



# Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

November 21, 2011

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Via Email: commentletters@



**RE: Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California**

Dear Chair Hoppin and members of the Board,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. As a number of our members could be affected by the Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California (Waiver), MCFB wishes to submit the following comments.

**Finding 11:**

- a. Priority Watersheds are selected by each National Forest to focus watershed restoration efforts where they will be most effective. Each National Forest will select several 6th field sub-watersheds based on watershed condition, values at risk, and opportunities to improve watershed conditions. Selection of priority watersheds will be done in collaboration with other agencies, tribes, and stakeholders. Priority watersheds are described on page 11 of the Watershed Condition Framework Technical Guide, available at: [http://www.fs.fed.us/publications/watershed/Watershed\\_Condition\\_Framework.pdf](http://www.fs.fed.us/publications/watershed/Watershed_Condition_Framework.pdf). As described in more detail below, priority watersheds receive heightened water quality protection under the multi-region Forest Plans. Water Boards will be encouraged to participate in the prioritization process.

MCFB appreciates the concept of focusing watershed restoration efforts where they will be most effective. This will allow for limited USFS funding and staff time to be more productive in relation to water quality improvement efforts. This concept is further reiterated on page 11 of the USFS Watershed Condition Framework document, "*The Forest Service does not have the capability to improve the condition of every watershed*" and "*Forests should identify an appropriate number of watersheds for maintenance or improvement that correspond to a reasonable and achievable program of work over the next 5 years within current budget levels.*"

MCFB also appreciates that the USFS recognizes that there are a number of factors, both natural and anthropogenic, within a watershed that need to be considered as referenced below. MCFB wants to emphasize that uncontrollable natural events (such as the landslides and wild fires that are common to Mendocino County) are an equal contributor to water quality standards and that simply attempting to further control anthropogenic factors is not good policy.

#### P.4- USFS Watershed Condition Framework Document

*"Defining specific classes for watershed condition is obviously subjective and, therefore, problematic for several reasons. First, watershed condition is not directly observable (Suter 1993). In nature, no distinct lines separate a watershed that is functioning properly from impaired condition, and every classification scheme is arbitrary to some extent. Second, watershed condition is a mental construct that has numerous definitions and interpretations in the scientific literature (Lackey 2001). Third, the attributes that reflect the state of a watershed are continually changing because of natural disturbances (e.g., wildfire, landslides, floods, insects, and disease), natural variability of ecological processes (e.g., flows and cycles of energy, nutrients, and water), climate variability and change, and human modifications."*

Finally, the stakeholder process that is defined in the selection of priority watersheds is encouraged. MCFB would like to ensure that USFS grazing permittees and other contract holders are invited to participate in the stakeholder process.

#### **Finding 17:**

MCFB would like to ask why the last bullet point, *Project implementation mechanisms (e.g., contracts, permits, and other agreements)*, was removed as a process that provides guidance for effective implementation of site specific, on-the-ground prescriptions as related to water quality?

MCFB feels that those individuals that have contracts, permits and other agreements with the USFS should be involved with the process. For example, a number of USFS livestock permittees are multi-generational and are quite familiar with the lands and watersheds within their grazing allotments. These permittees can be a resource for the USFS and should be allowed to be engaged with the USFS in determining site specific, on-the-ground prescriptions that can benefit water quality specifically within the grazing allotment.

**Finding 39:**

*"This Waiver does not supersede the application of North Coast Regional Water board Order R1-2010-0029 until its expiration on June 10, 2015. Upon expiration of Order R1-2010-0029, new NPS activities and projects on NFS lands under the jurisdiction of the North Coast Regional Water Board will seek coverage under this Statewide Waiver."*

In 2010, the North Coast Regional Water Board issued Order R1-2010-0029: Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region (USFS Waiver), a conditional waiver addressing certain nonpoint source activities on United States Forest Service lands in the region, including timber, roads, and grazing.

When the Board adopted Order R1-2010-0029 in 2010 there were a number of concerns expressed by stakeholders including California Farm Bureau Federation, the California Cattlemen's Association and the California Forestry Association. The main concerns were: regulatory overlap, maintaining the jurisdiction of the USFS in relation to contractors and permittees, the apparent expansion of the Board's jurisdiction (specifically with regard to land use, management practices and pesticide application) and the fiscal impact to the USFS for an additional unfunded mandate.

At this point in time, the North Coast Regional Board is only in the beginning stages of implementing R1-2010-0029. USFS permit and contract holders in the North Coast Region, a number of them being Farm Bureau members, are in the process of understanding the waiver as related to their operations. MCFB encourages the State Board to not develop inconsistent policy with what the North Coast Order has already put in place.

**Finding 42:**

- b. USFS, State Water Board or its Executive Director, or the Regional Water Board or its Executive Officer to deny or terminate waiver coverage of an individual project at any time if it is determined that the project may result in of water quality requirements.*

*In the event that a Regional Water Board or its Executive Officer denies or terminates waiver coverage of an individual project, it must, at the same time, provide USFS with a statement of reasons for that decision, supported by factual information and reasoned analysis.*

MCFB would like to emphasize the importance of maintaining the current relationship between the permit and contract holders and the USFS. The State and Regional Water Board staff should work with the USFS and the USFS should be the sole authority to discuss proposed changes to permit or contract terms with the permit or contract holder. The USFS should maintain the authority to manage USFS lands and related land uses under their jurisdiction. If individual projects are terminated from waiver coverage, there needs to be an appeal process especially if the termination impacts a permit or contract.

**Finding 50:**

*It is the State Water Board's expectation that the USFS will seek coverage under this Waiver for all new Category B projects that meet the conditions of the Waiver. New projects are those projects that undergo NEPA review after the adoption of this Waiver. The USFS may seek coverage for ongoing Category B activities at the discretion of the Regional Water Board through submission of an application with environmental and project information sufficient to support an informed and reasoned Regional Water Board decision regarding enrollment. This Waiver specifically contemplates and sets out a process for the USFS to apply for coverage of ongoing grazing activity*

A number of grazing permits have gone through the NEPA process or are currently in the NEPA process. The Regional Water Boards should work with the USFS to clarify the application submittal process for coverage of Category B activities so that ongoing grazing permits are not impacted.

**Finding 61:**

*USFS emergency activities may include actions needed to deal with storms, floods, landslides, and illegal activities, as well as wildfire suppression and BAER activities.*

MCFB appreciated the addition of illegal activities as the illegal marijuana gardens and associated environmental impacts are a significant issue in Mendocino County National Forest lands.

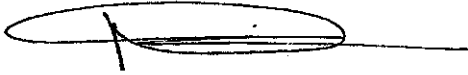
**Statewide General Condition 10b:**

*Contractors, grazing permittees, USFS volunteers or any other third parties specified in this Waiver shall comply with general Waiver conditions 13 -15 responsible for discharges from activities or projects under this Waiver shall comply with statewide general conditions 13 - 16 below as well as all the site-specific, on-the ground prescriptions as described in 10.a.1). The State Water Board or a Regional Water Board may take enforcement action for violation of this provision against the third party or the USFS or both.*

MCFB feels that the Regional Boards should take enforcement action against the USFS and that the USFS should retain the authority in relation to permit and contract holders. The Regional Boards must be required to provide substantial evidence of a violation prior to any enforcement action being taken. The Regional Board must also verify and third party complaints of a violation prior to any action being taken. The liability and appeal process should also be thoroughly explained to permit and contract holders by the USFS.

In conclusion MCFB respectfully asks the Water Board to take into consideration the concerns that have brought forward. MCFB wants to stress the importance of maintaining multiple legitimate uses on USFS properties including livestock grazing. MCFB would also like to reiterate that the State and Regional Water Board staff should work with the USFS and the USFS should be the sole authority to discuss proposed changes to permit terms with the permittee.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Anderson", with a long horizontal line extending to the right.

Mike Anderson  
President

CC:

California Farm Bureau Federation