



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
CIVIL RIGHTS

JUN 10 2015

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**In Reply Refer To:**

EPA File No: 07A-14-R9

Matthew St. John  
Executive  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard, Suite A  
Santa Rosa, California 95403-1072

**Re: Rejection of Administrative Complaint**

Dear Mr. St. John:

This letter is to notify you of actions the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) has taken concerning a complaint filed against the North Coast Regional Water Quality Control Board ("the Board") by residents of Eureka, California. The EPA received this complaint on June 19, 2014. On October 14, 2014, the OCR sent the complainants a letter requesting clarification regarding the complaint and received a response on November 5, 2014. The complaint and subsequent clarification allege that the Board violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 United States Code (U.S.C.) §§ 2000d *et seq.*; the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; and the EPA's regulations implementing both Title VI and the Age Discrimination Act at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another federal agency. 40 C.F.R. § 7.120(d)(1). For the OCR to accept a complaint for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. In addition, there are certain circumstances, such as,

pending litigation and ripeness, when it would not be appropriate for an agency to investigate a matter over which it may have jurisdiction.<sup>1</sup>

The complaint alleges that the Board discriminated against persons living near the South Fork of Elk River, who are described as being disproportionately poor and elderly. Specifically, the complaint and subsequent clarification allege that the Board has discriminated against these residents in its regulation of the water quality of the Elk River through the Total Maximum Daily Load (TMDL) process and associated public participation activities.

The OCR has since learned that the TMDL process that forms the basis of the complaint is not yet complete.<sup>2</sup> Indeed, the Board held public workshops on May 7 and June 19, 2014, to inform the public on the status of the process and solicit comment, both of which were attended by the Complainants.<sup>3</sup> The Board has not taken any formal action related to the TMDL subsequent to that meeting. Accordingly, the TMDL that the complaint alleges is discriminatory has not yet been enacted by the Board.

Under these circumstances, as a preliminary jurisdictional matter and without addressing its merits, the OCR finds that this complaint is not ripe. The allegations in the complaint are speculative in nature and anticipate future events that may not occur. The allegations here involve the same facts that are currently before the Board as part of the public involvement and decision-making process associated with it eventually making a TMDL determination. In other words, the Board's action is not yet final, so the Board's final decision resulting from completion of its administrative process could potentially address the concerns raised in this complaint or otherwise alter how the water quality of the Elk River is regulated. Accordingly, the OCR must reject the complaint as premature.

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<sup>1</sup> Department of Justice's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and other Non Discrimination Statutes, Chapter III. B. (September 1998); <http://www.justice.gov/crt/about/cor/Pubs/manuals/complain.pdf>.

<sup>2</sup> Email from Janet Parrish, EPA Region 9, Memorializing Her Call with North Coast Regional Water Quality Control Board (May 14, 2015) (on file); *see also* Email from Janet Parrish, EPA Region 9, Providing Details of Final Delivery Order for Tetra Tech (May 21, 2015) (on file) (setting forth schedule of deliverables for contractor working on TMDL).

<sup>3</sup> *See* North Coast Regional Water Quality Control Board, Minutes of Meeting at 4 (June 19, 2014), *available at* [http://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/06\\_2014/140619\\_June19\\_2014\\_minutes.pdf](http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2014/140619_June19_2014_minutes.pdf) (listing [REDACTED] among those offering comments on the "Draft Elk River Total Maximum Daily Load"); North Coast Regional Water Quality Control Board, Minutes of Meeting at 2 (May 7, 2014), *available at* [http://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/05\\_2014/140507\\_May\\_2014\\_minutes.pdf](http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/05_2014/140507_May_2014_minutes.pdf) (listing Complainant among those offering comments on the "Upper Elk River TMDL and Waste Discharge Requirements Update").

If you have any questions, please contact Jonathan Stein of the OCR External Compliance Program by telephone at (202) 564-2088, via email at [stein.jonathan@epa.gov](mailto:stein.jonathan@epa.gov), or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Velveta Golightly-Howell  
Director

cc: Elise Packard  
Associate General Counsel  
Civil Rights & Finance Law Office (MC 2399A)

Alexis Strauss  
Deputy Civil Rights Official  
U.S. EPA Region 9 (MC ORA-1)

Michael Shapiro  
Deputy Civil Rights Official  
U.S. EPA Office of Water (MC 4101M)