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Acting Secretary for
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**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**

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Edmund G. Brown, Jr.,
Governor

February 14, 2011

Karen O'Haire
Senior Staff Counsel
State Water Resources Control Board
Sacramento, CA 95812-0100

Dear Ms. O'Haire:

Subject: Response to Request for Additional Evidence Related to Petitions of California Department of Forestry and Fire Protection; California Farm Bureau Federation, Forest Landowners of California, the Buckeye Conservancy, California Licensed Foresters Association, Association of Consulting Foresters of America, California Chapter; and Weger Interests, Ltd., Parker Ten Mile Ranch, Bradford Ranch, Miller Tree Farm, and PRH Comptche Properties (Categorical Waiver of Waste Discharge Requirements Order No. R1-2009-0038 for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region), North Coast Regional Water Quality Control Board. **SWRCB/OCC Files A-2029, A2029(a), and A 2029(b)** (Consolidated Petitions)

I am writing on behalf of the North Coast Regional Water Quality Control Board (Regional Board) in the matter of the Consolidated Petitions referenced above. By letter dated December 14, 2010, the State Water Resources Control Board (State Board) requested additional evidence supporting the specific conditions in the Categorical Waiver to control sediment discharges and meet the Basin Plan temperature objective. Specifically, State Board requests the submittal of additional evidence, such as water quality monitoring reports or studies, on the 1) specific conditions to control sediment discharges; 2) specific conditions for control of thermal discharges; and 3) discharges and water quality impacts from timber operations conducted under Non-Industrial Timber Management Plans (NTMP) enrolled under Order No. R1-2004-0016 (2004 Waiver). The administrative record contains numerous documents and analyses that support Categorical Waiver conditions and will not be repeated here. As detailed in our previous responses related to the Consolidated Petitions (see letters dated July 15, 2009 and October 8, 2009), the conditions included in the Categorical Waiver are effective measures for controlling sediment discharges and temperature increases, and are essential Total Maximum Daily Loads (TMDL) implementation tools given the prevalence of impaired waterbodies throughout the North Coast Region. These specific conditions are structured to provide flexibility to accommodate site-specific circumstances and regulatory consistency in areas where adequately-protective Forest Practice Rules are applied.

Erosion Control Plans and Road Plans

All of the sediment TMDLs developed for the North Coast region have identified roads

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and related ground disturbance from timber harvesting activities as the significant contributing anthropogenic sources contributing to sediment impairment. Development and implementation of Erosion Control Plans (ECPs) and Road Plans is a proven and effective means to inventory, evaluate, and treat controllable anthropogenic sediment discharge sources over time. These sediment source control programs are essential components of the Regional Board's efforts to restore and recover impaired beneficial uses on the North Coast, and provide assurance that TMDL load reductions are achieved.

Since the previous Categorical Waiver and General Waste Discharge Requirements (GWDR) were approved in 2004, the majority of new THPs and all new NTMPs in the North Coast Region have included ECPs. The timber industry has responded remarkably well; foresters now routinely identify controllable sediment discharge sources and devise corrective measures, and operators have become proficient in restoration work. Due to the effectiveness shown by ECPs in identifying and treating controllable sediment sources throughout the region, the revised (2009) Categorical Waiver expanded the condition requiring ECPs to all NTMPs and THPs covered under the Categorical Waiver.

Controllable sediment discharge sources are so prevalent in timberlands of the Region, that they are found nearly everywhere that they are looked for. Regional Board staff reviewed several previously enrolled THPs and NTMPs to demonstrate the importance of ECPs. Since 2004, the Regional Board has enrolled nearly 2,000 timber harvest plans in the General WDRs and over 60 NTMPs in the Categorical Waiver. Regional Board staff reviewed 20 randomly selected THPs¹ and 10 randomly selected NTMPs², and found that a substantial majority of those plans that included an ECP had multiple controllable sediment discharge sources, which were identified and subsequently treated pursuant to the plans. Table 1 summarizes the results of this informal survey and demonstrates the value of ECPs within THPs and NTMPs. Without ECP requirements, multiple sediment sources will remain untreated and will continue to discharge sediment to North Coast water bodies.

Table 1. Summary of controllable sediment discharge sites identified in randomly selected THP and NTMP Erosion Control Plans

Avg. # of Sites per plan	Max.# of Sites	Average plan size (acres)	Maximum potential sediment discharge (cubic yards)
THPs:			
8	32	184	1161
NTMPs:			
14	92	295	250

¹ The 20 randomly selected THPs ranged in size from 32 to 949 acres and all were enrolled in the General WDR.

² The 10 randomly selected NTMPs ranged in size from 33 to 1051 acres and all were covered under the Categorical Waiver.

Canopy Retention

Canopy retention is an essential component of the Regional Board's efforts to restore and recover impaired beneficial uses on the North Coast, and provide assurance that TMDL load reductions are achieved. The Categorical Waiver conditions associated with canopy retention are designed to attain and maintain the Basin Plan temperature objective, which states that the "natural receiving water temperature... shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses." All of the North Coast region's temperature TMDLs have identified loss of shade (and canopy) due to land management activities as the predominant factor contributing to temperature impairment³. Existing temperature TMDLs have affirmed the need for natural shade conditions for attainment of temperature water quality objectives, and require site-potential shade conditions, as well as the control of anthropogenic sediment discharges. Further, the results of these existing temperature assessments, coupled with the widespread temperature impairment in the North Coast, point to the need to address the effects of shade removal on elevated water temperature on a region-wide basis.

The establishment of riparian buffers for temperature protection is also an effective and important management measure for the control of some types of sediment discharges. Maintenance of a vegetated buffer provides a control on the discharge of sediment mobilized by surface erosion. Also, the retention of mature trees (and their roots) along a stream bank provides bank stability, reducing the discharge of sediment associated with stream bank landslides and debris flows originating upstream. Maintenance of a vegetated buffer along streams also ensures a supply of large woody debris to the stream channel, which is critical for metering of sediment, channel forming processes, and fish habitat.

Changes from the 2004 Waiver

On June 4, 2009, the Regional Water Board revised the Categorical Waiver to be consistent with state and federal water quality law, the Basin Plan (including TMDLs), and the State Non-Point Source Policy. The following are the primary additional conditions (i.e. those not included in the previous (2004) Categorical Waiver) included in the Categorical Waiver E covering NTMPs:

- Develop and submit erosion control plans (ECPs). New NTMPs must submit an ECP for the entire NTMP plan area prior to applying for coverage under the Categorical Waiver. Existing NTMPs must enroll in the waiver prior to conducting timber operations, and as of June 4, 2010, must submit an ECP just for that portion of the logging area to be harvested in the upcoming year. These existing NTMPs have until the first Notice of Timber Operations (NTO) submitted *after* June 4, 2014, to submit an ECP for the entire plan area. The

³ All of the North Coast Region TMDLs are available at:
http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/

previous (2004) Categorical Waiver required ECPs to be developed only for that portion of the logging area to be harvested under a NTO.

- Develop and submit a long-term management plan for the road system (Road Plan), developed by a qualified professional and designed with the goal of preventing and minimizing sediment discharge from roads in the NTMP area. The Road Plans shall be submitted within five years of enrollment in the Categorical Waiver and only apply to new NTMPs.
- Maintain specific canopy retention levels within the Watercourse and Lake Protection Zone (WLPZ), or alternative canopy retention levels approved by the Executive Officer which provide equal or better protection.

The most significant changes from the 2004 Waiver are the new requirements to existing NTMPs. Just as new operations are subject to updated and more protective water quality provisions, the same restrictions should apply to ongoing operations under an NTMP. The Regional Water Board's ability to implement these new requirements is essential because most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature under section 303(d) of the Clean Water Act.

In fact, over 60% of the North Coast region is within waterbodies listed as impaired by elevated water temperature and/or excess sediment. The Regional Board is mandated under the Clean Water Act to develop TMDLs as pollution control plans to restore impaired waterbodies. To date the U.S. EPA has established sediment TMDLs for 20 watersheds in the North Coast Region, and established temperature TMDLs for 7 of those watersheds. Regional Board staff are currently developing TMDLs in additional watersheds, including the Russian River, Elk River, and Freshwater Creek.

TMDLs are not self-implementing; they are implemented via State and regional permits and policies. In addition, similar management measures are often needed to address nonpoint source water quality concerns with or without the presence of the TMDL allocations. Often several pollutants can be addressed by the same management measure, particularly sediment and temperature, and sometimes nutrients. Where possible, it is sensible to combine water quality requirements under one permitting structure. Incorporating TMDL implementation into a broad-based nonpoint source approach increases efficiency and consistency in regulation. Therefore, it is the Regional Water Board intent to enforce TMDL requirements through basin-wide and region-wide programs where possible, rather than piecemeal various requirements in each TMDL action plan. The Categorical Waiver represents a significant step forward in this effort.

Petitioners citation to the approach taken by the Central Coast Regional Water Board is misplaced. Timber is not the predominate land use in Region 3. Water bodies in the Central Coast region are listed as impaired primarily for bacteria and toxicity associated

with agriculture. Moreover, soil type and precipitation in Region 3 are significantly different from the North Coast. Less than three percent of all NTMPs are found in the Central Coast region.

In contrast, approximately 35% (~554,000 acres) of the total acreage of timber harvest plans (THPs) and 75% (~229,000 acres) of the acreage of NTMPs in the State, between 2000 and 2009, is located in the North Coast Region. Furthermore, the majority of NTMPs in the North Coast Region occur in sediment and/or temperature impaired watersheds. **Attachment 1** shows the locations of lands managed under NTMPs in relation to waterbodies impaired by sediment and/or temperature, and to those waterbodies that have had sediment and/or temperature TMDLs developed. The analysis shows that 93% of existing NTMP lands are at least partially within watersheds listed as impaired for sediment and/or temperature on the 303(d) list⁴. Similarly, 81% of NTMP lands exist in waterbodies in which a sediment and/or temperature TMDL has been developed.

The Categorical Waiver is an essential implementation mechanism for TMDL compliance in the North Coast, particularly for existing NTMPs that have not had updated environmental mitigation applied to operations. The new requirements from the 2004 are well established measures designed to restore and protect water quality.

ASP Rules

The Categorical Waiver was approved in June 2009, prior to implementation of the new Anadromous Salmonid Protection (ASP) rules, which went into effect January 2010. As such, the Waiver includes conditions that provide a level of protection above the minimum standards of the FPRs, which was determined necessary to meet water quality standards. The ASP rules substantially increased riparian retention standards, and are much more protective of stream temperatures than the previous rules. In most cases, timber operations occurring in areas where the ASP Rule canopy prescriptions apply will achieve compliance with the temperature water quality objective. However, while the ASP Rules are expected to address temperature issues in many timber harvest situations, they do not ensure compliance with the temperature objective in all locations, and the Regional Board maintains that the Categorical Waiver conditions associated with canopy retention fill this gap in protection of the temperature objective.

The Categorical Waiver contains a built-in accommodation to avoid duplicative requirements. Where ASP prescriptions are in fact implemented, no additional requirements are needed. What is not clear is exactly how ASP rules are actually applied in the context of existing NTMPs. Regional Board staff are in the process of investigating ASP protection levels for all timber harvesting on the North Coast to better inform the Regional Water Board for permitting actions in the future.

Fundamentally, the TMDLs developed for the sediment and temperature impaired waterbodies in the North Coast region lay out a strategy to control anthropogenic sources of sediment and to retain or restore shade on streams at unaltered levels. The Categorical Waiver represents a significant step forward in this regard. Categorical

⁴ A small subset of these NTMPs contain land both in and out of an impaired watershed.

Waiver conditions are appropriate and essential to attain and maintain water quality standards, while also providing a significant degree of flexibility to landowners for compliance. The Categorical Waiver, including new requirements that apply to existing NTMPs, is fully supported by substantial evidence in the administrative record. The Regional Water Board respectfully requests sufficient time and opportunity to review and respond to any studies submitted by Petitioners prior to any State Water Board action in this matter.

Sincerely,

Original signed by

Catherine Kuhlman
Executive Officer

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