

# California Regional Water Quality Control Board North Coast

DRAFT Order No. R1-2023-0034

## Waiver of Waste Discharge Requirements and General Water Quality Certification for Road Management and Activities Conducted Under the Five Counties Salmonid Conservation Program in the North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. The North Coast Region encompasses 19,390 square miles, containing over 6,000 miles of county and rural roads. Roads are a source of existing and potential sediment delivery from increased surface erosion and fine sediment production and delivery, and from an increased potential for stream diversions (stream channel capture), rill and gully erosion, and shallow landslides with corresponding increases in sediment production and delivery. Sediment and settleable matter may affect stream channel stability and habitat, resulting in a potential impact to cold water fish habitat (COLD) beneficial uses.
2. Counties and other dischargers are responsible for conducting routine and emergency repair and maintenance of roads and related facilities (e.g., bridges and road maintenance yards) and snow and ice removal. These activities have the potential to discharge wastes that affect waters of the state. In addition, counties and other dischargers are responsible for discharges of waste from controllable sediment discharge sites (CSDSs) associated with their road networks. A CSDS is an existing site that is 1) actively discharging or has the potential to discharge sediment in violation of water quality requirements; 2) is caused or affected by human activity; and 3) may reasonably respond to erosion control/management measures.
3. The management of county and rural roads within the North Coast Region provides a unique opportunity for a comprehensive permit that can provide more efficient protection of the beneficial uses of water by addressing temperature and sediment sources systematically across the landscape through the use of an already-developed and well-established road management program, the Five Counties Salmonid Conservation Program (5C Program). The Five Counties Salmonid Conservation Program (5C Program) provides an efficient and organized structure for preventing and mitigating water quality impacts from county and rural road maintenance activities and implements important fish passage and restoration projects in the North Coast Region.
4. This Order (or Waiver) covers discharges of waste from nonpoint source activities, which have the potential to adversely affect waters of the State. Most of the potential water quality impacts are associated with erosion and sediment delivery and/or alterations to riparian systems that may reduce shade and affect water temperatures. These nonpoint source activities include those described below:
  - a. Grading practices, including shoulder blading and rebuilding, erosion repair, road outsloping and rolling dip installation, and ditch shaping and cleaning.
  - b. Ditch relief culvert cleaning, repair, hydrologic disconnection of inside ditches, and installation of ditch relief culverts, and reshaping cutbanks.
  - c. Road surfacing and dust abatement including road surface repair, water drafting.
  - d. Vegetation management including mowing and cutting of vegetation, invasive weed abatement, and tree removal for safety or maintenance (note: this Order does not cover the use of pesticides or herbicides in riparian areas or waters of the State).

- e. Winterizing roads.
  - f. Soil disposal, including disposal site maintenance, disposal site closure, and stockpile maintenance (does not apply to asphalt concrete grindings).
  - g. Maintenance yard housekeeping practices including building and yard maintenance, vehicle and equipment maintenance and material use and storage.
  - h. Emergency maintenance, including slide and settlement repair.
  - i. Snow and ice removal including sanding, de-icing, and anti-icing chemicals.
  - j. Channel maintenance, including removal of accumulated sediment at culvert inlets/outlets, replacement of rip-rap.
  - k. Low water crossing maintenance.
  - l. Watercourse crossing culvert maintenance and repair including culvert cleaning, culvert improvement and repair, culvert replacement, and temporary stream diversions during in-stream projects.
  - m. Bridge drift removal and removal of storm deposited debris from bridges.
  - n. Treatment of legacy sites involving repair, upgrading, and replacement of watercourse crossings.
5. This Waiver divides road related nonpoint source project activities into two categories, Category A and Category B, which are based on the potential threats to water quality. Threats are generally based on characteristics such as, but not limited to, the areal extent and intensity of disturbance, the types of habitat and riparian functions present, and the proximity and presence of surface waters. Both Category A and B activities must meet the General Conditions and requirements of this Order, and the 5C Roads Manual. Activities with a low potential threat to water quality are eligible for Category A. A list of Category A project activities is found in Attachment A. Provided they comply with this Order, Category A project activities listed in the Annual Report (General Condition 6) have a Specific Condition to keep records of activities covered under Category A of this Order, including any environmental assessments prior to, during, or after the activity. Category B activities are those with a moderate potential threat to water quality. A list of Category B type projects is in Attachment B. For Category B project activities, dischargers are required to provide specific project information to the Regional Water Board in the Annual Report for review and evaluation for compliance with the Order. Projects or activities that may result in impacts to water quality that cannot be mitigated to less-than-significant are not eligible for coverage under this Order.
6. This Waiver does not authorize:
- a. New road construction.
  - b. Bridge painting.
  - c. Mining discharges, except for control of nonpoint sources to the extent that the discharger employs BMPs that address sediment and temperature from roads, unvegetated soil, and loading pads that are associated with mining activities or mining sites.
  - d. Storage of asphalt grindings in stockyards or spoil storage sites, or use of asphalt grindings in those portions of roads, or road projects, that are hydrologically connected to waters of the State.
  - e. Discharges from the application of herbicides or pesticides as part of vegetation management activities. An Invasive Weed Management BMP section will be added to the 5C Manual at a later date to address noxious weed abatement. At that time, the Order may be amended to cover herbicide and pesticide use as appropriate.
  - f. Specific projects or project activities when the specific project or activities may result in impacts to water quality that cannot be mitigated to less-than-significant levels.
  - g. CalTrans projects.
7. On May 17, 2018, the Regional Water Board adopted the *Waiver of Waste Discharge Requirements and General Water Quality Certification for County Road Management and Activities Conducted Under the Five Counties Salmonid Conservation Program*, Order No. R1-2018-0011 (2018 Waiver).

The 2018 Waiver renewed the first iteration of the 5C Waiver, R1-2013-0004. Pursuant to Water Code section 13269, the 2018 Waiver expired on May 17, 2023, after a five-year term. This Waiver contains the same requirements as the 2018 Waiver.

Projects already approved under the 2018 Waiver, provided they meet the eligibility criteria and remain in compliance with the conditions of Order R1-2018-0011 until completed, are enrolled in this Order subject to the terms and conditions herein.

## FRAMEWORK OF THE 5C PROGRAM

8. The counties of Mendocino, Humboldt, Del Norte, Siskiyou, and Trinity (collectively referred to as the 5C Counties) entered into a cooperative effort beginning in 1997 to address the listing of coho salmon as a threatened species under the federal Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.). The effort resulted in the development of the 5C Program, which is committed to long-term, systematic, prioritization-based restoration to improve water quality and salmonid habitat.
9. An important element of the 5C Program is long-term reduction of sediment discharges from county roads to streams with anadromous salmonid populations. The *Water Quality and Stream Habitat Protection Manual for County Road Maintenance in Northwestern California Watersheds* (5C Roads Manual) was developed in 2002 as an implementation tool to achieve salmonid habitat restoration goals through the 5C Program. The goals of the 5C Roads Manual are to prevent or minimize delivery of sediment and chemicals to streams, protect aquatic and riparian habitat, and restore access for fish passage at stream crossings. One of the anticipated benefits of the Manual was the facilitation of streamlined permitting processes with state and federal agencies.
10. The 5C Program contains the five major components described below that are important for meeting water quality needs: BMP implementation; riparian management; treatment of existing CSDS; monitoring; and training.

First: The 5C Roads Manual provides best management practices (BMPs) for the repair and maintenance of roads and related facilities, such as bridges and county road maintenance yards, including the replacement of existing structures with different types of structures. Road maintenance includes actions taken to prevent erosion and/or the deterioration of a roadway, including the associated cutbank, road surface, fill slope, and all drainage structures. The 5C Roads Manual includes management measures for activities to protect the traveling public, such as snow and ice removal. The 5C Roads Manual describes categories of maintenance activities and recommended BMPs, including management of temporary and permanent soil stockpile locations, and retention of riparian vegetation near watercourses, aimed at reducing environmental degradation from sediment delivery to streams and minimizing the potential for other adverse effects.

Second: The 5C Roads Manual includes measures for minimizing disturbance of riparian areas and maintaining shade. Shade trees along streams and rivers are to be maintained unless they are determined to be a hazard. Any removal of trees providing riparian shade or bank stabilization requires coordination with appropriate agencies.

Third: The 5C Program includes a road inventory method known as the Direct Inventory of Roads and Treatments (DIRT). The DIRT provides methodology to assess road related erosion sources from existing roads and drainage structures, identify road stream crossings that are barriers to fish passage, locate suitable soil spoils sites, recommend treatments of identified sediment sites, and begin to prioritize the inventoried sites by treatment immediacy and other criteria, including the erosion potential and total sediment delivery volume. Additional factors include a cost-benefit analysis of prescribed

treatments, biological considerations including watershed priority and anticipated benefits to salmonid populations; and management considerations such as capital improvement schedules and funding availability. The implementation approach to DIRT recommended treatments is developed by each individual County depending on their economic and other available resources. Individual Counties and 5C Program staff may modify initial DIRT prioritizations when developing implementation projects.

Fourth: Del Norte, Mendocino, Sonoma, and Trinity Counties have completed the DIRT inventories on all of their roads. DIRT inventories continue to be performed in Humboldt and Siskiyou counties to identify existing sources of road-related erosion and prioritize treatments. A total of 2,455 miles of county roads has been inventoried, largely with grant assistance. Counties enrolled in this Order must comply with General Condition #4 to develop and maintain DIRT inventories. Dischargers already using a methodology comparable to the DIRT methodology may continue to do so, provided that it can be demonstrated to the satisfaction of Regional Water Board staff that it meets the intent and information requirements of the DIRT methodology. There is an expectation that each county will make reasonable progress towards completing road inventories and remediating high priority CSDS during the 5-year term of this Order.

Fifth: Training and monitoring are also important components for meeting water quality needs and are included in the 5C Program. The 5C Roads Manual includes a training program for road crews, supervisors, engineers, and managers; and a monitoring program to evaluate and document the effectiveness of the BMPs in protecting, maintaining, and enhancing water quality and stream habitat, especially for listed species of salmonids. The manual describes selective self-monitoring of the implementation and effectiveness of BMPs with suggested methods for carrying out both types of monitoring. The monitoring provisions of the 5C Program also specify the development of an annual report by March 1 of each year to summarize each county's implementation and effectiveness monitoring results.

## WATER QUALITY REGULATION

11. The *Water Quality Control Plan for the North Coast Region* (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives to protect waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. Economic considerations were evaluated as required by law during the development of these objectives. Compliance with the conditions, prohibitions, and provisions contained in this Order will implement these previously developed water quality objectives and protect beneficial uses.
12. The State Water Board 2004 *Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy) requires that nonpoint source discharges of waste are regulated by waste discharge requirements (WDR), a waiver of waste discharge requirements, or prohibition to ensure compliance with regional water board water quality control plans (Basin Plan).
13. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a Report of Waste Discharge (ROWD) containing such information and data as may be required by the Regional Water Board. Water Code section 13269 authorizes the Regional Water Board to waive the requirements of Water Code section 13260 for specific types of discharge if the waiver is consistent with the Basin Plan and in the public interest. Any waiver is conditional and may be terminated at any time. A waiver should include monitoring requirements to verify the adequacy and effectiveness of the waiver's conditions. This Order conditionally waives the requirement to file a ROWD for activities and

associated discharges described in Finding 4 and includes monitoring requirements to verify the efficacy of the waiver conditions.

14. Activities described in finding 4 that involve construction and other work in waters of the United States may require a federal permit pursuant to section 404 of the Clean Water Act. Section 401 of the Clean Water Act requires every applicant for a federal license or permit to provide water quality certification from the state. State water quality certification conditions shall become conditions of any federal license or permit for the project. This Order includes a section 401 General Water Quality Certification for projects that include Category B activities. The application for section 401 General Water Quality Certification coverage is located in Attachment E.
15. Activities described in finding 4 that take place within jurisdictional waters of the State but do not require CWA Section 404 permit are still subject to regulation under the State law. This Order provides coverage in the form of a Waiver of Waste Discharge Requirements for those activities. The application for coverage of Category B activities that impact waters of the State is located in Attachment E.
16. The federal Clean Water Act section 303(d) (33 U.S.C. § 1313), requires states to determine waterbody compliance with water quality objectives and to develop a list of impaired waterbodies. Federal regulations require that a Total Maximum Daily Load analysis (TMDL) is conducted for 303(d) listed water bodies for each pollutant of concern. The US Environmental Protection Agency (EPA) has established sediment and turbidity TMDLs for 18 impaired waterbodies, and temperature TMDLs for 10 impaired water bodies in the North Coast Region. The Regional Water Board has adopted 9 additional TMDLs for impaired stream segments in the North Coast Region with accompanying implementation plans adopted into the Basin Plan as TMDL Action Plans. The TMDL Action Plans are watershed-specific programs of implementation with interim milestones and final compliance dates, by which waste load allocations, load allocation, numeric targets, and other regulatory and non-regulatory actions must be implemented and water quality standards attained.
17. The Regional Water Board implements the required waste load allocations, load allocations, and numeric targets of EPA-developed sediment TMDLs through Resolution No. R1-2004-0087, which adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (Sediment TMDL Implementation Policy) as an amendment to the Basin Plan. Under Resolution No. R1-2004-0087 and the Sediment TMDL Implementation Policy, staff are directed to use existing permitting and enforcement tools, existing prohibitions, and MOUs as some of the available techniques to implement sediment TMDLs and attain water quality standards. Similarly, the Regional Water Board implements the required waste load allocations, load allocations, and numeric targets of EPA-developed temperature TMDLs through Resolution No. R1-2014-0006, which adopted the *Policy for the Implementation of the Water Quality Objectives for Temperature* (Temperature Implementation Policy) and incorporated the *Policy Statement for Implementation of the Water Quality Objective for Temperature in the North Coast Region* as an amendment to the Basin Plan. The Sediment TMDL Implementation Policy applies to all sediment-impaired waters for which there is no watershed specific TMDL Action Plan. The Temperature Implementation Policy applies to all North Coast waters, regardless of impairment status.
18. If certain findings can be made, the State Water Board's *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options*, Resolution No. 2005-0050, (Impaired Waters Policy) provides that a TMDL may be adopted with a resolution or order that certifies that a regulatory or non-regulatory program is being implemented by another entity, and the program will correct the impairment. This Order includes the requisite findings below and certifies the 5C Program as an appropriate TMDL implementation mechanism.
19. The 5C Program provides an efficient and organized structure for addressing water quality

impacts from road maintenance activities and implementing important restoration projects in the North Coast Region. When implemented, the 5C Program meets the water quality protection needs of the Regional Water Board while consolidating efforts of various local, state, and federal agencies to conserve resources and avoid duplicative implementation of regulatory requirements.

20. Implementation of the 5C Program addresses sediment and temperature impairments by requiring: 1) the application of Best Management Practices (BMPs) on roads and at maintenance yards to avoid excess sediment discharges; 2) the protection and maintenance of riparian conditions and shade, within the road right-of-way and property; 3) inventories, prioritization, and remediation of sediment delivery sites; 4) implementation and effectiveness monitoring of BMPs and documentation of the monitoring results; and 5) on-going training of road district supervisors, road crews, and equipment operators in BMPs. For activities identified in finding 4, it is anticipated that compliance with the conditions contained in this Order will constitute TMDL compliance with all sediment/turbidity and temperature TMDLs, including EPA-established TMDLs in the North Coast Region, subject to periodic review, monitoring, and reassessment.

### WAIVER OF WASTE DISCHARGE REQUIREMENTS

21. The Regional Water Board may issue a waiver of waste discharge requirements for a specific type of discharge if it finds the issuance is consistent with applicable state and regional water quality control plans and is in the public interest pursuant to Water Code section 13269.
22. This Order contains conditions that rely on the implementation of the 5C Program. The primary substantive components include: 1) prevention and minimization of water quality impacts from 5C Road Program activities through implementation of the BMPs contained in the 5C Roads Manual; 2) inventory, prioritization, and scheduling for remediation of sediment delivery sites using the DIRT methodology; and 3) monitoring and reporting requirements, including adaptive management to ensure that lessons learned are translated into modified practices.
23. As authorized by Water Code section 13269, this Order conditionally waives the requirement to file a ROWD and obtain WDRs for activities and associated discharges identified in finding 4 for those counties who adopt and implement the 5C Program and comply with all conditions in this order, including the monitoring and reporting program.
24. It is appropriate to regulate discharges from nonpoint source activities as described in finding 4 under a general waiver order rather than individual discharge requirements because this Order addresses the same or similar discharges of waste from the same or similar operations and proposes the same or similar treatment methods and management practices. By regulating these discharges and activities under a general waiver order, it simplifies and streamlines the regulatory process and allows Regional Water Board staff to focus its limited resources on working with counties within the North Coast Region to protect water quality. Adoption of Order No. R1-2018-0011 by the Regional Water Board in 2018 continued a successful waiver program that relies, in part, on the 5C Program and each county's administration of its existing water quality protection programs. This Order contains the same requirements as the 2018 Waiver, with non-substantive revisions throughout, including to update findings specific to the renewal, correct typographical errors, and standardize formatting.

### GENERAL WATER QUALITY CERTIFICATION

25. Projects that involve construction and other work in waters of the United States will likely require a permit from the Army Corp of Engineers pursuant to section 404 (33 U.S.C. § 1344) of the Clean Water Act. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with

water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act and other appropriate requirements of state law (33 U.S.C. § 1313). The Regional Water Board Executive Officer may issue a decision on a water quality certification application. (Cal. Code Regs., tit. 23, § 3838, subd. (b).) State water quality certification conditions shall become conditions of any federal license or permit for the project.

26. The Regional Water Board may issue a General Water Quality Certification for a class or classes of activities that are the same or similar, or involve the same or similar types of discharges, and possible adverse impacts to water quality, if it determines that these activities are more appropriately regulated under a general certification rather than individual certifications. (Cal. Code Regs., tit. 23, §3861.) General certifications apply for a fixed term not to exceed five years, must be conditioned to require subsequent notice to the Regional Water Board at least 30 days prior to commencement of the activity, and include appropriate monitoring and reporting requirements. A fee is also required pursuant to California Code of Regulations, title 23, section 3833, sub.(b)(3).
27. This Order includes a General Water Quality Certification for activities covered under this Order that may require a federal permit. General certification conditions in addition to waiver conditions are provided for in this section of this Order. Any enrolled county seeking Clean Water Act section 401 General Water Quality Certification for a project shall notify the Regional Water Board at least 30 days prior to commencement of the activity and submit information regarding the construction schedule and other relevant information (form provided in Attachment E), and appropriate fee. Unless the Regional Water Board determines that the project or activity does not meet the specified criteria for coverage under the General Water Quality Certification, this Order provides Clean Water Act section 401 certification for the federal permit required for that project. Projects that do not meet the criteria for coverage under the general certification must apply for individual 401 certification.
28. The General Water Quality Certification contained in this order shall not apply to activities that will:  
1) result in significant unavoidable environmental impacts including permanent impacts to waters of the State and/or violation of water quality standards; 2) result in the unauthorized direct or indirect take of any listed species; or 3) expose people and/or structures to potential adverse effects from flooding, landslides, or soil erosion. (Cal. Code Regs., tit. 23, §3861, subd. (d).)

#### OTHER NON-COUNTY DISCHARGERS

29. The 5C Program and Roads Manual can be used by other dischargers engaged in road maintenance or construction activities (e.g., non-county entities with ranch roads, rural road associations, private rural road owners, etc.).
30. With submittal of a Notice of Intent (Attachment D) and Regional Water Board staff approval, non-county dischargers can be enrolled under this order to ensure that discharges are authorized. Non-county dischargers must rely on the *Handbook for Forest, Ranch & Rural Roads* (Pacific Watershed Associates, 2014) BMPs or another comparable technical manual and are required to follow the monitoring and reporting requirements outlined in the Monitoring and Reporting Plan for the Order.

#### MONITORING

31. Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. Pursuant to Water Code section 13267, the Monitoring and Reporting Program (Attachment C) for this Order includes: 1) an annual reporting requirement; 2) BMP implementation and effectiveness monitoring; and 3) a feedback mechanism to ensure that lessons learned are included in future trainings and 5C Roads Manual revisions.
32. The Monitoring and Reporting Program for this Order is issued pursuant to Water Code section 13267 and may be modified as necessary by the Executive Officer of the Regional Water Board.

## PROCEDURE

33. To be covered under this Order, a county, or other discharger, must submit a written Notice of Intent (NOI) to the Regional Water Board. A NOI template may be found in Attachment D. The NOI must certify the county's, or other discharger's, intent to comply with the 5C Program and the conditions of this Order. The NOI shall be signed by the Chair of the Board of Supervisors, the Director of Public Works, or another designated authorized representative. If a county, or other interested discharger, chooses not to be covered under this Order, that county, or other interested discharger, could be required to submit a Report of Waste Discharge and be subject to issuance of individual WDRs and associated fees for individual projects and road maintenance activities.
34. The procedure and conditions for General Water Quality Certification of projects are outlined in findings 25 - 28.

## TMDL IMPLEMENTATION CERTIFICATION

35. The Impaired Waters Policy allows the Regional Water Board to certify that regulatory or non-regulatory programs implemented by another entity will satisfy TMDL implementation requirements if the program will correct the impairment. The Policy specifies that the Regional Board should take into account the constructive involvement by another entity to address water quality impairments, and, where appropriate, take advantage of third-party efforts. Not only does this avoid unnecessary duplication of effort, it can leverage the Regional Board's staffing and financial resources.
36. The Impaired Waters Policy also makes clear that the Regional Board cannot delegate nor abdicate its water quality responsibilities and may not indefinitely defer taking necessary action if another entity is not properly addressing a problem. To ensure that the Regional Board retains adequate oversight, certain specific findings must be made about the program to be certified as follows:
  - a. The 5C Program is consistent with the assumptions and requirements of the TMDL;
  - b. Sufficient mechanisms exist to provide reasonable assurances that the program will address the impairment in a reasonable period of time; and
  - c. Sufficient mechanisms to enforce exist or the Regional Water Board otherwise has sufficient confidence that the program will be implemented, such that further regulatory action in the form of a TMDL implementation plan by the Regional Board is unnecessary and would be redundant.
37. The 5C Program addresses sediment and temperature impairments by requiring:
  - a. Application of BMPs on roads and at maintenance yards to avoid excess sediment discharges;
  - b. Protection and maintenance of riparian conditions and shade within the road right of way and/or property; and
  - c. Inventorying, prioritization, and remediation of sediment delivery sites. These measures are consistent with existing sediment and temperature TMDL implementation requirements to meet relevant load allocations. The 5C Program is also recognized as a proper implementation tool under the Sediment TMDL Implementation Policy and the Temperature Implementation Policy.
38. This Order sets targets for sediment site inventories and a monitoring and reporting program for oversight, including a reassessment of the progress and success of the program in reducing sediment sources and retaining and improving shade. Order conditions are enforceable.
39. The 5C Program contains conditions that require trackable progress. In addition, this Order includes



a monitoring and reporting program adopted by the Regional Water Board. Conditions 4 and 6 of this Order provide a timeline and require assessment of progress and condition 16 is a provision for terminating coverage under the Order if adequate progress is not made. Implementation of this Order and the 5C Program comply with the requirements of the NPS Policy.

40. The commitment of the 5C Counties to implement the 5C Program has been demonstrated since 1998, when the 5C Program commissioned an assessment of County activities and management practices on salmonids and water quality. Work on development of the 5C Roads Manual began in 2000. The 5C Roads Manual was completed in 2002 and has been in use by the 5C Counties since then to address potential adverse impacts to water quality from road management and maintenance activities. County DIRT road sediment source inventories have been conducted, as funding and time permits, since 2000 and have yet to be completed. Since the Program began, 5C workshops and best management practice training have regularly occurred, as funding permits.
41. The original 5C Counties have continued to maintain the 4(d) exemption under the federal ESA (16 U.S.C § 1531-1544) by implementing the 5C Roads Manual, participating in annual training, and monitoring and reporting their activities. The 5C Program implementation history over the last decade and 5C Counties commitment to compliance with the federal ESA 4(d) rule provides the basis for finding that the 5C Program, inclusive of implementation of the 5C Roads Manual, will continue to remain in place and will succeed in addressing the sediment and temperature impairments in a reasonable period of time. Therefore, 5C Program certification is appropriate to ensure attainment of water quality standards with consideration of seasonal variations, financial resources, and a margin of safety. Counties that are not included in the current 5C Program are responsible for ESA compliance and must seek any necessary approvals (i.e., 4(d) exemption) from National Marine Fisheries Service (NMFS) to ensure activities do not constitute a “take” of a threatened species. Nothing in the waiver order authorizes the take of a threatened species.
42. Table 4-10 of the Scott River Sediment and Temperature TMDL Implementation Plan contained in the Basin Plan requires the development of a Memorandum of Understanding (MOU) with Siskiyou County to address county roads. Siskiyou County submitted an NOI documenting the adoption of the 5C Program and their enrollment in the Order on October 21, 2014. Siskiyou county’s enrollment in and implementation of this Order serves to implement the TMDL requirements for Siskiyou County in lieu of an MOU.

#### ADDITIONAL FINDINGS

43. State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California (Resolution No. 68-16), requires that regional water boards, in regulating the discharge of waste, to maintain high quality waters of the state, require that any discharge not unreasonably affect beneficial uses, and not result in water quality less than that described in regional water board’s policies. This Order is consistent with Resolution No. 68-16 because it will result in a net benefit to water quality by implementing BMPs for road maintenance and repair activities, providing riparian and shade protections, and address existing sediment delivery sites. Any resulting change in water quality will be to the maximum benefit to the people of the State. The activities permitted under this Order have been determined to have a low potential impact to water quality when conducted pursuant to the terms of the Order, resulting in compliance with applicable water quality control plans, including applicable water quality objectives. Additionally, this Order requires monitoring of and reporting on covered activities to ensure full implementation and to document the effectiveness of the BMPs used in accordance with the Waiver. Reporting enables the information gathered from implementation and effectiveness monitoring to be used by the Counties to modify BMPs and correct any failures that have or may result in impacts to water quality and to inform the Counties and the Regional Water Board of BMP and project successes and failures.
44. In accordance with the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.)(CEQA), the adoption of this renewed waiver is a “project”, and the Regional Water Board is the lead agency responsible for approving the project. The Regional Water Board conducted an

Initial Study for the 2018 Waiver in accordance with section 15063 of the “State CEQA Guidelines” beginning at California Code of Regulations, title 14, section 15000 et seq. Based on the Initial Study, the Regional Water Board prepared a Mitigated Negative Declaration. The Regional Water Board approved the Initial Study and adopted the Mitigated Negative Declaration (State Clearinghouse No. 2018012054) concurrently with its adoption of Order No. R1-2018-0011. Compliance with this Order does not result in any significant physical changes in the environment, or imposition of mitigation measures considerably different from what was described and analyzed in the Mitigated Negative Declaration prepared in 2018. As such, this Order is consistent with the prior CEQA documentation as no new impacts that were not previously analyzed are expected to occur. Therefore, the Regional Water Board determined that no subsequent environmental review was necessary consistent with California Code of Regulations, Title 14, section 15162. The Regional Water Board will file a notice of determination in accordance with title 14, California Code of Regulations, section 15075 within five (5) days of the adoption of this Order.

45. Consistent with Water Code section 189.7, the Regional Water Board conducted outreach to potentially affected disadvantaged and Tribal communities and other interested parties through widespread circulation of the draft Order and notice of the opportunity to comment and participate at its public hearing. Regional Water Board staff do not anticipate that discharges of waste that are authorized through this Order will result in detrimental water quality impacts or have a disproportionate impact on water quality in disadvantaged communities or tribal communities. The Regional Water Board’s Order is designed to more efficiently regulate County and other rural roads through adherence to water quality protection standards that are expected to provide environmental benefits to communities in the North Coast Region. Additionally, this Order does not change any requirements of the prior waiver. (Wat. Code, section 13149.2.)
46. Subject to a notification requirement, Water Code section 13269, subdivision (c) allows the Regional Water Board to waive waste discharge requirements for discharges resulting from immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. These activities and those specific actions necessary to prevent or mitigate an emergency (does not include long-term projects) are exempt from CEQA. (Cal. Code Regs., tit. 14, §15269.) The Regional Water Board has the discretion to establish conditions on any such waiver. (Water Code, § 13269, subd. (d).)
47. This Order covers discharges from emergency actions defined in the California Code of Regulations, title 14, section 15269. The Order requires the enrolled counties and other dischargers to notify the Regional Water Board of emergency activities and to maintain records for Regional Water Board staff review, as appropriate.
48. The Regional Water Board has reviewed the contents of this Order, its accompanying Initial Study and Mitigated Negative Declaration, written public comments and testimony provided after notice and hearing and finds that the adoption of this Order is consistent with the Basin Plan, and is in the public interest.

**THEREFORE, THE REGIONAL WATER BOARD HEREBY CERTIFIES THAT:**

Having made the requisite findings in findings 35-42 above, the 5C Program as implemented through this Order is consistent with the assumptions and requirements of sediment, turbidity, and temperature TMDLs in the North Coast Region, including EPA-established TMDLs, and will ensure attainment of water quality standards for the activities described in finding 4; and

**IT IS HEREBY ORDERED THAT:**

Projects already approved under the 2018 Waiver, provided they meet the eligibility criteria and remain in compliance with the conditions of Order R1-2018-0011 until completed, are enrolled in this Order subject to the terms and conditions herein; and

Those counties and other dischargers that previously submitted a written Notice of Intent (NOI) to the Regional Water Board for coverage under Order R1-2013-0004 or under Order R1-2018-0011 are automatically enrolled under this Order. Counties or other dischargers may option out of this Order with written notification to the Regional Water Board Executive Officer; and

The provisions of Water Code section 13260, subdivision (a) and (c), and Water Code section 13264, subdivision (a) are hereby waived for discharges from road maintenance and repair that result from emergency actions, as defined in California Code of Regulations, title 14, section 15269. For these discharges, no application procedures are required; however, the county and other dischargers shall notify the Regional Water Board of any in-stream emergency repair work in which a discharge is likely, within 48 hours of the initiation of such activities. A record of any emergency repair work shall be maintained for Regional Water Board staff review, as appropriate; and

Pursuant to Water Code sections 13263, subdivision (a), 13267, and 13269, the Regional Water Board waives the requirement to submit a report of waste discharge and the requirement to establish waste discharge requirements for activities described in findings 4 and 5, for those 5C Counties who participate in the on-going collaborative 5C Program, including the implementation of the BMPs within the 5C Roads Manual and compliance with the following conditions:

#### GENERAL CONDITIONS (apply to both Category A and B activities)

1. To be covered under this Order, a county or other discharger must submit a written Notice of Intent (NOI) to the Regional Water Board, unless they have previously done so for Order No. R1-2013-0004 or Order R1-2018-0011. A NOI template may be found in Attachment D. The NOI must certify the county's, or other discharger's, intent to comply with the 5C Program and the conditions of this Order on roads located within the North Coast Region. For county projects the NOI shall be signed by the Chair of the Board of Supervisors, the Director of Public Works, or another designated authorized representative. NOIs submitted by non-county dischargers are subject to Regional Water Board staff approval.
2. Enrolled counties, other dischargers, and their contractors shall conduct road maintenance, repair activities, and project activities described in finding 4 in compliance with the 5C Roads Manual and this Order.
3. Enrolled counties and other dischargers shall manage activities in riparian zones pursuant to the 5C Roads Manual to retain adequate vegetative cover that results in natural shade conditions for riparian zones as detailed in the 5C Roads Manual. For fish-bearing watercourses the riparian zone shall be 100 feet on either side of the watercourse, and for non-fish-bearing watercourses the riparian zone shall be 50 feet on either side of the watercourse.
4. Enrolled counties and other dischargers shall actively address CSDS sediment discharges and/or threats to water quality. Sediment delivery sites must be inventoried, prioritized, and scheduled for remediation. Prioritization shall be determined based on the volume of sediment that could be discharged in the event of failure, the sensitivity of receiving waters (for example, anadromous fish bearing streams would be considered highly sensitive whereas ephemeral streams with no aquatic habitat would be considered less sensitive), and imminence of failure. Remediation of high priority sites must be scheduled for implementation within two years of identification unless Regional Water Board staff agree to an alternative implementation schedule. There is an expectation that each county will make reasonable progress towards completing road inventories and remediating high priority CSDS during the 5-year term of this Order.

The Regional Water Board recognizes that counties within the North Coast Region may not have allocated sufficient financial resources to complete the DIRT inventories and implement corrective action on all CSDS to minimize the potential for sediment discharge during the term of this Order. To that end, the Regional Water Board will evaluate progress on the DIRT inventories on an annual basis. The DIRT inventories are to be developed and maintained within the enrolled counties in the North Coast Region.

The purpose of the DIRT inventory is for remediation of sites on a priority basis, with the highest priority sites receiving attention first. However, that does not preclude addressing lower priority sites in the normal conduct of operations or in concert with remediation of higher priority sites or as funding sources targeting other priorities becomes available. The pace of remediation will be evaluated on an annual basis, and any necessary adjustments may be made upon Order renewal in five years, or sooner, if appropriate.

Dischargers already using a methodology comparable to the DIRT methodology may continue to do so, provided that it can be demonstrated to the satisfaction of Regional Water Board staff that it meets the intent and information requirements of the DIRT methodology.

5. Enrolled counties and other dischargers shall participate in 5C Program training and/or conduct its own training programs pursuant to the guidance in the 5C Roads Manual, Chapter 11.
6. Enrolled counties and other dischargers, or their authorized designees, shall submit an annual report for the previous calendar year (January 1-December 31) to the Regional Water Board by March 1 of each year which includes:
  - a. A list of all completed or in-progress projects, both 5C and non-5C road projects (e.g., projects requiring individual 401 Water Quality Certification, emergency repair), for the previous year.
  - b. Results of BMP implementation and effectiveness monitoring, including corrective actions in the event of BMP failure.
  - c. Any suggested changes to BMPs and the 5C Roads Manual for better water quality protection.
  - d. Proposed schedule for addressing high priority DIRT sites for the coming year.
  - e. A description of the progress on the DIRT inventories, site prioritization, and implementation.
  - f. Investigations of illicit discharges to County rights of way or drainages.
  - g. Trainings attended by roads staff.
  - h. A description of efforts made to obtain funding (grants and otherwise) to aid in implementation of the 5C Program.
  - i. An annual workplan listing the planned Category A and B projects for the upcoming calendar year that includes at a minimum the following information:
    - i. The project name.
    - ii. A description of where the project is located.
    - iii. Whether the project is a Category A or Category B project.
    - iv. An indication of whether the Project will require the General 401 Water Quality Certification or WWDR contained in this Order.
    - v. The anticipated project start and end dates.
    - vi. The name, mailing address, email address, and phone number for the project lead staff.

The purpose of this annual report describing projects to be implemented during the coming year is to allow Regional Water Board staff an opportunity to provide preliminary input to the counties or other dischargers on specific projects as well as on the scope of work anticipated for each county and the level of review that the projects will undergo prior to enrollment. This workplan list may be amended as needed as circumstances change (e.g. funding, work schedules, emergencies, etc.).

7. Regional Water Board staff and staff from enrolled counties, other dischargers, or their designees, covered by this Order shall conduct annual meetings by April 15 of each year to discuss and rectify any issue with Order compliance, TMDL implementation, or any other issues associated with this Order. Meetings may be conducted with multiple participants or individually and will be arranged with input from the counties and other dischargers.
8. Enrolled counties and other dischargers are responsible for Order compliance, regardless of whether the activities covered by this Order are conducted by its employees or its contractors. In addition, contractors must comply with all applicable conditions of this Order.
9. Enrolled counties and other dischargers within the North Coast Region shall obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for construction projects on land that disturb one or more acres of soil, or less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.
10. This Order does not preclude the need for permits that may be required by other governmental agencies, including necessary certification and permitting for the application of pesticides and herbicides.
11. Enrolled counties and other dischargers shall comply with all mitigation measures identified in the accompanying mitigated negative declaration. All CEQA mitigation measures shall constitute enforceable conditions under this Order.
12. Compliance with this Order's conditions will ensure that no significant environmental impact to water quality occurs from an activity covered by this Order. Activities that have potentially significant impacts to water quality that cannot be reduced to less than significant levels are not eligible for coverage under this Order. Enrolled counties and other dischargers will need to submit a Report of Waste Discharge to the Regional Water Board and any necessary documentation to comply with CEQA to obtain individual authorization for that activity.
13. Projects implemented by enrolled counties and other dischargers shall comply with all applicable water quality standards, requirements, and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
14. Project activities covered under this Order shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life. Project activities covered under this Order shall not discharge waste classified as "hazardous" as defined in California Code of Regulations, title 22, section 66261 and Water Code section 13173.
15. Projects implemented by enrolled counties and other dischargers shall not cause pollution, contamination, or nuisance as defined by Water Code section 13050.
16. Water Code section 13269 provides that any such waiver of waste discharge requirements shall be conditional, enforceable, and may be terminated at any time by the Regional Water Board. The Executive Officer or Regional Water Board may terminate the applicability of this Order to the 5C Program activities for any enrolled counties or other dischargers at any time, if the 5C Program has

not been adequately implemented.

17. This Order does not preclude the Regional Water Board from administering enforcement remedies (including administrative civil liability) pursuant to the Water Code.

## SPECIFIC CONDITIONS

### Category A Project Activities:

Category A includes activities that as proposed have a low potential to impact water quality, and as such, require no additional conditions. The General Conditions above apply to Category A project activities. Activities included in Category A are listed in Attachment A. Enrolled counties or other dischargers may propose additional types of activities to add to this categorization, subject to approval by the Executive Officer.

No application is required for activities covered under Category A of this Waiver. Counties and other dischargers shall keep records of activities covered under Category A of this Order, including any environmental assessments prior to, during, or after the activity, for Regional Water Board staff review, as deemed necessary.

### Category B Project Activities

Category B activities are those with a moderate potential to impact water quality and require Regional Water Board review and evaluation for compliance with the Order. The General Conditions above apply to Category B projects, as well as additional Category B Conditions listed below, as described under the Category B Waiver Application Procedures section below.

### Category B Application Procedures

1. As applicable, counties or other dischargers shall submit an Application for 401 General Water Quality Certification/Waiver of Waste Discharge Requirements for Category B Activities Conducted Under the 5C Program (Attachment E). One application is sufficient for projects with multiple work sites so long as information on each site is included. A Fish and Game Code section 1602 Lake and Streambed Alteration Agreement form may be used in-lieu of Attachment E, so long as the information provided on it meets the requirements of Attachment E.
2. The application shall be electronically filed at least 30 days prior to anticipated commencement of on-the-ground activities. The address for electronic filing can be is: [Northcoast@waterboards.ca.gov](mailto:Northcoast@waterboards.ca.gov). The date of the receipt of the application will initiate a 30-day review period. During the 30-day review period, staff may request additional information from the county or other discharger. A request for additional information will restart the 30-day review period.
3. Subject to Category B Waiver Procedures No. 2, if the application is complete, the Regional Water Board Executive Officer or her/his delegee shall accept or deny in writing within 30 days from its receipt of the application.

THE REGIONAL WATER BOARD HEREBY CERTIFIES that projects in compliance with the Order conditions above will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, subject to the following additional terms and conditions:

## GENERAL WATER QUALITY CERTIFICATION

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, section 3833, subdivision (b)(3). Annual Fee Schedules are detailed in the California Code of Regulation, title 23, section 2200.
4. This general certification applies only to projects activities subject to the Order. Other dischargers (e.g. ranches, rural road associations, private rural road owners, etc.) may seek coverage under this certification for similar activities subject to approval by Regional Water Board Executive Officer or his/her delegee.
5. Authorization of this certification for any General Water Quality Certification or dredge and fill activities expires five (5) years from issuance of the NOA.
6. General conditions 2, 3, and 8-17 are enforceable conditions of this General Water Quality Certification.
7. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
8. The General Water Quality Certification portion of the Order may be modified as necessary by the Executive Officer of the Regional Water Board.

Any person aggrieved by this action of the North Coast Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petitions by 5:00 p.m., 30 days after the date of this Order, except if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the [State Water Board's website](https://www.waterboards.ca.gov/public_notices/petitions/water_quality/) ([https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](https://www.waterboards.ca.gov/public_notices/petitions/water_quality/)).

CERTIFICATION:

I, Valerie Quinto, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California North Coast Regional Water Quality Control Board, on June 15, 2023.

\_\_\_\_\_  
Valerie Quinto, Executive Officer

Attachments:

- A. Category A Activities
- B. Category B Activities
- C. Monitoring and Reporting Plan
- D. Notice of Intent (NOI) Form
- E. Application for 401 General Water Quality Certification/Waiver of Waste Discharge Requirements
- F. Notice of Completion Form

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