetlands. For this reason, Free contends that easter lilies should not be grown at all on the bottomlands that surround the estuary. Meanwhile, Hurst's 2024 study of lily fields demonstrate that filter strips—a core component of the best management practices that the draft lily order will impose on lily growers—cannot possibly stop the flow of copper, and therefore undoubtedly other pesticides, into Smith River spawning streams. Whereas Water Boards are subject to a restriction in Water Code section 13360, that permits cannot specify the means or method of compliance—which is to say that while this Water Board may not be able to fully disallow pesticide use on the Smith River Plain, though we find this contention arguable—where there is only one possible method of complying with a WDR, section 13360 does <u>not</u> ban the imposition of a restrictions that disallow any and all discharges of pesticide residues to, and pesticide-caused toxicity in, surface waters. According to *Tahoe-Sierra Preservation Council v. State Water Resources Control Bd.* (1989) 210 Cal.App.3d 1421, 1438: "Where the lack of available alternatives is a constraint imposed by present technology and the laws of nature rather than a law of the Water Board specifying design, location, type of construction or particular manner of compliance there is no violation of section 13360."

So this Water Board can and absolutely must disallow discharge of any and all pesticide residues, and disallow any and all toxicity to the aquatic food chain caused by pesticides, as such contamination and discharges are causing or contributing to a violation of the narrative standards in the Basin Plan, as demonstrated by monitoring of Smith River estuary waters since 2010. If a ban on such discharge and toxicity is strong enough that it also disallows the use of pesticides on the Smith River Plain, then that is what we would call a best-case scenario.

Because if you want to protect the Smith River estuary, its water quality, its habitat, its imperiled species, and the humans who live in the area, then it's likely that use of these highly toxic pesticides will have to be discontinued altogether.

Although my organization and others are dedicated to the idea that this Water Board, as noted above, has the legal authority and obligation to require zero discharges of pesticides and zero instances of reproductive toxicity in the aquatic food chain, I want to

emphasize also that in constructing this WDR the Water Board has an excellent opportunity to offer top-tier protection to California's wildest and most pristine river ecosystem. It has an opportunity to contribute immensely to the Governor's excellent 30x30 initiative to protect 30 percent of the state's lands and waters by the year 2030, and to the Governor's California Salmon Strategy of 2024. By fully protecting the Smith River estuary, you will be allowing and ensuring the survival of salmonid populations, particularly coho salmon, throughout the entire 700 square-mile Smith River watershed—survival that otherwise would look perilous at best. You will also be allowing the survival of the northernmost population of tidewater goby, which has the highest level of protection under the federal Endangered Species Act and is disappearing throughout the state. By fully protecting the Smith River estuary from pesticides, you could actually be preventing the total extinction of tidewater goby. And these are but two of many such species that deserve and demand the strongest waste discharge requirements to fully protect the Smith River estuary. Which is to say: zero discharge, zero toxicity.

Thank you,
Greg King