



## DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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May 8, 2009

Mr. Harold Singer, Executive Officer  
California Regional Water Quality Control Board, Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, California 96150

**RE: Comments on: 1) the proposed Conditional Waiver of Waste Discharge Requirements Resulting from Timber Harvest and Vegetation Management Activities in the Lahontan Region (waiver), and 2) the Initial Study Supporting the Preparation of a Mitigated Negative Declaration for the Revision of the Timber Waiver (negative declaration).**

Dear Mr. Singer:

The California Department of Forestry and Fire Protection (CAL FIRE) appreciates the opportunity to comment on: 1) the proposed Conditional Waiver of Waste Discharge Requirements Resulting from Timber Harvest and Vegetation Management Activities in the Lahontan Region (waiver), and 2) the Initial Study Supporting the Preparation of a Mitigated Negative Declaration for the Revision of the Timber Waiver (negative declaration).

CAL FIRE appreciates that many of our comments were incorporated in the proposed version of the waiver now under review. These important changes that Water Board staff made in the proposed waiver will ensure better water quality now and in the long-term by making fuel hazard reduction projects more effective and efficient now and in the future. The changes are many and include changes such as waiving monitoring for some low impact activities, such as the activities included Categories 1 & 2. However, we still have some remaining issues that should be addressed, which are covered in this letter under the following headings:

- A) CAL FIRE's remaining concerns about the waiver,
- B) Points that need to be clarified or modified in the waiver, and
- C) California Environmental Quality Act (CEQA) process and documentation.

**A) CAL FIRE's remaining concerns about the waiver.**

1. Much of the information required under Categories 4-6 (i.e. via applications, monitoring, completion form submittals, etc.) duplicate what is already required in Timber Harvest Plans (THPs), Notices of Exemptions, and Emergency Notices.

The Lahontan Regional Water Quality Control Board receives copies of each harvest plan, exemption, or emergency notice submitted to the Department as a responsible agency and member of the review team. Many of the GENERAL CONDITIONS result in dual reporting (CAL FIRE and Water Quality (WQ)), establishment of standards similar to (but not exactly the same as) forest practice laws, and in some cases, a relaxation of existing statute (e.g. GENERAL CONDITION 12, which is intended to allow reasonable access to property, but is less restrictive than PRC § 4604).

2. Each WQ Monitoring form includes a signature block requiring the landowner, agent thereof, or Land Manger to "*certify under penalty of perjury that all information contained in the monitoring report is true, accurately represents site conditions, and is complete*". Two inherent problems exist with this approach:
  - (a) Many landowners and/or agents are unqualified to make technical monitoring assessments; landowner expertise, experience, education and training are needed in order to assess such things as critical dips, constructed/reconstructed roads, skid trails, road drainage, culvert installations, fish passage, unstable areas, elevated stream turbidity, stream sediment load, stream stage [gage], erosion voids, tension cracks, rills, gullies, landings, high/extreme erosion hazard rating, in-lieu practices, and proper selection of photo points for visual monitoring records. To assume a "self-auditing" monitoring program by private landowners or hired agents will result in accurate results is naïve at best.
  - (b) Even though the Water Board has authorized Natural Resource Professionals to be employed for report monitoring, only California licensed foresters, Registered Professional Foresters (RPFs), are held to a professional conduct standard subject to disciplinary action by the Professional Foresters Examining Committee. Therefore, even though Water Board staff have provided an option for landowners to hire or acquire help from other "resource professionals", there is much less assurance that these individuals can/will be held to the same conduct standard as RPFs. Thus, landowners may be compelled to hire RPFs so as not to be subject to prosecution for perjury by the Water Board. Landowners who hire RPFs to prepare a Timber Harvest Plan(s) or Exemptions will also have to bear the additional cost of having the RPF prepare the waiver monitoring report. If landowners choose to hire other resource professionals of equal training and experienced as licensed foresters (e.g. civil engineers, registered geologists, research biologists/scientists, certified erosion control specialists, etc.), they will likely be burdened with another significant cost to comply with waiver criteria.



As we previously discussed at the March 23, 2009 meeting in Camino, California, CAL FIRE is required by law (PRC 4604) to provide for inspections of timber operations in which required mitigation is evaluated for implementation and effectiveness. Although the focus is primarily for enforcement purposes, CAL FIRE forest practice inspectors are required to clearly document their observations which in turn could be used to satisfy the Water Board's need for monitoring documentation. Forensic monitoring is also conducted with the requirement for Licensed Timber Operators (LTOs) to implement corrective remedial actions if/when violations of the Forest Practice Rules occur. The Department still believes it is possible for us to formulate an agreement with the Water Board where we could provide them with copies of our inspection reports and, if need be, focus on particular items in the field to help address the Water Board's concerns. Better monitoring and inspection coordination between CAL FIRE and the Water Board would help meet the growing public demand for a more efficient regulatory process, both in terms of time and costs.

3. Category 5, Eligibility Criteria (2) implies that all Water Board recommendations must be accepted without question and does not mention that CEQA requires substantial evidence to justify recommendation after a nexus has been established, and roughly proportional mitigation developed. It appears that the criterion does not recognize the Water Board's status as a responsible agency in the timber harvest review process and the need to document their conclusions in writing in accordance with 14 CCR § 1037.5 et seq.

**B) Points that need to be clarified or modified in the waiver.**

1. Language was added to Category 4 (page 16) regarding "*1 class III watercourse crossing per 5 acres*", and no explanation has been provided explaining the basis for that condition. There does not appear to be a precedent for this in law, regulation or research, nor an explanation of the purpose and water quality objection of this regulation. It would be our recommendation for this regulation to be deleted from the proposed waiver unless the purpose and scientific basis for the regulation is cited.
2. The definition for Large Woody Debris (LWD) was removed from Attachment A. Did Board staff intend to omit the LWD definition?
3. Category 2(2)(a) (on page 13) references 10 psi limitation on equipment. This is different and more restrictive than all other equipment limitation references of 13 psi (Page 5, A. Findings #7; Page 16, Category 4 Criteria (4); Page 17, Category 4 Conditions (6); Page 24, Category 6, Conditions (12)). For consistency please change the reference in on Category 2(2)(a) (on page 5) to 13 psi.

4. Hand piling and burning within the zone has been addressed and would be allowed for those areas outside of the Tahoe/Truckee River under Category 6 (page 24) based on the discretion and approval of the Executive Officer. The monitoring and reporting requirements are however, a significant disincentive to treat vegetation in the zone; a lesser category would be more appropriate and affective. If left unchanged, the effect on public safety would be significant and needs to be addressed in the CEQA analysis. See discussion below under: *CEQA process and documentation*.
5. The proposed waiver will generate a considerable increase in monitoring, inspection and enforcement workload for Water Board staff. This increase in workload should be estimated and/or quantified in the proposal.

### **C) CEQA process and documentation.**

The Lahontan Regional Water Quality Control Board has formally consulted (CCR 15086) with CAL FIRE, a responsible agency under CEQA, over regulations considered for approval by the Board. CAL FIRE will be the CEQA lead agency for future projects where the harvesting of trees and the removal of vegetation for the purpose of reducing the incidence and spread of catastrophic fires will be subject to these new regulations. In response to that consultation (CCR 15096), CAL FIRE has identified new potentially significant effects that could arise as a result of adopting these regulations that were not identified nor mitigated in the Board's mitigated negative declaration.

CAL FIRE believes that any new regulations that discourage or prohibit private land owners, public agencies or the federal government from carrying out or approving projects that are intended to reduce the incidence or severity of wild fires will result in potentially significant effects to the environment (CCR 15382). Regulations that result in fewer vegetation treatments, accumulations of fuels and increases in catastrophic fire may lead to the potential for significant negative impacts to air and water quality, sensitive species and their habitats, as well as loss of life and property. The reasonably foreseeable impacts from implementing these regulations cannot be ignored. It is CAL FIRE's responsibility, as a public agency with expertise in matters related to fire prevention and control as well as vegetation treatments, to inform the Board of these potential impacts and recommend means for mitigating those effects.

The potentially significant impacts are as follows (from the Initial Study Checklist (CEQA Guidelines appendix G)):

#### **1. Hazards**

- a. *Would the project expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?*

Yes, a potentially significant effect due to increased risk of fire start, increased rate of spread and catastrophic fire events leading to loss of life and property.



## **2. Air Quality**

- a. *Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?*
- b. *Expose sensitive receptors to substantial pollutant concentrations?*

Yes, a potentially significant effect due to increased and uncontrolled release of smoke during catastrophic fire events.

## **3. Biological Resources**

- a. *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or the United States Fish and Wildlife Service?*
- b. *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or the United States Fish and Wildlife Service?*

Yes, a potentially significant adverse effect on listed species, their habitat or sensitive environments during and following catastrophic fire events.

## **4. Geology and Soils**

- a. *Would the project result in substantial soil erosion or the loss of topsoil?*

Yes, potentially significant soil erosion may occur following uncontrolled fires unless mitigated.

## **5. Hydrology and Water Quality**

- a. *Would the project create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?*

Yes, potentially significant increases in runoff and turbidity following catastrophic fires.

## **6. Mandatory Findings of Significance**

- a. *Would the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare, or threatened species, or eliminate important examples of the major periods of California history or prehistory?*
- b. *Would the project have impacts that are individually limited, but cumulatively considerable?*

- c. *Would the project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?*

Yes, potentially significant impacts to the environment, wildlife populations and their habitats, cultural and historic resources as well as adverse impacts to humans and a potential for cumulative effects.

These potentially significant effects are not speculative, but rather are reasonably foreseeable, direct and indirect consequences of the Board's action. The Board may not know when or where the next catastrophic fire will occur, although it is known with certainty that fires will start somewhere. Actions that increase the likelihood of a fire start or increase its rate of spread are indirect effects that must be considered. Lead agencies are often required to speculate to a certain degree about the potential impacts of their approvals. Impacts to be evaluated are either direct impacts (the least speculative), indirect impacts (more speculative) or cumulative impacts (the most speculative). Agency decisions are often influenced by factors outside of the lead agency's control; yet CEQA requires that analysis none-the-less.

In this case, speculation is limited since there is growing evidence to suggest that wildfires must be considered as part of the evaluation of significant effects attributed to global warming. In a recent news release by the University of California, Santa Barbara, researchers stated the following ([http://www.eurekalert.org/pub\\_releases/2009-04/uoc--fii042309.php](http://www.eurekalert.org/pub_releases/2009-04/uoc--fii042309.php)):

*"Fire must be accounted for as an integral part of climate change, according to 22 authors of an article published in the April 24 issue of the journal Science. The authors determined that intentional deforestation fires alone contribute up to one-fifth of the human-caused increase in emissions of carbon dioxide, a heat-trapping gas that raises global temperature.".....*

*....."Co-lead author Jennifer Balch, a postdoctoral fellow at NCEAS, explains that there are bigger and more frequent fires from the western U.S. to the tropics. There are "fires where we don't normally see fires," she says, noting that in the humid tropics a lot of deforestation fires are occurring, usually to expand agriculture or cattle ranching"*

The same assertion could easily be made for the growing incidence of wildfire within the State of California, where over one million acres of wildland burned during last year's fire season.

CAL FIRE collects statistics on the number and location of fire starts, the number of acres that burn, the value of resources and improvements that are destroyed, and the cost to federal, state and local government in controlling those fires. The impacts to water and air quality and the losses to biological resources that may occur are clearly evident, yet are less well quantified. If the most cost effective tool in controlling fires is eliminated or significantly curtailed, then the acreages burned and smoke released will increase (on average) as will the associated damage and costs. The Board would be incorrect in arguing that the impacts are too speculative to analyze.



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CEQA requires a lead agency to mitigate the significant impacts of their actions (PRC 21002) and not leave it to other agencies to address those effects (i.e., finding other means to control vegetation or fight fires) or the public to accept the environmental consequences (i.e., increased risk to life and property, smoke, reduced water quality). Mitigation that could be adopted by the Board includes, but is not limited to: 1) funding alternative fuel treatments (chipping or biomass removal); 2) contributing to the Vegetation Management Program (VMP) or the California Forest Improvement Program (CFIP) programs; 3) funding a biomass plant; 4) restoring damaged habitat; 5) funding fire safe inspections or education programs, etc. As an alternative, they could reconsider the need for the current waiver requirements which increase the difficulty of implementing effective fuel reduction work.

CAL FIRE has raised a fair argument supported by substantial evidence that the adoption of these new regulations will cause a significant effect on the environment. The Board must either: 1) not approve these regulations; 2) adopt mitigations and/or project alternatives that reduce the impacts to a level of less than significant; or, 3) certify an Environmental Impact Report and prepare a statement of overriding considerations finding that the benefits of adopting these regulations outweigh the environmental costs.

In summary, CAL FIRE appreciates the opportunity to comment on the proposed Waiver and CEQA process. If you have questions or wish to schedule a meeting to discuss these comments, please contact Clay Brandow, CAL FIRE Hydrologist, at (916) 653-0719 or via email at [clay.brandow@fire.ca.gov](mailto:clay.brandow@fire.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Crawford Tuttle', with a long horizontal flourish extending to the right.

CRAWFORD TUTTLE  
Chief Deputy Director

cc: (See attached list.)

Honorable Dianne Feinstein, United States Senate  
Honorable Dan Lundgren, United States House of Representatives  
Honorable Tom McClintock, United States House of Representatives  
Honorable Dave Cox, California State Senate  
Honorable Ted Gaines, California State Assembly  
Honorable Mike Chrisman, Secretary, California Natural Resources Agency  
Honorable Linda Adams, Secretary, California Environmental Protection Agency  
Honorable Cindy Tuck, Undersecretary, California Environmental Protection Agency  
Honorable Charles R. Hoppin, Chair, State Water Resources Control Board  
Honorable Allen Biaggi, Chair, Tahoe Regional Planning Agency  
Honorable Norma Santiago, Vice Chair, El Dorado County Board of Supervisors  
Honorable Jennifer Montgomery, Supervisor, Placer County Board of Supervisors  
Ms. Dorothy Rice, Executive Director, State Water Resources Control Board  
Ms. Joanne Marchetta, Executive Director, Tahoe Regional Planning Agency  
Mr. Patrick Wright, Executive Officer, California Tahoe Conservancy  
Mr. Jim Branham, Executive Officer, Sierra Nevada Conservancy  
Mr. Jim Pena, Deputy Regional Forester, Pacific Southwest Region, USDA Forest Service  
Mr. Pete Anderson, State Forester, Nevada Division of Forestry  
Mr. Stewart McMorrow, Chief, North Tahoe Fire Protection District  
Mr. John Pang, Chief, Meeks Bay Fire  
Mr. Lorenzo Gigliotti, Chief, City of South Lake Tahoe Fire  
Mr. Duane Whitelaw, Chief, North Tahoe Fire Protection District  
Mr. Chris Sauer, Chief, City of South Lake Tahoe, Fallen Leaf CSD FD  
Mr. Jeff Michael, Chief, Lake Valley FPD  
Ms. Terri Marceron, Supervisor, Lake Tahoe Basin Management Unit, USDA Forest Service  
Mr. Ken Anderson, Senior Environmental Scientist, California State Parks and Recreation