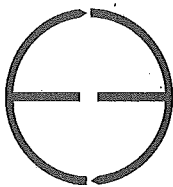


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August 24, 2011

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Mr. Gaylon Lee
Division of Water Quality
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814



RE: Comment re: USFS Waiver

Dear Mr. Lee:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the Draft Mitigated Negative Declaration (MND) and the Draft Statewide Conditional Waiver of Waste Discharge Requirements (Conditional Waiver) for Nonpoint Source Discharges Related to Certain Activities on National Forest system (NSF) Lands in California prepared by the SWRCB in collaboration with the United States Department of Agriculture, Forest Service (USFS).

CCEEB gas and electric utilities members have reviewed the MND and the Conditional Waiver and support the efforts to achieve a consistent approach in the management of soil disturbing activities in NFS Lands in California in order to protect water quality. However, CCEEB has major concerns that the draft Conditional Waiver contains several conditions that will adversely impact our members' ability to adequately maintain utility infrastructure essential to public benefit and respond to emergencies to ensure public safety.

NFS Lands in California are utilized by numerous third parties, including natural gas and electric utility companies. These utilities have various Right-of-Ways (ROWs) and Use Permits for their natural gas and electric transmission and distribution lines. In addition, this infrastructure typically includes roads that allow for access to and maintenance of the pipelines, electric lines, and supporting ancillary equipment and infrastructure. In many cases, these access roads may be dedicated to this purpose, but a substantial percentage of the access roads may also be shared with NFS or other third party users.

The natural gas and electric utilities are governed by the General Orders of the California Public Utilities Commission to maintain this utility infrastructure in a safe manner and at a reasonable cost to utility ratepayers.

Our concerns revolve around stakeholder input to NFS decisions that, if determined without stakeholder input, may unintentionally:

- Restrict maintenance access to utility infrastructure
- Impose unsafe restrictions on maintenance activity
- Impose requirements on the utilities that are not cost efficient and that are without benefit to water quality

We believe that it is important to incorporate flexibility and stakeholder input in the implementation of the various NFS plans, programs, manuals, and handbooks, including the Watershed Improvement Program (WIP) and the Water Quality Management Handbook (WQMH).

In particular, we are concerned about the impact of the USFS Conditional Waiver on access to critical utility infrastructure for routine operation and maintenance. In general, our concerns regarding access are as follows:

- Road closure decisions that may occur without notice and consultation Imposition of prescriptive road travel and ROW/access road maintenance restrictions and requirements without the flexibility to propose alternative effective water quality measures. No cost sharing decision mechanism (ex. cost sharing for the maintenance and monitoring of shared ROWs and access roads)

Additional concerns have been identified in regards to the requirements presented in the Conditional Waiver and the MND for:

- 1) Road Management
- 2) Designated Riparian Zones
- 3) Vegetation Management
- 4) Watershed Restoration
- 5) Wet Weather Operations Standards
- 6) Total Maximum Daily Loads
- 7) NEPA
- 8) Statewide General Conditions
- 9) Specific Waiver Concerns

Road Management

CCEEB members have significant assets located within the California USFS regions that are accessed by roads routinely for operation and maintenance activities.

The Conditional Waiver requires the USFS to provide an anticipated schedule for completion of all remaining watershed assessments. As part of this assessment, inventories of road related watershed improvement needs are being compiled to identify critical projects, including prevention, restoration, and monitoring for each watershed resulting in a watershed restoration plan.

The watershed restoration plan is a concern to CCEEB members as USFS will be making decisions to determine which watersheds will need to be managed to maintain or recover habitat for

anadromous and resident fish species; and these watersheds will have a high priority for restoration and protection of riparian functions.

Concerns:

- The MND is unclear as to whether or not key stakeholders will have an opportunity to participate in this process and in the decision making on the outcome of roads and other facilities located within watersheds that are labeled as a high priority. The MND needs to clarify that key stakeholders will be included in the process and decision-making.
- Decisions to reduce existing road mileage, limit seasonal road use, or restrict the types of vehicles authorized to travel on USFS roads is a significant concern to CCEEB members, because such roads may be critical for access to utility infrastructure. The utilities' need to maintain access to operate, maintain, inspect their infrastructure needs to be accommodated in these decisions.
- It is also unclear who will be responsible for funding the reduction in road mileage.

Designated Riparian Zones

In the MND, designated riparian zones are defined as lands along ephemeral, intermittent, and perennial streams and potentially unstable areas where special standards and guidelines direct land use. Designated riparian zones maintain hydrologic, geomorphic and ecological processes that directly affect streams and fish habitats. Widths of the riparian zone buffers can range from a minimum of 100 feet on each side of ephemeral and/or intermittent streams to over 300 feet on each side of perennial fish bearing streams.

CCEEB members have a large number of access roads and infrastructure that are within the designated riparian zones where they are required to perform operation and maintenance activities to maintain compliance with regulatory requirements.

Concerns:

- The buffers of 100 to 300 feet within designated riparian zones would prohibit routine operations and maintenance activities within these designated zones and will have a significant impact to CCEEB members.
- Utilities need the ability to continue to operate and maintain existing infrastructure and to construct projects that are in the permitting and/or construction stage.
- It is also unclear how the boundaries of riparian zones will be delineated. This is especially critical for ephemeral streams in which the boundary of the riparian zone may be ambiguous.
- The identification of riparian zones in the MND should be GIS-based and this information should be made available to CCEEB members for planning and permitting purposes.

Vegetation Management

Vegetation management is a critical requirement for utilities in maintaining necessary clearances. It is unclear whether the vegetation management requirements in the MND and WQMH will apply to

line clearing and other activities required by CCEEB members to maintain critical utilities infrastructure within access roads and infrastructure ROW's.

Concerns:

- Individual projects are to be evaluated by an interdisciplinary team through the environmental process. Although the concept sounds like it would be beneficial, delays waiting for responses to project considerations from a group of individuals reviewing several different projects could be problematic. There is no defined time frame associated with a project review.
- It is unclear as to who will be part of the review team and what will be the qualification of the review team. We are concerned with the lack of a defined time frame for project review and what the lead time is for a determination to be made.
- CCEEB members would also like clarification that pesticide treatment of utility poles within USFS Lands in accordance with the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and Clean Water Act (CWA) regulations does not constitute a pesticide application activity requiring a WDR or a Conditional Waiver.
- For decisions to be made related to the soil disturbances associated with Vegetative Manipulation criteria as soil stability, mass stability and geology, climate conditions, and soil water-holding capacity will need to be determined. These field determinations are to be made as part of the environmental documentation process during project planning.
 - Who will be responsible for gathering this data?
- The majority of the Vegetative Manipulation BMPs deal with pesticide applications. The team of individuals required to conduct pesticide applications could be cost prohibitive. For a pesticide application, a qualified earth scientist, the project planner, either a contracting officer's representative or a USFS project supervisor, and a water-quality specialist will be required.

Watershed Restoration

Although BMP 7.1 Watershed Restoration identifies activities for Watershed Management, the main emphases of watershed management BMPs are mainly procedural. It is unclear whether the requirements in the WQMH including BMP 7.1 would apply to activities conducted by CCEEB members as the language used is general and refers to all activities conducted within the forest.

Concerns:

- Currently CCEEB members pursue 401 certification on a case-by-case basis for earth-moving activities within wetlands areas including activities conducted on USFS lands. Certification is based on the plans for construction provided by the utility. If specific requirements such as BMP 7.1 apply to all activities within the forest, construction plans could be altered without consideration to cost or time if a determination is made that there may be an impact to wetlands. This decision can be made in the field without peer review. In some cases this may require re-engineering to address changes.

- This can have a significant impact on CCEEB members as their projects typically go through several agencies for review and approval.
- Changes made to projects by the USFS may cause significant delays and substantial increases in cost to the project.
- In addition, activities such as reforestation could result in conflicts with required utility clearances.

Wet Weather Operation Standards

The MND contains Wet Weather Operation Standards that address practices that each forest has to implement to avoid erosion and sedimentation from activities conducted during wet weather.

Concerns:

- The Wet Weather Operation Standards have not been made available for review as part of this comment period and CCEEB members are concerned on how the content of the Wet Weather Operation Standards may impact access to CCEEB members' infrastructure during wet weather events where emergency conditions (e.g., power line disruption, etc.) exist.
- Furthermore, CCEEB members agree that emergency repairs to essential public service facilities (such as utilities) should be included under emergency activities not requiring a waiver. This exemption needs to include actions to restore services in all emergencies. This would be consistent with current emergency reporting and permitting authorized by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (CWA). However, there is concern that exempting such work only in cases where the Governor has declared a state of emergency is inconsistent with what is currently authorized for emergency permitting by other agencies

Total Maximum Daily Loads (TMDLs)

CWA Section 303(d) and associated USEPA regulations contain provisions for developing TMDLs on impaired waterbodies. Several TMDLs have been developed in watersheds managed in part or whole by the USFS. The Conditional Waiver requires compliance with all applicable TMDL implementation plans, while compliance with Conditional Waiver conditions would be considered to be compliance with those TMDLs without TMDL implementation plans.

The purpose of the Conditional Waiver and the MND is to prevent impacts to water quality caused by sediment deposition due to ground disturbing activities within USFS lands.

Concern:

- CCEEB members are concerned with the statement that compliance with all applicable TMDL implementation plans is required. It is unclear as to who will be responsible for performing sampling, monitoring and technical evaluation of TMDLs for potential impacts to water quality and the costs associated with the evaluation. Will the requirement to implement the TMDLs fall solely on the USFS as part of the terms of the Conditional Waiver or will all entities performing work in the NFS Lands be required to participate?

NEPA

The Conditional Waiver requires that projects that go through the NEPA process in addition to submitting to the USFS are also to submit the NEPA analysis of specific projects to the affected Regional Water Board.

Concerns:

- The NEPA process is a time consuming process and it is unclear to CCEEB members as to what timeframe the Regional Water Board will determine the applicability of the Conditional Waiver to any specific project and whether appropriate site-specific measures have been prescribed.
- Please add into the language that if the Regional Board does not accept or deny the application coverage, within 30 days, the project may proceed as described.

Statewide General Conditions Concerns

1. Under the Statewide General Conditions number 1. Please define “adequate.” Vegetation under power lines must be removed and will not be allowed to recover. How does the project proponent determine shade and solar impacts? Also, under Category B General Conditions number 15, please outline how to implement.
2. Under the Statewide General Conditions number 5. Please clarify who “their” refers to. If the projects are category B the Water Board will be made aware through the NOI process.
3. Under the Statewide General Conditions number 10 a.1. Remove “site-specific.” BMP’s have been outlined in the USFS WQMH and The Travel Management Planning and Analysis. Maintenance crews, who understand use of equipment, will follow the outlined BMP’s in the above documents and implement “on-the-ground prescriptions” as decided in the field . Furthermore the USFS has a BMP Evaluation Program that will address BMP deficiencies and correct.
4. Under the Statewide General Conditions number 21. Low risk use of pesticides in hazard vegetation removal situations, where manual removal is unsafe or impractical, should be allowed with proper documentation to the NFS, without the 90 day noticing period. A hazard is a hazard at any time. The criteria of Low toxicity (including aquatic), low volume, restricted area of application, and adequate distance from water bodies should be sufficient, and a 90 day delay is unwarranted. The waiver is conditioned on implementation of the USFS Water Quality Management Handbook, which outlines BMP’s for the use of herbicides and pesticides.
5. Under the Statewide General Conditions number 27. Change to “unauthorized discharge of a reportable amount of waste.”

Specific Conditional Waiver Concerns

Category A

1. The hazard tree removal along roads (Category A) should be expanded to hazard tree removal along utility pipeline and electric lines. Tree roots can severely damage pipeline protective coatings and cause pipe pitting and increase the need for ground invasive repairs. Tree branches overhanging or contacting electric lines are a fire danger as well as a utility infrastructure reliability issue.
2. The Category A activity of hand thinning without assistance from heavy equipment should allow mechanical transportation of thinned material from the area where a road is available. Leaving material behind may in some cases may increase the fire load and removing it by manual labor may be a safety/health concern (injury, exhaustion, etc). Please define "hand thinning."

Category B

1. Category B 2. Please define "Pre-Commercial Thinning"
It is unclear which category routine maintenance vegetation trimming, required by California Public Utilities (CPUC), associated with utilities would fall under. Cat A 4 & 7 or Cat B 3 and 12. Please clarify the differences between the activities.
2. Category B 10. Clarify what motor vehicle trails and their use means. Please explain and clarify why this activity is included and considered within Category B.
3. The Category B 3.c exemption should also include gas pipeline right-of-way maintenance. The wording should be changed from "electric" to "utility."
4. Category B application of on-the-ground prescriptions should allow for flexibility of implementing equivalent BMPs. The WQMH should also allow this.
5. Road patrols should be conducted when it is definitely safe and appropriate to protect water quality. The inclusion of the wording "after major storms", even with the caveat "to the extent allowed by weather, safety and road conditions" pushes the safety envelope as well as being impractical, without a benefit to water quality. Road patrols prior to the rainy season and after the rainy season are sufficient to determine necessary repairs or actions to protect water quality.

Category B General Conditions

Who will be required to collect this information, USFS or third Parties?

Waiver Application for Category B Activities number 3. Please add if the Regional Board does not accept or deny the application coverage, within 30 days, the project may proceed as described.

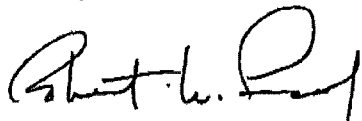
For gas and electric project specific work that is routine, once it has been approved we would like to propose that it be moved to Category A activity for future occurrences as there are well established procedures and guidelines on how the routine work is performed.

Additional general recommendations are to include the following in the Conditional Waiver and MND as well as on the SWRCB's website:

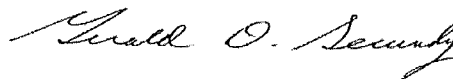
1. Include a list of acronyms
2. Include links to all referenced documents

Thank you for considering our comments. CCEEB and its members would be interested and willing to participate in further dialogue regarding this Conditional Waiver and MND. If you wish to discuss this matter further, please contact Bob Lucas at (916) 444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President

cc: Charles Hoppin, Chair and Members of the State Water resources Control Board
Jackson Gualco, The Gualco Group, Inc.