

**STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER QUALITY**

**ORDER WQ 2011-0014-DWQ  
MODIFYING ORDER NO. R5-2010-0022**

**MODIFICATION OF CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES  
IN THE CENTRAL VALLEY REGION**

The State Water Resources Control Board, (State Water Board) finds that:

1. California Water Code (Water Code) section 13260, subdivision (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 containing such information and data as may be required by the board and the first annual fee applicable to waste discharge requirements, unless the board waives such requirement.

2. Water Code section 13269, subdivision (a) provides that a regional water board or the State Water Board may waive the requirements to submit a report of waste discharge and to obtain waste discharge requirements as to a specific discharge or specific type of discharge, if the board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. Water Code section 13269 further provides that any such waiver of waste discharge requirements shall be conditional, may not exceed five years in duration, and may be terminated at any time by the board.

3. Water Code section 13269 includes the following provisions:

- The waiver shall include the performance of individual, group, or watershed-based monitoring, unless the board determines that the discharges do not pose a significant threat to water quality.
- Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
- Monitoring results must be made available to the public.

4. The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), issued a conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Central Valley Region on January 30, 2003 (Waiver), and renewed the Waiver on January 27, 2005 and April 28, 2005. On March 18, 2010, the Central Valley Water Board issued [Order R5-2010-0022](#), which renewed the Waiver until March 31, 2015.

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5. Water Code section 13269 authorizes the Central Valley Water Board to include as a condition of a waiver the payment of an annual fee established by the State Water Board. At the time of this hearing the State Water Board has not established annual fee regulations with respect to waivers of waste discharge requirements for timber harvest activities.

6. The Central Valley Water Board has adopted the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4<sup>th</sup> Edition 1998) and the Water Quality Control Plan for the Tulare Lake Basin (2<sup>nd</sup> Edition 1995) (Basin Plan), including subsequent amendments, that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Valley Region.

7. Pursuant to the Basin Plan and State Board Plans and Policies, including [State Water Board Resolution No. 88-63](#), the existing and potential beneficial uses of waters in the Central Valley Region include:

- (a) Agricultural Supply (AGR)
- (b) Aquaculture (AQUA)
- (c) Preservation of Biological Habitats of Special Significance (BIOL)
- (d) Cold Freshwater Habitat (COLD)
- (e) Commercial and Sportfishing (COMM)
- (f) Estuarine Habitat (EST)
- (g) Freshwater Replenishment (FRSH)
- (h) Ground Water Recharge (GWR)
- (i) Industrial Service Supply (IND)
- (j) Migration of Aquatic Organisms (MIGR)
- (k) Municipal and Domestic Supply (MUN)
- (l) Navigation (NAV)
- (m) Hydropower Generation (POW)
- (n) Industrial Process Supply (PRO)
- (o) Rare, Threatened, or Endangered Species (RARE)
- (p) Water Contact Recreation (REC-1)
- (q) Non-contact Water Recreation (REC-2)
- (r) Shellfish Harvesting (SHELL)
- (s) Spawning, Reproduction, and Development (SPWN)
- (t) Warm Freshwater Habitat (WARM)
- (u) Wildlife Habitat (WILD).

8. [State Water Board Resolution 68-16](#) ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires the Central Valley Water Board to regulate discharges of waste to waters of the state to achieve highest water quality consistent with maximum benefit to the people of the State. It further requires that the discharge meet

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waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. The Central Valley Water Board found the Waiver to be consistent with Resolution 68-16. This revision to the Waiver will not change any requirements of Order No. R5-2010-0022 other than certain fee requirements. This revision is consistent with Resolution 68-16 because it does not authorize degradation of any waters of the State.

9. The Central Valley Water Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) (CEQA), conducted an Initial Study in 2002 in accordance with title 14, California Code of Regulations, section 15063.

10. The Central Valley Water Board adopted a negative declaration pursuant to CEQA on January 30, 2003 when it issued the Waiver. This action to renew the Waiver does not require preparation of a subsequent or supplemental environmental document pursuant to title 14, California Code of Regulations, sections 15162 or 15163. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in section 15162, subdivision (a). In addition, it can be seen with certainty that there is no possibility that the revision may have a significant effect on the environment. (Cal. Code of Regs., tit. 14, §15061, subd. (b)(3).)

11. The Central Valley Water Board found that the Waiver is in the public interest as follows. This revision to the Waiver does not affect these findings:

- (a) Timber harvest activities are primarily regulated by other agencies, including CAL FIRE and the USFS. The Central Valley Water Board does not approve timber harvests, but it does have authority to require compliance with the California Water Code.
- (b) Without the Waiver, timber harvest activities would continue under authority of those other agencies, but such activities may not be subject to appropriate water quality protective conditions.
- (c) Without the Waiver, the Central Valley Water Board could regulate a smaller percentage of timber harvest activities in the Region due to limited staff resources, but with the Waiver, timber harvest activities acting pursuant to the Waiver are subject to enforceable conditions.
- (d) The Waiver contains conditions that require compliance with the applicable Basin Plan, including applicable water quality objectives.
- (e) The Waiver contains conditions requiring compliance with monitoring and reporting programs that will assist in the protection of water quality and in verification of the adequacy and effectiveness of Waiver conditions.
- (f) Compliance with the conditions of the Waiver will result in protection of water quality.
- (g) The Waiver does not approve of or authorize pollution.

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- (h) The Waiver conditions are subject to enforcement pursuant to Water Code section 13350 in the same way as enforcement of waste discharge requirements.
- (i) The Waiver is an effective mechanism given staff resources to regulate a large number of potential discharges and allows staff to maximize its field presence.
- (j) The Waiver allows staff to continue to participate in the pre-harvest review of proposed timber activities which provides staff the ability to require implementation of protective measures beyond those required by CAL FIRE and the USFS for the most critical timber operations.
- (k) The State Water Board, on January 22, 2004 and in [Order No. WQQ 2004-0002](#), affirmed the Central Valley Water Board Waiver and stated: "The Waiver includes specific criteria to ensure compliance with requirements of the Basin Plan and to prevent discharges that may substantially impact water quality. Further, the Regional Board's actions were consistent with State Board policies and procedures and the terms of the Waiver do not exceed the Regional Board's statutory authority."
- (l) The Waiver has been in effect since 2003, and based on the Central Valley Water Board's experience, the Waiver has resulted in increased use of management practices to protect waters of the state such as the inclusion of staff recommendations during field review of timber harvest plans and the inclusion of additional management practices in submittals not field-reviewed by staff.
- (m) The MRP has been in effect since mid-2005, and based on the Central Valley Water Board's experience, the MRP has resulted in accelerated application of management practices to protect waters of the state once failures or potential failures have been identified.
- (n) The Waiver, given limited Central Valley Water Board staff resources, provides a framework that most effectively utilizes resources to regulate discharges of wastes.

12. This revision of the Waiver will remove the requirement for Category 3 and 4 dischargers to pay the first annual fee with their enrollment documents. This revision is in the public interest because it treats Category 3 and 4 dischargers the same as similarly situated dischargers throughout the state for purposes of annual fees and is consistent with the State Water Board's fee schedules.

13. When it adopted the Waiver, the Central Valley Water Board made the following findings. This revision to the Waiver does not affect these findings:

- (a) The Waiver is consistent with applicable water quality control plans as it requires compliance with the Basin Plan, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and includes eligibility criteria and conditions to protect waters of the State.
- (b) The Waiver requires compliance with monitoring conditions consistent with the amendments to Water Code section 13269.

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(c) As described in the administrative record, the adoption of individual waste discharge requirements for all timber harvest activities in the Central Valley Region is not feasible at this time. The Central Valley Water Board receives for review more than 2000 timber harvest documents annually. Given the number of Central Valley Water Board staff and other factors, including the timing of the CAL FIRE timber harvest approval process and the time needed to adopt waste discharge requirements, it is not feasible for the Central Valley Water Board to adopt many individual waste discharge requirements in a year. General waste discharge requirements on, for example, a watershed-by-watershed approach, would also take a significant amount of time given the large number of watersheds and sub-watersheds in the Region. Thus, without the Waiver, most timber harvest activities would not be subject to any regulation under the California Water Code. Waste discharge requirements do not provide identifiable benefits over this Waiver because the Waiver contains essentially the same conditions that would be included in waste discharge requirements, such as the requirement to comply with water quality control plans, and the Waiver is enforceable to the same extent as waste discharge requirements. The adoption of waste discharge requirements, however, is not precluded because pursuant to Water Code section 13269, a waiver may be terminated at any time without cause.

14. Ordering Paragraph 7 of Order R5-2010-0022 states, "Dischargers enrolling under Categories 3 or 4 of the Waiver shall submit a fee with the report of waste discharge, as described in Attachment A." Ordering Paragraph 19 states: "If all timber Personnel Years are fully general-funded for the 2010/2011 fiscal year, the Executive Officer shall propose a modification to the Waiver which waives all reports of waste discharge." This Order modifies Order No. R5-2010-0022 by waiving the requirement to submit a report of waste discharge for all categories of discharge subject to the Waiver. Thus, Category 3 and 4 dischargers will not be required to pay any fee unless the State Water Board establishes an annual fee schedule for waivers of waste discharge requirements for discharges related to timber harvest activities.

15. The Central Valley Water Board and State Water Board have given notice of this revision of the Waiver to all known dischargers and other interested persons.

16. The State Water Board conducted a public meeting on September 19, 2011, in Sacramento, California, and considered all testimony and evidence concerning this revision to the waiver.

**IT IS HEREBY ORDERED:**

1. The State Water Board hereby conditionally waives the requirement to submit a report of waste discharge for Waiver Categories 3 and 4. Ordering Paragraph 5 of Order No. R5-2010-0022 is modified to add the following sentence to the end: "Effective on September 19, 2011, the State Water Board waived the requirement to submit a report of waste discharge for Waiver Categories 3 and 4." Ordering Paragraphs 7 and 19 of Order No. R5-2010-0022 are hereby stricken.

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2. The State Water Board hereby modifies [Attachment A](#) to Order No. R5-2010-0022 as shown in the attached redline/strikeout version.

3. Dischargers currently enrolled under the Waiver shall continue to be covered under the Waiver, without re-enrolling.

4. If the State Water Board establishes an annual fee schedule for waivers of waste discharge requirements for discharges related to timber harvest activities, all Dischargers shall pay the applicable annual or enrollment fees as a condition of maintaining coverage under the Waiver.

5. The discharge of any waste not specifically regulated by the Waiver is prohibited unless the discharger complies with Water Code section 13260, subdivision (a) and the Central Valley Water Board either issues waste discharge requirements pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269 or, in the case of a discharge that does not create or threaten a condition of pollution or nuisance, the time frames in Water Code section 13264, subdivision (a) have elapsed.

6. The Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code section 13263.

7. Pursuant to Water Code section 13269, the State Water Board's action waiving the requirement for Category 3 and 4 dischargers to submit a report of waste discharge: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code.

8. The Executive Officer or Central Valley Water Board may terminate the applicability of the Waiver as modified herein to any timber harvest activities at any time.

9. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the Central Valley Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge, or by an action of the State Water Board.

10. The Waiver (Order No. R5-2010-0022 including Attachments A and B, and the Monitoring and Reporting Program) shall remain in effect except as specifically modified in this Order, and shall expire on March 31, 2015, unless terminated or renewed by the Central Valley Water Board. The waiver of the requirement for Category 3 and 4 dischargers to submit reports of waste discharge and associated enrollment fees shall take effect on September 19, 2011, and shall expire on March 31, 2015, unless terminated or renewed by the Central Valley Water Board.

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11. The Central Valley Water Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as appropriate.

**CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 2011.

AYE: Chairman Charles R. Hoppin  
Vice Chair Frances Spivy-Weber  
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



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Jeanine Townsend  
Clerk to the Board