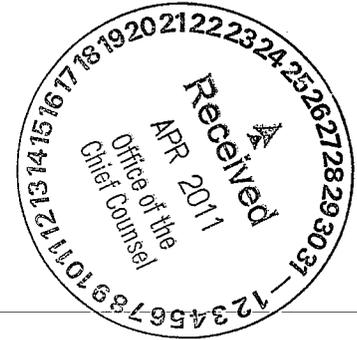


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(650) 839-8644  
Attorney for Petitioners



BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Order No. R1-2011-0038 of the  
North Coast Regional Water Quality Control  
Board, suspending the NTMP provisions in  
Timber Waiver Order No. R1-2009-0038

SWRCB No.

PETITION FOR REVIEW;  
PRELIMINARY POINTS  
AND AUTHORITIES; and  
REQUEST FOR  
IMMEDIATE STAY  
[Water Code, § 13320]

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## PREFACE

Petitioners Coast Action Group, Environmental Protection Information Center, Friends of the Gualala River, and Forest Unlimited petition the State Water Resources Control Board to review the North Coast Regional Water Quality Control Board's Order No. R1-2011-0038. That order suspends until February 1, 2012, the provisions for Non-Industrial Timber Management Plans (NTMP) in the 2009 Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities in the North Coast Region ("2009 Categorical Waiver"; Order No. R1-2009-0038). Petitioners also request the Board to stay the Regional Board's order.

The Petition includes the information required by Cal. Code Regs., tit. 23, § 2050. It also includes a Request for a Stay and a declaration in support thereof.

Petitioners also request the right to file additional argument and points and authorities once the administrative record becomes available.

## PETITIONERS

Coast Action Group (affiliated with Redwood Coast Watersheds Alliance) is a non-membership organization of individuals and groups concerned with forestry and water quality values on the north coast of California. Coast Action Group has a long and extensive history of involvement in issues related to forest management and the protection and recovery of regional streams, rivers, and estuaries. It has participated in the rule making process for timber harvest activity including Total Maximum Daily Loads and Implementing Programs, Waste Discharge Reporting and related Categorical Waivers for Timber Harvest Operations on Private Lands. It protested the Regional Board's action in this case. (Exh. E.)

Environmental Protection Information Center (EPIC) is a community based, non-profit organization that actively works to protect and restore forests, watersheds, coastal estuaries, and native species in northwest California. EPIC has been at the forefront of environmental protection in northwest California since 1977, working to ensure that state and federal agencies follow their mandate to uphold environmental laws and protect endangered species. EPIC uses an integrated, science-based approach that combines public education, citizen advocacy, and strategic litigation to produce needed policy reforms and legal actions to inform the public and advocate for reform. EPIC has a long history of working to protect and restore water quality throughout northwest California. It protested the Regional Board's action in this case. (Exh. F.)

Friends of the Gualala River (FoGR) is a non-profit, grassroots watershed protection association formed to share common concerns and research regarding the welfare of the Gualala River, its estuary and habitat. FoGR's goal is to protect the Gualala River watershed and the species that rely on it. FoGR's interest in this matter pertaining to the WDR waiver program for NTMPs stems from the desire to keep in place the best environmental protections possible in a permitting program that is rapidly proliferating in the watershed above the 303d listed Gualala River. It protested the Regional Board's action in this case. (Exh. F.)

Forest Unlimited is a California 501(c)(3) organization whose mission is to protect, enhance, and restore the forests and watersheds of Sonoma County. Logging plans including Nonindustrial Timber Management Plans are critically important to functioning watersheds and are of great concern to members of Forest Unlimited and its Board of Directors. Forest Unlimited monitors logging plans county wide, addresses

illegal and unsound logging, works toward changing local logging rules, and provides information regarding current forestry law. Forest Unlimited, established in 1995, sponsors forest restoration projects, major tree plantings, and coordinates a Mentor Program designed to educate and train the public. It protested the Regional Board's action in this case. (Exh. F.)

## INTRODUCTION

On March 24, 2011, the North Coast Regional Water Quality Control Board issued an order, suspending until February 1, 2012, the requirements for NTMPs set forth in its 2009 Categorical Waiver for timber harvest activities. In so doing, the Regional Board concluded that the suspension order was exempt from the California Environmental Quality Act (CEQA) under the "common-sense" exemption, because "it can be seen with certainty that there is no possibility" that the suspension may have a significant effect on the environment. The Regional Board's action is indefensible.

In promulgating the NTMP requirements in the 2009 Categorical Waiver and later defending them against industry petitions to this Board, the Regional Board took the opposite position: It repeatedly found based on scientific evidence that the NTMP requirements were *necessary* to protect the environment from harm.

Under case law, the common-sense exemption requires the Regional Board to be certain that there is no possibility of environmental harm, and that finding cannot be made where there are legitimate questions about a project's impact. Having found the NTMP provisions necessary to protect the environment, the Regional Board can hardly be certain that there is no

possibility of harm from their suspension. The Regional Board's action plainly violates CEQA and must be set aside.

In addition, Petitioners make a second argument. They argue that the Regional Board's suspension of the 2009 Waiver's NTMP requirements violates the Clean Water Act and the Porter-Cologne Water Quality Control Act. More specifically, they argue that the suspension violates the Regional Board's obligations under the TMDL Implementation Plan and Basin Plan to implement sediment and temperature TMDLs.

I.

**Name, Address, Telephone Number and Email Address of the Petitioners**

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## II.

### **The Specific Action of the Regional Board which the State Board Is Requested to Review and Copy of Order**

Petitioners seek review of the Regional Board's Order No. R1-2011-0038, issued on May 24, 2011. ("2011 order"; Exh. A.) That order suspends until February 1, 2012, provisions of another order, namely the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities in the North Coast Region, Order No. R1-2009-0038 ("2009 Categorical Waiver"; Exh. B). The provisions suspended are those relating to NTMPs. (Exh. A, p. 3.)

In issuing the 2011 order, the Regional Board concluded that its action was exempt under CEQA because "it can be seen with certainty that there is no possibility" that suspending the NTMP provisions in the 2009 Categorical Waiver may have a significant effect on the environment. (CEQA Guidelines, § 15061, subd. (b)(3).) It reasoned that the protections afforded by the previous waiver were sufficient to protect the environment. (Exh. A, p. 2.)

Petitioners contend that the Regional Board violated CEQA, because the 2011 order is not subject to CEQA's common-sense exemption. In the

2009 Categorical Waiver as well as other related documents, the Regional Board made a finding that the NTMP provisions were necessary to protect the environment. The Board can hardly now claim to a certainty that the suspension of those protections will not harm the environment.

Petitioners' second argument is that the Regional Board's suspension of the 2009 Waiver's NTMP requirements violates the Clean Water Act and the Porter-Cologne Water Quality Control Act. More specifically, Petitioners argue that the suspension violates the Board's obligations under the TMDL Implementation Plan and Basin Plan to implement sediment and temperature TMDLs.

### III.

#### **The Date on which the Regional Board Acted**

The Regional Board adopted the 2011 Order on March 24, 2011. (Exh. A, p. 5.)

### IV.

#### **STATEMENT OF REASONS THE ACTION WAS IMPROPER AND STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION**

##### **A. Procedural and Factual Background**

To understand the Regional Board's error in suspending the NTMP provisions of the 2009 Categorical Waiver, one must understand what the 2009 Waiver required and the scientific evidence on which it was based.

Reduced to its essentials, the 2009 Waiver required persons operating under an NTMP to do three things: (1) Submit an Erosion Control Plan (ECP) and schedule to mitigate all controllable sediment discharge sources;

(2) refrain from removing overstory canopy below 85 percent within the first 75 feet of a Class I WLPZ, within the first 50 feet of a Class II WLPZ; and not below 65 percent for the remainder; and (3) submit a long-term management plan for the road system (Road Plan). (Exh. B, pp. 14-17.)

The 2009 Waiver required all NTMPs to apply for coverage before any timber operations that occur after June 10, 2010. (Exh. B, p. 22.) Two of the 2009 Waiver's requirements—the restrictions on canopy removal and the road plan—were new, that is, they were not required under the 2004 Categorical Waiver, Order No. R1-2004-0016. (Exh. C, pp. 11-12.) In addition, submission of an ECP was required under the 2004 Categorical Waiver, but only for new NTMPs; previously waived NTMPs were not required to prepare and submit an ECP. The 2009 Waiver changed this: It required all NTMPs to submit an ECP. (Exh. C, p. 9; Exh. D, 12.)

There are currently over 230,000 acres of approved NTMPs in the North Coast Region. Categorical waivers are the primary tools used by the Regional Board to control NTMP and THP-related pollution. In justifying the 2009 Waiver's NTMP requirements, the Board observed that NTMPs, which are proliferating, raise heightened concerns about water quality because of the long-term nature of the permit. (Exh. D, p. 6.) For example, an NTMP can harvest every year and many do. As a result, impacts from constant road use and other ground-disturbing activities have “the potential to result in chronic sediment impacts to watersheds for a much longer duration than a THP, which expire within three to five years.” (*Id.* at p. 16.) Regional Board staff have observed such discharges from NTMPs. In addition, a number were approved in the 1990s when the Forest Practice Rules failed to protect water quality. (*Ibid.*)

The Regional Board found that the NTMP requirements of the 2009 Waiver were necessary to protect the environment from harm and were based on scientific evidence. The Regional Board is responsible for implementation and enforcement of the State's Nonpoint Source Pollution Control Plan, which requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools." (Exh. D, p. 3, citing 2007 Basin Plan, 4-33.00.) The Regional Board followed this directive in promulgating the 2009 Waiver; it found that the new requirements of the 2009 Waiver were "expressly intended to identify and control nonpoint source waste discharges in violation of the Basin Plan." (Exh. D, p. 10.) Moreover, it found that the new requirements were needed to protect the environment based on scientific evidence.

The Regional Board described the scientific justification for each of the 2009 Waiver's requirements.

### **ECPs**

Most water bodies in the North Coast Region are listed as impaired under Section 303(d) of the Clean Water Act, due to either excess sediment and/or elevated water temperature. Research has identified erosion from roads and timber harvest as major contributing factors to sediment discharge from anthropogenic sources. (Exh. B, p. 4; Exh. D, p. 10.)

The Regional Board found that ECPs are an effective and accepted tool for identifying and controlling these sources of sediment. (Exh. D, p. 12.) Moreover, the Board found that the timber industry has efficiently utilized them to find new sources of sediment and devise corrective measures. (Exh. D, p. 13.) However, controllable sediment sources are so prevalent in the

North Coast timberlands, “they are found nearly everywhere they are looked for.” (*Ibid.*) Given the ubiquity of sediment sources and the effectiveness of ECPs, the Regional Board rationally concluded that requiring more NTMPs to utilize ECPs would reduce environmental harm: “Expanding the ECP requirement greatly expands the land base on which sediment sources will be identified and treated, and therefore is one of the most effective tools for wide spread sediment source reduction.” (*Ibid.*)

### **Road Plans**

The Regional Board observed that it is “widely recognized” that roads are significant contributors, if not the main source, of sediment discharge. (Exh. D, pp. 10, 14; accord Exh. B, pp. 3-4.) Accordingly, proper road management is “one of the most crucial components of any management plan for preventing and minimizing chronic sediment sources.” (*Ibid.*) In light of these factors, the Regional Board concluded that the 2009 Waiver’s requirement of a Road Plan was justified. (Exh. D, p. 15.)

### **Increased canopy retention**

As with the requirements for an ECP and Road Plan, the Regional Board concluded on the basis of scientific evidence that restrictions on canopy removal greater than those required by the Forest Practice Rules were warranted.

The Regional Board has Temperature TMDLs for 12 watersheds in the North Coast Region. These TMDLs have evaluated the effects of shade on stream temperatures and consistently reached the same conclusion, one that is “consistent with published literature and temperature analyses conducted in the Pacific Northwest.” (Exh. B, pp. 4-5.) Scientific modeling based on data collected from the Scott and Shasta watersheds concluded that 85

percent canopy retention would meet the Basin Plan water quality objective for temperature. (Exh. D, p. 11.) The Regional Board observed that there was no evidence the Forest Practice Rules' minimum 50 percent canopy retention for non-fish-bearing streams met the requirements of the Bain Plan. (*Ibid.*)

Based on this information, Regional Board concluded that canopy retention standards above those in the Forest Practice Rules are necessary to meet the Basin Plan temperature objective. (Exh. B, pp. 4-5; Exh. D, p. 11.)

### **Challenges to the 2009 Waiver and the Regional Board's Response**

The Regional Board approved the 2009 Waiver on June 4, 2009. (Exh. B, p. 25.) In response, industry and the Department of Forestry and Fire Protection filed several petitions with this Board challenging the Waiver's requirements for NTMPs. By letter dated October 8, 2009, the Regional Board responded to these petitions and defended the 2009 Waiver and its NTMP provisions. (Exh. D.)

Notwithstanding its defense of the Waiver, on March 24, 2011, the Regional Board suspended the Waiver's NTMP requirements until February 1, 2012. In so doing, the Board conceded that its action was a "project" under CEQA. But it concluded that the suspension was exempt under CEQA Guidelines section 15061(a)(3), the so-called common-sense exemption, because "it can be seen with certainty that there is no possibility" that the suspension may have a significant effect on the environment. (Exh. A, p. 2.) The Board reasoned that "the environmental baseline, against which the Regional Water Board considers the environmental impacts of a project includes the protections provided by the previous waiver." (Exh. A, p.2.)

**B. The Regional Board's Suspension of the Waiver's NTMP Requirements Based on the "Common-Sense" Exemption Violated CEQA**

The common-sense exemption provides in pertinent part: "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (CEQA Guidelines, § 15061, subd. (b)(3).)

The exemption applies in very limited circumstances: "[T]he exemption under subdivision (b)(3) should be reserved for those 'obviously exempt' projects, 'where its absolute and precise language clearly applies.'" (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4<sup>th</sup> 106, 117, quoting *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425.)

An agency invoking the exemption faces a difficult burden: If there is "a possibility that a project will cause a significant environmental impact, the agency must refute that claim *to a certainty* before finding that the exemption applies." (*Davidon Homes, supra*, 54 Cal.App.4<sup>th</sup> at p. 118, italics in original.)

Conversely, the burden on a party challenging the exemption is "slight." (54 Cal.App.4<sup>th</sup> at p. 117.) If "there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Ibid.*)

Under these authorities, it is obvious that the Regional Board's use of the exemption violated CEQA. Based on a wealth of evidence, the Board found that the 2009 Waiver's NTMP requirements—increased canopy retention, Road Plans, and more NTMP owners preparing ECPs—were necessary to mitigate and avoid environmental harm. It is inconceivable that the suspension of those requirements does not raise the *possibility* of

harm, and it is inconceivable that the Board could make such a finding *to a certainty* given the evidence in the record.

First, the administrative record provides no support for the exemption. Indeed, the Regional Board's justification for it is based on no more than the unsupported recital in the suspension order that the previous waiver will provide protection. (Exh. A, p. 2; *Davidon Homes, supra*, 54 Cal.App.4<sup>th</sup> at p. 116 [exemption set aside where based on no more than conclusory recital in preamble of ordinance that the project was exempt].)

Second, and more significantly, the Regional Board's conclusion of no possibility of environmental harm is directly contrary to its promulgation of the 2009 Waiver's NTMP requirements and its defense of them from industry challenge. As we show in the previous sections, based on a wealth of scientific evidence, the Regional Board concluded that previous waivers were inadequate, and that the 2009 Waiver's *new* NTMP requirements were necessary to avoid and mitigate past and ongoing environmental harm from logging activities. Such evidence easily defeats the exemption: Where "there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Davidon Homes, supra*, 54 Cal.App.4<sup>th</sup> at p. 117.)

Here, the evidence of environmental harm does not merely raise the possibility of a significant effect, it virtually *guarantees* it. And there is little if any evidence to the contrary of which we are aware. Nor can the Regional Board argue that the suspension will last only one year. The 2009 Waiver has been in effect since June 4, 2009. (Exh. B, p. 25.) It covered all NTMPs, both new ones and old ones proposing new timber operations. (Exh. B, pp. 22-23.) Suspending the Waiver's NTMP requirements will

cause significant delays in implementing mitigations that the Regional Board emphatically deemed necessary.

The Regional Board cannot have it both ways, concluding on the one hand that the 2009 Waiver's NTMP requirements were necessary to lessen and avoid harm, and concluding on the other that they were not. Such a blatant contradiction demonstrates the *possibility* of harm and underscores the Board's error in relying on the exemption.

In sum, the Regional Board's use of the common-sense exemption is a blatant violation of CEQA.

**C. The Regional Board's Suspension of the Waiver's NTMP Requirements Violates the Clean Water Act and Porter-Cologne Water Quality Control Act**

Under Section 303(d) of the Clean Water Act, most North Coast Region water bodies are listed as impaired due to either excess sediment and/or elevated water temperature. (Exh. B, p. 4.) Federal law and regulation require that a Total Maximum Daily Load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. (Exh. B, p. 4.)

The United States Environmental Protection Agency (EPA) has established sediment TMDLs for nineteen watersheds in the North Coast Region of California. In the majority, erosion from roads and timber harvest were identified as major contributors to sediment discharge from anthropogenic sources, and EPA called for significant reductions. (Exh. B, p. 4.) In addition, EPA has established temperature TMDLs for twelve watersheds in the North Coast Region. (*Ibid.*)

This Board has interpreted the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.) to require that implementation be

addressed when TMDLs are incorporated into Basin Plans (water quality control plans). ([http://www.swrcb.ca.gov/water\\_issues/programs/tmdl/background.shtml](http://www.swrcb.ca.gov/water_issues/programs/tmdl/background.shtml).)

Accordingly, to meet the TMDL goals to control sediment and restore sediment-impaired water bodies, the Regional Board adopted the Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Implementation Policy). (See CWA, § 303(e); *Pronsolino v. Nastri* (9<sup>th</sup> Cir. 2002) 291 Fed.3d 1123, 1140 [TMDL informs State's mandatory implementation plan].) The Implementation Policy provides that the Regional Board *shall* control sediment pollution by using existing permitting and enforcement tools, including categorical waivers like the one at issue here. (Exh. B, pp. 1, 4.) To that end, the Regional Board also adopted the Staff Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan); it describes the actions that it will take over the next ten years to control sediment in the impaired water bodies of the North Coast Region. (Exh. B, p. 4.) Categorical waivers are the primary tools used by the Regional Board to control NTMP and THP-related pollution and implement TMDLs.

When it adopted the 2009 Categorical Waiver, the Regional Board found that the Waiver's provisions for sediment reduction, including the NTMP requirements at issue here, implemented TMDLs: "The Categorical Waiver furthers the objectives defined in the TMDL Implementation Policy and Work Plan. Conditions and eligibility criteria required for enrollment in the Categorical Waiver are intended to contribute to reductions in anthropogenic sediment discharges from the sources identified by EPA *and constitute implementation of TMDLs.*" (Exh. D, p. 11, italics added; accord Exh. B, p. 4.)

Viewed against this backdrop, the Regional Board's suspension of the 2009 Waiver's NTMP requirements *violates* its implementation plan and Basin Plan by violating the commitments of each to implement sediment and temperature TMDLs. Indeed, this is precisely what the Board argued in defense of the 2009 Waiver against Cal-Fire and industry petitions. In an effort at compromise, the Board considered using "other regulatory tools," rather than the 2009 Waiver NTMP requirements. In so doing, however, the Board observed that "this approach would not necessarily provide TMDL compliance." (Exh. D, pp. 1-2.)

By suspending the 2009 Waiver NTMP requirements, the Regional Board violated its implementation plan and Basin Plan in violation of the Clean Water Act and Porter-Cologne Act.

## V.

### **The Manner in which Petitioners Are Aggrieved**

Petitioners are all environmental organizations dedicated to improving the protection of watersheds in the North Coast Region of California, including water quality and temperature, fisheries, and wildlife. All take an active interest in the Regional Board's efforts to protect water quality, including through the issuance of categorical waivers of waste discharge requirements for discharges related to timber harvest activities in the North Coast Region.

Accordingly, all protested the Regional Board's suspension of the 2009 Waiver's NTMP requirements. (Exhs. E, F.) And all are aggrieved because the Board's action eliminated environmental protections that the Board previously deemed necessary to adequately protect the environment from past, ongoing and future harms.

**VI.**

**Specific Action by the State Board that the Petitioners Request**

1. Petitioners respectfully request the State Board to stay and rescind Regional Board's Order No. R1-2011-0038;
2. Petitioners respectfully request the State Board to reinstate the NTMP provisions of Order No. R1-2009-0038.

**VII.**

**Statement that the Petition Has Been Sent to the Regional Board**

On April 24, 2011, Petitioners mailed a copy of this petition with exhibits to—

Katherine Kuhlman, Executive Officer  
North Coast Regional Water Control Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403-1072

**VIII.**

**Petitioners' Request for a Stay**

Petitioners request this Board to stay the effect of the Regional Board's Order No. R1-2011-0038, which suspends until February 1, 2012, the

NTMP requirements of the 2009 Categorical Waiver. The factual basis for this request is set forth in the attached declaration of Paul Carroll.

Dated: April 24, 2011

Respectfully submitted,

  
PAUL CARROLL  
Attorney for Petitioners

## DECLARATION OF PAUL V. CARROLL

I, Paul V. Carroll, declare:

1. I am an attorney duly licensed to practice law in the State of California.
2. I have personal knowledge of the facts stated herein and if called upon to testify about them, I could do so competently under oath.
3. I represent the Petitioners in this petition and I prepared the petition.
4. The basis of my knowledge is the attached exhibits, particularly exhibits A through D.
5. Exhibits A through D are all official documents that were prepared by the Regional Board. Each copy attached is a true and correct copy of the original.
6. Based on Exhibits A through D, there will be substantial harm to the public interest that Petitioners represent. As Petitioners demonstrate in their discussion of the evidence (Section IV, *infra*), the Regional Board found that the NTMP requirements of the 2009 Waiver were necessary to prevent past, ongoing, and future harm from logging activities. Those requirements were more numerous, more exacting, and covered more NTMPs than any previous waiver. (Exhs. B, D.)
7. Accordingly, the Board's conclusion in the 2011 Order suspending the NTMP requirements—that there cannot possibly be harm because of the protections provided by the previous waiver—is patently unsupportable.
8. There will not be substantial harm to interested NTMP owners. Exhibit D is the Regional Board's response to the Cal-Fire and industry petitions challenging the 2009 Categorical Waiver. In it, the Regional Board explains at length how the NTMP requirements will work and why they will not cause the economic harms feared by industry.

9. This Petition raises substantial questions of fact and law regarding the Regional Board's approval of the 2011 Order and suspension of the NTMP requirements. Indeed, the Board's invocation of the CEQA common-sense exemption to justify its action is plainly unlawful. In addition, the Regional Board itself *concedes* that the suspension of the NTMP requirements will prevent compliance with TMDLs for NTMP owners. (Exh. D, pp. 1-2.)

I declare under penalty of perjury that the foregoing statements are true and correct and that this declaration was executed at Redwood City, California on April 24 2011.

A handwritten signature in black ink, appearing to be "P. V. ...", is written over a horizontal line.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of San Mateo. I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1103 17<sup>th</sup> Avenue, Redwood City, CA 94063.

On April 24 2011, I served one true copy of PETITION FOR REVIEW; PRELIMINARY POINTS AND AUTHORITIES; and REQUEST FOR IMMEDIATE STAY by placing a true copy thereof enclosed in a sealed envelope and postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as follows:

Katherine Kuhlman, Executive Officer  
North Coast Regional Water Control Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403-1072

I, Paul V. Carroll, declare, under penalty of perjury that the foregoing is true and correct. Executed April 24, 2011, at Redwood City, California.

  
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**EXH. A**

**California Regional Water Quality Control Board  
North Coast Region  
Order No. R1-2011-0038**

Limited Term Amendment to NTMP Provisions of Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. On June 4, 2009, the Regional Water Board adopted Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Timber Waiver).
2. The Timber Waiver includes conditions for controlling sediment discharges and temperature increases that also implement Total Maximum Daily Loads (TMDLs) in impaired waterbodies throughout the North Coast region. It includes updated and additional conditions for Non-industrial Timber Management Plans (NTMPs), including those that were previously enrolled under the Categorical Waiver, Order No. R1-2004-0016 (2004 Waiver).
3. Three petitions for review were filed with the State Water Resources Control Board by a landowner group, several non-governmental organizations, and the California Department of Forestry and Fire Protection (CAL FIRE). Petitioners' concerns included among other things, the specific NTMP conditions in the Timber Waiver, because such conditions allegedly impose unnecessary additional burdens on CAL FIRE and on NTMP landowners.
4. The Regional Water Board did not intend for the Timber Waiver to create unnecessary regulatory burdens on CAL FIRE or NTMP landowners, or to create conditions that are duplicative of adequately-protective Forest Practice Rules (FPRs). It was the Regional Water Board's intent to include NTMP conditions to accommodate site-specific circumstances and to provide regulatory consistency in areas where the FPRs provide adequate water quality protection.
5. The Timber Waiver was adopted prior to the California Board of Forestry and Fire Protection adoption of revisions to the FPRs referred to as the new Anadromous Salmonid Protection (ASP) rules, which went in effect January 2010.
6. At this time, it is uncertain as to how ASP rules are applied to existing NTMPs. To more fully understand the application of the new ASP rules, as well as other FPRs, to NTMPs, Regional Water Board staff are in the process of reviewing ASP protection levels as applied to all NTMPs in the North Coast to better inform the Regional Water Board for its regulatory actions in the future.

7. To allow appropriate review time, it is reasonable to temporarily suspend the (2009) NTMP Timber Waiver provisions to allow an inquiry into water quality protections provided for NTMPs by the FPRs, including the new ASP rules.
8. It is necessary for Regional Water Board staff to work with NTMP landowners, CAL FIRE and other interested parties to evaluate the adequacy of the existing FPRs and their effectiveness and implementation to achieve compliance for protecting water quality, particularly in areas designated as sediment and temperature impaired.
9. In the meantime, it is appropriate for the NTMP provisions from the 2004 Waiver to apply until February 1, 2012, after which time the 2009 NTMP Timber Waiver conditions will automatically become effective again, unless the Regional Water Board takes action to modify the conditions in the Waiver prior to that date.
10. The Regional Water Board retains all its authorities under the Water Code to address discharges of waste from NTMPs during this interim time period, including enforcement actions, requesting reports of waste discharge for individual sites, and authority to deny or terminate coverage under the Timber Waiver, as appropriate.
11. For the reasons stated above, a limited term amendment suspending the NTMP provisions of the 2009 Timber Waiver is in the public interest and consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan).
12. In accordance with the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), the revision of a categorical waiver is a "project" and Regional Water Board is the lead agency responsible for approving that project. Section 15061(b)(3) of the CEQA Guidelines (section 15000 et seq of title 14 of the California Code of Regulations) allows a lead agency to find a project exempt from CEQA if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The limited term suspension of 2009 NTMP Timber Waiver provisions will not have any effect on the environment because the environmental baseline, against which the Regional Water Board considers the environmental impacts of a project includes the protections provided by the previous waiver. There is no possibility that the project will have a significant effect on the environment, and it is, therefore, exempt from CEQA.
13. The Regional Water Board has notified interested parties of its intent to amend the Categorical Waiver to temporarily suspend 2009 NTMP Timber Waiver provisions of the 2009 Timber Waiver and apply 2004 Waiver protections in the interim time period. The Regional Water Board, in a public meeting on March 24, 2011, heard and considered all comments pertaining to this amendment.

**THEREFORE, IT IS HEREBY ORDERED, that**

NTMP provisions in the Timber Waiver Order No. R1-2009-0038, including Section I(E), Section III, and application procedures contained in Section II as applicable to NTMPs are stayed until February 1, 2012. All other sections of the 2009 Timber Waiver remain unchanged.

In this interim time period, NTMP provisions from the 2004 Waiver (Order R1-2004-0016) shall apply: These temporary provisions are as follows:

**Categorical Waivers E: Nonindustrial Timber Management Plan**

In the case of NTMPs, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Project is a Nonindustrial Timber Management Plan (NTMP) under the FPRs.
2. The NTMP has been approved by CAL FIRE.
3. No Non-Concurrence has been filed with CAL FIRE by Regional Water Board staff, which was not resolved prior to CAL FIRE's approval.

Conditions:

1. The Discharger and NTMP complies with the general waiver conditions set out in Section III(G) of the 2004 Waiver.
2. Dischargers shall incorporate into the approved NTMP or submit with each Notice of Timber Operations (NTO) an Erosion Control Plan as follows:

Erosion Control Plan

An Erosion Control Plan (ECP), as described below, shall be developed and implemented for the NTMP or the area covered by each NTO, including roads used for timber harvest activities owned by or under the control of the Discharger. The ECP shall be designed to prevent and minimize the discharge or threatened discharge of sediment from controllable sediment discharge sources into waters of the state to the degree necessary to avoid a violation of water quality requirements or other provisions of this Order. Sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard.

a. Contents of an ECP

- i. An inventory of all controllable sediment discharge sources within the NTMP or NTO area, and

- ii. A time schedule with each NTO for implementation of prevention and minimization management measures to address the inventoried controllable sediment discharge sources, and

b. Inventory and Treatment of Controllable Sediment Sources

The on-the-ground inventory of controllable sediment discharge sources will be used to identify the existing or threatened controllable sediment discharge sources, and provide a time schedule for implementation of prevention and minimization management measures. Any method or model used to develop the inventory shall be briefly described and shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources to attain compliance with applicable water quality requirements. Site evaluations are required in preparing the inventories to fully assess on-the-ground conditions and to facilitate the detection of threatened or existing controllable sediment discharge sources. The inventory shall include:

- i. A brief description of the inventory method(s) and/or model(s) used,
- ii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the NTMP and/or NTO boundary and location of all inventoried controllable sediment discharge sources, and
- iii. An estimate of the sediment volume and the relative potential for sediment delivery from each inventoried site.

c. Implementation Schedule

Each NTO shall include an area-wide (i.e. the NTO area) time schedule for implementation of prevention and minimization management measures that will be used to guide corrective actions. Prevention and minimization management measures shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources in the NTO area to achieve compliance with applicable water quality requirements. The time schedule must be during the time an individual NTO is active, and provide for timely implementation to prevent and minimize sediment discharge sites in the order of priority, unless an alternative time schedule is agreed to in writing by the Executive Officer. The time schedule will include:

- i. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory, and
- ii. A schedule for implementing prevention and minimization management measures for controllable sediment discharge sources. The priority shall be based on the volume of sediment and threat to water quality, with the highest priority assigned to the largest sediment discharge sources that discharge to waters that support domestic water supplies or fish.

**Application Procedures**

To seek coverage for new NTMPs, Discharger shall file a Certification Notice with the Regional Water Board. The Certification Notice shall be signed by the Discharger and shall state that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and conditions, specific and general, of Categorical Waiver E. Unless otherwise specified by the Regional Water Board, timber harvest activities may commence no sooner than fourteen (14) days after Regional Water Board receipt of the Certification. Pursuant to 2004 Waiver, general condition 11, Discharger must submit a Notice of Timber Operations (NTO) to the Regional Water Board at least five (5) days prior to commencement of timber harvest activities. The Regional Board Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate.

**NTMPs Previously Waived Under Order No. R1-2003-0116**

NTMPs approved by CAL FIRE pursuant to the FPRs that were previously waived under Order No. R1-2003-0116 can be covered under this Order. Such NTMPs must not be the subject of an unresolved water quality issue or non-concurrence filed by Regional Water Board staff, and must comply with the general conditions set forth in Section III(G) of the 2004 Waiver. These NTMPs need not comply with application procedures for new NTMPs. Pursuant to 2004 Waiver, general condition 11, Discharger must submit a Notice of Timber Operations (NTO) to the Regional Water Board at least five (5) days prior to commencement of timber harvest activities.

**Certification**

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on March 24, 2011.

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Catherine Kuhlman  
Executive Officer

**EXH. B**

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2009-0038

Categorical Waiver of Waste Discharge Requirements  
For  
Discharges Related to Timber Harvest Activities  
On Non-Federal Lands in the  
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) finds that:

1. California Water Code section 13260(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 Board a Report of Waste Discharge (ROWD) containing such information and data as may be required.
2. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest.
3. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Basin Plan, 4-33.00).
4. In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality are regulated by conditional waivers of WDR. Individual or general WDRs are required for discharges of waste from all other timber activities.
5. In addition, the following waste discharge prohibitions from the Water Quality Control Plan for the North Coast Region (Basin Plan) pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

Prohibition 1: The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2: The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

6. On June 23, 2004, the Regional Board adopted Order No. R1-2004-0016, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, and superseded the previous Categorical Waiver (Order No. R1-2003-0116, Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region). This Order will supersede Order No. R1-2004-0016 consistent with the transition provisions in section III. This Categorical Waiver is similar to the existing 2004 waiver but makes both minor and substantial revisions and is structurally reorganized for clarity and usability. As described in more detail below, this Categorical Waiver adds conditions designed to meet Basin Plan temperature objectives.
7. This Categorical Waiver defines five categories of timber harvest activities, detailed in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions result in timber harvesting projects that are considered to be low impact, and therefore pose no significant threat to water quality.
8. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
  - a. Municipal and Domestic Supply (MUN)
  - b. Agricultural Supply (AGR)
  - c. Industrial Service Supply (IND)
  - d. Industrial Process Supply (PROC)
  - e. Groundwater Recharge (GWR)
  - f. Freshwater Replenishment (FRSH)
  - g. Navigation (NAV)
  - h. Hydropower Generation (POW)
  - i. Water Contact Recreation (REC-1)
  - j. Non-contact Water Recreation (REC-2)
  - k. Commercial and Sport Fishing (COMM)
  - l. Cold Freshwater Habitat (COLD)
  - m. Warm Freshwater Habitat (WARM)
  - n. Wildlife habitat (WILD)
  - o. Preservation of Areas of Special Biological Significance (BIOL)
  - p. Rare, Threatened, or Endangered Species (RARE)
  - q. Marine Habitat (MAR)
  - r. Migration of Aquatic Organisms (MIGR)
  - s. Spawning, Reproduction, and/or Early Development (SPWN)
  - t. Shellfish Harvesting (SHELL)
  - u. Estuarine Habitat (EST)
  - v. Aquaculture (AQUA)
  - w. Native American Culture (CUL)
  - x. Flood Peak Attenuation/Flood Water Storage (FLD)
  - y. Wetland Habitat (WET)
  - z. Water Quality Enhancement (WQE)
  - aa. Subsistence Fishing (FISH)

The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were evaluated as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Categorical Waiver implement these previously developed water quality objectives. Compliance with Water Quality Standards will protect these beneficial uses.

9. Populations of several species of anadromous salmonids listed as threatened or endangered under both the Federal Endangered Species Act or the California Endangered Species Act have declined significantly during the past half century in the majority of waterbodies in the North Coast Region. Degradation of freshwater habitat by land use activities is a major contributing factor to the decline in populations, with discharges of waste from timber harvesting and associated activities among the most significant factors.
10. Harvest methods resulting in intensive canopy removal, such as clearcutting, can cause impacts to water quality from higher and more intensive peak flows, increased surface erosion, and higher rates of mass wasting. Unevenaged management or evenaged management that retains a substantial overstory canopy is less likely to result in adverse impact to water quality. As such, harvesting methods that result in intensive canopy removal are limited under this Categorical Waiver. Intensive canopy removal, such as clearcutting, is allowed under this Categorical Waiver when buffers are provided for streams that are significantly larger than the minimum required under the Forest Practice Rules.
11. Timber harvesting activities on landslides, or on those portions of the landscape that are vulnerable to landsliding, can increase rates of sediment delivery from landslides. This increase in the rate of landslide related sediment delivery can be prevented or minimized by avoiding or minimizing ground disturbance and canopy removal on vulnerable areas, or implementing recommendations made as a result of site characterization by a licensed geologist experienced in slope stability investigations. As such, no timber harvesting activities may be conducted under THPs covered by this Categorical Waiver on landslides and geomorphic features related to landsliding without site characterization and input into Project design by a licensed geologist.
12. Sediment discharge sources, or threatened discharge sources, from past timber harvest activities are present throughout the north coast region and continue to pose risks to water quality. A condition of the Categorical Waiver requires timber harvesting proponents to prepare Erosion Control Plans, which identify controllable sediment discharge sources and implement prevention and minimization measures, thereby eliminating a significant pollutant source from those Project areas.

### **Impaired Waterbodies and TMDLs**

13. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (Section 303(d) of the Clean Water Act). Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern.
14. The United States Environmental Protection Agency (EPA) has established sediment TMDLs for 19 watersheds in the North Coast Region. The majority of these TMDLs identified erosion from roads and timber harvest as major contributing factors to sediment discharge from anthropogenic sources and called for significant reductions in such discharges. The EPA includes recommendations to reduce sediment delivery from the major sources identified in those TMDLs. The Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (TMDL Implementation Policy) provides that the Regional Board shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
15. The TMDL Implementation Policy also directed staff to develop the Staff Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan) that describes the actions staff are currently taking or intend to take over the next ten years, as resources allow, to control human-caused excess sediment in the sediment-impaired water bodies of the North Coast Region. This Categorical Waiver furthers the objectives defined in the TMDL Implementation Policy and Work Plan. Conditions and eligibility criteria required for enrollment in this Categorical Waiver are intended to contribute to reductions in anthropogenic sediment discharges from the sources identified by EPA and constitute implementation of TMDLs, thus furthering the objectives contained in the Work Plan.
16. The temperature of a stream is significantly influenced by the amount of solar radiation the stream receives. Removing shade canopy in riparian zones can increase the amount of solar radiation that reaches a watercourse, potentially resulting in an increase in water temperature. Canopy retention standards above the minimums established in the Forest Practice Rules and restrictions on shade reduction required under this Categorical Waiver are necessary to meet the Basin Plan temperature objective.
17. The North Coast Regional Board has Temperature TMDLs for 12 watersheds in the north coast region of California. These watersheds include three of the major Klamath River tributaries: the Salmon, Scott, and Shasta River watersheds. The twelve temperature TMDLs have evaluated the effects of shade on stream

temperatures and have consistently reached the same conclusion regarding stream shade. These conclusions are consistent with published literature and temperature analyses conducted in the Pacific Northwest.

The Basin Plan contains the following temperature objectives, which apply to surface waters:

- The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.
  - At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature.
  - At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature.
18. Given the similarity among the majority of north coast watersheds and the universal nature of the laws of thermodynamics, the conclusions of shade-related analyses from previous temperature TMDLs apply region-wide, and especially to those tributaries not already assigned TMDL shade allocations. In order to protect, maintain, or restore natural water temperature, riparian shade controls are also needed in many watersheds not subject to an existing TMDL Action Plan or in watersheds that are not currently impaired due to elevated water temperatures.
19. The load allocation for excess solar radiation assigned in previous TMDLs is also an appropriate allocation for excess solar radiation to meet the Basin Plan temperature objective in watersheds throughout the North Coast Region. The load allocation for solar radiation is expressed as its inverse, shade. The load allocations for this source category are the shade provided by topography and full potential vegetation conditions at a site, with an allowance for natural disturbances such as floods, wind throw, disease, landslides, and fire. Riparian zone canopy and shade retention standards included as conditions of this Categorical Waiver are intended to preserve natural shade to meet the Basin Plan temperature objectives and constitute compliance with temperature TMDL implementation requirements.

#### **Waiver Categories**

20. The General and Specific Conditions of this Categorical Waiver limit the scope of impacts from timber harvesting plans (THPs) approved by CAL FIRE and other CEQA compliant timber harvesting activities so that discharges of waste will be minimized. Further, subsequent CEQA review ensures site-specific mitigation and appropriate project planning to protect water quality. As such, Projects that meet the eligibility criteria for Category F are not expected to pose a significant threat to water quality, and therefore, it is appropriate to conditionally waive waste discharge requirements.

21. Non-industrial Timber Management Plans (NTMPs), as defined in the Forest Practice Rules, are long term management plans, in which tree removal is limited to unevenaged management for small non-commercial timberland owners (2,500 acres or less). As a result, only partial harvesting of these types of timberlands occurs at any one time. With the addition of general and specific conditions required for coverage under this Categorical Waiver, NTMPs are not expected to pose a significant threat to water quality and therefore it is appropriate to conditionally waive waste discharge requirements.
22. Owners and operators of (THPs) in watersheds with approved Total Maximum Daily Load (TMDL) action plans must comply with the requirements of those plans. TMDL action plans are designed to restore the impaired beneficial uses of a polluted body of water. The TMDL process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. THPs for which the Executive Officer of the Regional Board has determined to be in compliance with a TMDL Action Plan are not expected to pose a significant threat to water quality. The Garcia watershed is the only TMDL Action Plan that fits this category. Therefore, it is appropriate to waive waste discharge requirements for THPs in the Garcia watershed that meet the Categorical Waiver conditions.
23. Modified THPs, as defined by the Forest Practice Rules, are limited to timberland ownerships of 100 acres or less. The Forest Practice Rules for modified THPs includes restrictions on intensive silvicultural prescriptions, heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in this Categorical Waiver, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for modified THPs meeting Categorical Waiver conditions.
24. California Code of Regulations, title 14, section 1052 allows timberland owners to submit a Notice of Emergency Timber Operations for a Fuel Hazard Reduction emergency when specified conditions are substantiated by the consulting forester. Operations conducted pursuant to an emergency must comply with all applicable Forest Practice Rules. In-lieu practices in riparian zones, exceptions to rules, and alternative practices are not allowed unless necessary to protect public health and safety. Due to the potential harm to public and private resources that could occur if fuel hazard reduction projects are not implemented in a timely manner when necessary, it is in the public interest to waive waste discharge requirements for Emergency Timber Operations.

25. California Code of Regulations, title 14, section 1038 exempts the following timber operations from the plan preparation and submission requirements:

- Harvesting Christmas trees
- Harvesting dead, dying or diseased trees in amounts less than 10 percent (%) of the average volume per acre
- Cutting and removal of trees within 150 feet from an improved or legally permitted structure for the purposes of reducing flammable materials and maintaining a fuel break
- Harvesting dead trees which are unmerchantable from substantially damaged timberlands.

Such exemptions include restrictions on use of heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in this Categorical Waiver, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for these exemptions.

26. California Code of Regulations, title 14, section 1104.1 exempts three categories of timberland conversion from THPs requirements, that when in compliance with all other permitting requirements of the Regional Board and other permitting agencies, are not likely to pose a significant threat to water quality. It is appropriate to waive waste discharge requirements for the following conversion exemptions:

- Conversion of less than three acres in size in one contiguous ownership,
- Construction or maintenance of right-of-way by a public agency on its own or other public property,
- The clearing of trees from timberland by a private or public utility for construction of gas, water, sewer, oil, electric, and communications rights-of-way, and for maintenance and repair of the utility and right-of-way.

However, higher potential impacts to water quality can result from conversion for vineyards, construction, and development projects that typically require waste discharge requirements and/or federal dredge and fill permits. These types of conversions are not covered by this Categorical Waiver.

27. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. The categorical waivers set out herein are only for Projects that do not pose a significant threat to water quality. Discharges that pose a significant threat to water quality are not permitted by this Order. Any project covered hereby that warrants it and meets the criteria of Water Code section 13267(b), however, will be subject to a monitoring program as directed by the Executive Officer.

### **Regional Board Waiver Fees**

28. Pursuant to Water Code Section 13269, the Regional Board may include as a condition of a waiver the payment of an annual fee established in accordance with subdivision (f) of section 13260. Based on consideration of factors established in section 13269 (4)(C), it is appropriate to impose the following fees for the Categories established by this Categorical Waiver:

**Categorical Waiver B: Emergency, Exemptions, and 3-acre conversions.**

Fees are not appropriate for this category of waiver, as no effect on beneficial uses is expected.

**Categorical Waiver C: Projects in the Garcia Watershed.**

Fees are not appropriate because applicants enrolling in this Category participate in a watershed management program through a TMDL approved by the applicable Regional Board.

**Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP).**

A one time application fee, in the amount of \$250, is appropriate. This category requires review of enrollment applications and review of significant amounts of technical information.

**Categorical Waiver F: Other Projects (Timber Harvest Plans (THPs) and Other Timber Harvesting Projects).** A one time application fee, in the amount of \$250, is appropriate. This category requires review of enrollment applications and review of significant amounts of technical information.

### **Miscellaneous**

29. Pursuant to Water Code section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that this action waiving the issuance of waste discharge requirements for certain specific types of discharges (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 Regional Board from administering enforcement remedies (including civil penalties) pursuant to the Water Code and other applicable law.
30. The Executive Officer or Regional Board shall terminate the applicability of this Order to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the state.

31. This Order establishing a group of categorical waivers shall not create a vested right, and all discharges covered by it shall be considered a privilege, not a right, as provided under Water Code section 13263.
32. This Categorical Waiver is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Both the state and federal antidegradation policies apply to surface waters in the North Coast Region. The antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in a violation of antidegradation policies through cumulative effects, especially, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.
33. On March 7, 2009, the Regional Board provided notice of intent to adopt a mitigated negative declaration (SCH No.2009042053) for the project. (Cal. Code Regs., title. 14, § 15072.) The mitigated negative declaration reflects the Regional Board's independent judgment and analysis. The documents or other material, which constitute the record, are located at 5550 Skylane Blvd, Suite A, Santa Rosa, CA 95403. The Regional Board will file a Notice of Determination within five days from the issuance of this Order.
34. The Regional Board conducted a public hearing on June 4, 2009 in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region.
35. Based on the Initial Study and Negative Declaration, the adoption of the waivers of waste discharge requirements for timber harvest activities in accordance with Order No. R1-2009-0038 will be consistent with the Basin Plan, and will be in the public interest.

THEREFORE, after considering the document and comments received during the public review process, the Regional Board hereby determines that the proposed project, with mitigation measures, will not have a significant effect on the environment. The Regional Board hereby approves and adopts the Negative Declaration and Initial Study prepared on this Order, and directs the Executive Officer to file all appropriate notices; and

Order No. R1-2004-0016 is hereby superseded except for application to Projects that have been accepted for filing but not yet approved by the California Department of Forestry and Fire Protection as of the adoption date of Order No. R1-2009-0038. Such Projects are eligible for coverage under Order No. R1-2004-0016 until October 15, 2009, should they qualify under the terms and conditions of that Order. All dischargers subject to categorical waiver of Waste Discharger Requirements (WDRs) under this Order shall comply with the following:

**SECTION I: Waiver of Submittal of Reports of Waste Discharge and Waiver of Waste Discharge Requirements for Timber Harvest Projects on Private (Non-Federal) Lands.**

This Order sets out general and specific conditions for dischargers to obtain categorical waivers of WDRs for certain timber harvest activities conducted on non-federal lands in the North Coast Region. The Order includes: application procedures, eligibility and submission requirements (Section II), waiver for Projects previously enrolled for a waiver of WDR under Order No. R1-2004-0016 (Section III), termination of coverage (Section IV), and Prohibitions (Section V). Definitions used in this Order are detailed in attachment A.

There are five (5) separate categorical waivers for new Projects (i.e. Projects not previously permitted or waived by the Regional Board). Each waiver category has a set of eligibility criteria, general conditions, and specific conditions when appropriate. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of five categories. For Projects that meet the eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific conditions detailed in that category, as well as the general conditions necessary to obtain and maintain coverage under all waiver categories, starting with submittal of application documents described in Section II.

**General Conditions that apply to all applications for Waiver:**

The Discharger shall comply with each of the following conditions for all Categorical Waivers established by this Order:

1. An owner/operator (hereinafter referred to as Discharger) shall file the documents set out in Section I, as appropriate.
2. The Discharger shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
3. The Discharger shall allow Regional Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section IV.
4. The Discharger shall comply with a monitoring program, unless waived by the Category of Waiver or in writing by the Executive Officer.
5. The Discharger shall conduct timber harvest activities in compliance with the Forest Practice Rules and a THP or NTMP that has been approved by CAL FIRE. In addition, Forest Practice Rules and THP conditions (including

mitigation measures identified and required pursuant to CAL FIRE CEQA process) that are intended to protect water quality shall constitute enforceable conditions under this Order.

6. The Discharger shall comply with all mitigation measures identified in any accompanying CEQA document. CEQA mitigation measures that are intended to protect water quality shall constitute enforceable conditions under this Order.
7. The Discharger shall notify the Regional Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30 days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements.
8. Recommendations and mitigation measures proposed by Regional Board staff during the CAL FIRE Project review and approval process are incorporated into the approved Project.
9. The Discharger must resolve any Non-Concurrence that has been filed with CAL FIRE by Regional Board staff to the satisfaction of the Executive Officer of the Regional Board prior to enrollment in the Categorical Waiver.
10. All new watercourse crossing construction or reconstruction shall occur under authority of local, state, or federal law, and a Streambed Alteration Agreement (Permit) when required by California Department of Fish and Game.
11. All amendments of THPs and NTMPs approved by CAL FIRE shall conform to the Eligibility Criteria and Conditions set forth for the originally waived Project. Failure to do so is a violation of the Categorical Waiver and subjects Discharger to enforcement action and/or termination of waiver coverage for the Project.

**Categorical Waiver B: Emergency, Exemptions, and 3-acre conversions**

The following are waived from submittal of ROWD, THPs, or enrollment application. The threat to water quality by this category of waiver is de minimis. Notification provided by CAL FIRE during its review process is sufficient notification. No additional application or reporting requirements beyond those already established by other regulations is required.

**a. Timber Operations Pursuant to an Emergency Notice**

Eligibility Criteria:

1. Projects that conform to the rules for Emergency Notice pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1052) administered by CAL FIRE.
2. CAL FIRE has accepted the Discharger's Emergency Notice for the Project and either: a) the Regional Board has received a copy of the notice of acceptance

from CAL FIRE, or b) 5 working days, or 15 days for a fuel hazard emergency, have passed since submission of the Emergency Notice to CAL FIRE and the Emergency Notice was not returned to the submitter.

Specific Conditions: None

Application and/or annual fee for this waiver category: None

**b. Exemptions as defined in Forest Practice Rules**

Eligibility Criteria:

1. Projects that conform to the rules for Exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1038) administered by CAL FIRE.
2. CAL FIRE has accepted the Notice of Exemption for the Project.

Specific Conditions: None

Application and/or annual fee for this waiver category: None

**c. Conversion Exemptions (also known as 3-acre conversions)**

Eligibility Criteria:

1. Projects that conform to the rules for Conversion exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1104.1) administered by CAL FIRE.
2. The Discharger has submitted a Notice of Conversion Exemption for the Project to CAL FIRE that has been accepted, and the Regional Board has received a copy of the notice of acceptance from CAL FIRE.

Specific Conditions:

1. Enrollment under this waiver does not cover discharges to waters of the United States that may require additional permits from federal and state agencies. If road construction includes new or upgraded watercourse crossings for a development following conversion that impacts waters of the United States, the Discharger must apply for and receive a federal Clean Water Act section 404 dredge and fill permit from the US Army Corps of Engineers and accompanying Section 401 water quality certification from the Regional Board.

2. If the less than 3-acre conversion is or will be for the purpose of construction development (for residence or commercial purpose of any type), the Discharger must have submitted a Notice of Intent to comply with the Statewide construction stormwater permit and received an enrollment notice prior to commencement of construction activities. This includes grading and land clearing for any type of construction of 1-acre or greater.

Application and/or annual fee for this waiver category: None

### **Categorical Waiver C: Projects in the Garcia Watershed**

In the case of Total Maximum Daily Load Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Executive Officer has determined that the Project is in compliance with the Garcia River sediment TMDL Action Plan.

Specific Conditions: None

Application fee for this waiver category: None

### **Categorical Waiver D: Modified Timber Harvest Plan Projects**

Eligibility Criteria:

1. The project meets the definition as a Modified Timber Harvest Plan pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1051) and has been approved by CAL FIRE.

Specific Conditions:

1. If road construction includes new or upgrading of watercourse crossings, the Discharger has submitted a Notice of Intent for the statewide dredge and fill permit and has received a Notice of Exemption for the statewide permit for the project.

Application fee for this waiver category: None

### **Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP)**

#### Eligibility Criteria:

1. The Project meets the definition as a Nonindustrial Timber Management Plan (NTMP) pursuant to Forest Practice Rules (Cal. Code Regs., title 14, §1090) and CAL FIRE has approved the NTMP.

Application fee for this waiver category: A one time application fee of \$250

#### Specific Conditions:

1. The Discharger submits a Project specific Erosion Control Plan (ECP) developed by a qualified professional as specified in Attachment B for the entire logging area of the NTMP. The logging area includes the area to be harvested, the roads used to access the harvest area (appurtenant roads), and the area within 100 feet of these appurtenant access roads. Typically, the ECP is incorporated into the approved NTMP. The ECP shall be updated for each submittal of the Notice of Timber Operations (NTO).
2. The Discharger shall propose a schedule to mitigate all controllable sediment discharge sources (CSDS), and shall implement according to that schedule until directed otherwise by the Executive Officer. Generally, CSDS sites shall be mitigated within the NTMP area identified in the NTO during the life cycle of the NTO.
3. The Discharger shall submit written notice to the Regional Board no less than five (5) days prior to commencement of timber harvest activities under a notice of timber operations (NTO). The notice must include an updated ECP for the entire area contained in the NTO. The notice may consist of a copy of the NTO submitted to CAL FIRE.
4. Timber harvesting activities within Watercourse and Lake Protection Zones<sup>1</sup> must be designed to protect and restore riparian functions and associated beneficial uses and comply with all applicable water quality regulations. Specific conditions 4.a. and 4.b. are intended to meet the Basin Plan temperature objective by preserving natural shade where present and restoring it where it is not present. Alternatives to these specific requirements will be considered for equal or better protection:
  - a. Alternative canopy retention levels received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection. In the absence of an approved alternative, overstory canopy must not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and

Lake Protection Zone<sup>1</sup> (WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone, and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.

- b. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June, July, August, and September), whether the trees are inside or outside the WLPZ or streamside buffer zone, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 85 percent (%), or when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 65 percent (%). Any shade tree outside of the WLPZ, which must be retained, shall be marked as a "leave tree." Alternative percent shade retention received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection.

#### 5. Road Plan

The Discharger shall 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. Roads refer to logging roads as defined in the Forest Practice Rules; a road other than a public road used by trucks going to and from landings to transport logs and other forest products. The Discharger shall submit the Road Plan within five years of enrollment in the Categorical Waiver. The road system described in the Road Plan shall be constructed, reconstructed, and maintained to prevent or minimize sediment discharge to streams. This shall be accomplished by dispersing road surface drainage, preventing surface erosion from entering streams, protecting stream crossings from failure or diversion, and preventing failure of unstable fills, which would otherwise deliver sediment to streams.

The Road Plan shall include, at a minimum:

- The location of all roads and watercourse crossings within the logging area;
- The current status of each road, including road surface material, road and watercourse design, and use restrictions;
- The future plan and implementation schedule for each road; and

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<sup>1</sup> WLPZ is defined in the Forest Practice Rules. (Cal. Code Regs., tit. 14, § 916.)

- A long term inspection and maintenance schedule designed to ensure that prevention and minimization measures are functioning as intended and to identify and correct any problems that could cause sediment discharge in a timely manner. All roads must either be:
  - inspected and maintained annually, or
  - hydrologically maintenance free, i.e., do not alter natural hydrology of the hillslope, or
  - decommissioned

Roads (including road prism and watercourse crossing drainage structures) that are constructed or reconstructed after enrollment in Categorical Waiver E, shall at a minimum, comply with the standards listed below.

Existing usable roads will be upgraded to the standards below according to a schedule developed by the Discharger and approved by the Executive Officer of the Regional Board. It is expected that significant portions of the road system will be upgraded concurrently with timber harvest activities or through compliance with other regulatory programs. Roads that are not needed as part of the long-term road system and that discharge or threaten to discharge earthen material to waters of the state shall be scheduled as necessary for abandonment or obliteration as Controllable Sediment Discharge Sources under the Erosion Control Plan. The implementation schedule may be revised as warranted by changed conditions if agreed to in writing by the Executive Officer.

#### Stream Crossings:

- All stream crossings must have a drainage structure designed for the 100 year return interval discharge and pass any reasonable amount of debris;
- Stream crossings must be designed so that in the event of plugging, the stream is not diverted out of its channel;
- Stream crossing inlets and outlets must be protected from erosion;
- Stream crossing outlets must not discharge onto road fill;
- Stream crossing inlets must have low potential for plugging;
- Culvert inlet, outlet, and bottom must be open and in sound condition;
- Fills must be stable, and unstable fills are removed or stabilized;
- Road surfaces and ditches must be disconnected from streams;
- Decommissioned roads must have all stream crossings completely excavated to original grade; and
- Fish bearing streams must have no barriers to fish passage

#### Road and Landing Fills

- Unstable and potentially unstable road and landing fills are removed; and
- Excavated spoil is placed in locations where earthen material will not discharge to a stream

Road Surface Drainage

- Road surface runoff must be dispersed by outsloping where feasible;
- Road surfaces and ditches must be disconnected from streams to the extent feasible. Road segments that cannot be disconnected from streams shall be stabilized to prevent surface erosion;
- Ditches must be drained frequently by functional rolling dips or ditch relief culverts;
- Outflow from ditch relief culverts must not discharge to streams, onto erodible fill, or onto active or potential landslides; and
- Gullies must be dewatered to the extent feasible

**Categorical Waiver F: Other Projects (Timber Harvest Plans (THPs) and Other Timber Harvesting Projects)**

Other Projects include standard THPs, or other timber harvesting activities in compliance with CEQA, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Any other Project, such as a Timber Harvest Plan (THP) under the FPRs approved by CAL FIRE, or other timber projects in compliance with CEQA.

Application fee for this waiver category: A one time application fee of \$250

Specific Conditions:

The following specific conditions shall apply to THPs and other timber projects. The Discharger shall prepare a brief summary describing how the project meets each of the eligibility criteria listed below. The summary may be incorporated into the plan or project, or may be submitted along with the application seeking coverage under this Waiver Category:

1. Dischargers shall submit a site specific Erosion Control Plan developed by a qualified professional for the entire logging area and include that in the approved THP or timber project as specified in Attachment B, which shall be fully implemented prior to the final project completion.
2. Timber harvest activities on all landslides and geomorphic features related to landsliding shall be designed to prevent and minimize sediment discharge related to landsliding. Prior to timber harvest activities on landslides or geomorphic features related to landsliding,<sup>2</sup> the discharger shall prepare and submit a geologic report. The report, to be prepared by a licensed California Professional Geologist, shall, at a minimum, be prepared in conformance with California Geologic Survey (formerly the California Department of Conservation Division of Mines and Geology) Note 45. The

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<sup>2</sup> Landslides and geomorphic features related to landsliding are defined by California Geologic Survey formerly (California Department of Conservation Division of Mines and Geology) Note 50.

geologic report shall address the degree to which proposed Project activities on landslides or geomorphic features related to landsliding increases the risk of sediment delivery to watercourses, identifies current condition of down slope waters, estimates the amount of sediment that could be delivered from the slides or unstable areas from Project activities, and identifies and incorporates into the Project recommendations for preventing and minimizing the discharge of sediment from these sites.

3. No timber harvest activities shall occur within the channel zone of a Class III watercourse, except for use and maintenance of roads, construction and reconstruction of approved watercourse crossings, and to allow for full suspension cable yarding when necessary to transport logs through the channel zone.

Projects that meet specific conditions 4 and 5 are not required to meet specific condition 6. Projects that meet specific condition 6 are not required to meet specific conditions 4 and 5.

4. Post harvest stocking within the Project area shall comply with the unevenaged stocking requirements of the FPR or in the case of evenaged harvesting methods shall maintain a canopy closure of at least 65 percent (%) comprised of commercial species at least 30 feet in height.
5. Timber harvesting activities with Watercourse and Lake Protection Zones must be designed to protect and restore riparian functions and associated beneficial uses and comply with all applicable water quality regulations. Specific condition 5.a. and 5.b. are intended to meet the Basin Plan temperature objective by preserving natural shade where present and restoring it where it is not present. Alternatives to these specific requirements will be considered for equal or better protection:
  - a. Alternative canopy retention levels received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection. In the absence of an approved alternative, overstory canopy shall not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and Lake Protection Zone <sup>3</sup>(WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone, and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.
  - b. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June-September), whether the trees are inside or outside the WLPZ, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ (50 feet for Class II WLPZs) is less than 85 percent (%), or when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs) is less than 65 percent (%). Any shade tree which must be retained shall be marked as a "leave tree."

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<sup>3</sup> WLPZ is defined in the Forest Practice Rules 14CFR 916

Alternative percent shade retention received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection.

6. To employ clearcutting (evenaged harvesting method) on slopes of less than 65 percent (%) and with a canopy closure of less than 65 percent (%) comprised of commercial species at least 30 feet in height, a riparian management zone (RMZ) must be established on each side of the watercourse for a distance of 300 feet on a Class I watercourse, 200 feet on a Class II watercourse, and 100 feet on a Class III watercourse. Within the RMZ, no harvesting may occur within the first 30 feet of Class I and II watercourses and within 10 feet of Class III watercourses. It is the intent of this condition to allow clearcutting with the maintenance of a substantial functional riparian zone and buffer.

If the following canopy conditions are not currently met, this specific condition will not be applied to the THP. Beyond the no harvest zone, overstory canopy must be maintained at a minimum of 85 percent for a distance of 150 feet from a Class I watercourse, 100 feet from a Class II watercourse, and 50 feet from a Class III watercourse. Overstory canopy must be maintained at a minimum of 65 percent in the remainder of the RMZ.

If the Project includes evenaged harvesting (clearcutting) methods which maintain a canopy closure of less than 65 percent (%) comprised of commercial species at least 30 feet in height on slopes greater than 65 percent (%), the Discharger shall prepare and submit a geologic report according to the criteria specified above in Section I(F)(3).

7. Roads shall be hydrologically disconnected from watercourses to the extent feasible. Hydrologically disconnecting roads consists of minimizing alteration of natural drainage patterns and preventing concentrated storm runoff from discharging into watercourses. Road segments that cannot feasibly be hydrologically disconnected from watercourses shall be treated to prevent and minimize surface erosion. Treatment may include seeding and mulching, rocking, slash packing, or other effective methods proposed by the Discharger.
8. No Timber harvest activities, including, log hauling, ground based yarding, road construction, road reconstruction, or road rocking shall occur during the winter period (November 15 to April 1). This does not include work necessary to apply or maintain erosion control management practices or and sediment control to reduce sediment discharge.

9. No timber harvest activities shall occur during measurable rain events (defined as greater than 1/4" in a 24-hour period). This does not apply to maintenance of existing roads and watercourse crossings, use of non-mechanized timber falling, fuels treatment such as hand piling and burning, hand fire line construction, or other activities which do not involve the use of heavy equipment or timber hauling,

#### 10. Sediment Prevention Plan

The Discharger shall develop and submit a Sediment Prevention Plan when any of the following are contained in the approved THP or other timber project:

- a. Construction of new skid trails on slopes over 40 percent (%) within 200 feet of a watercourse,
- b. Construction of more than 1,000 feet of new roads,
- c. Heavy equipment will be used within a WLPZ, equipment limitation zone, or streamside buffer zone of a watercourse, except for the following situations:
  - use of existing permanent roads,
  - use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures,
  - upgrading of roads to permanent standards by rocking, paving or other suitable surfacing materials to establish a stable operating surface prior to the start of hauling operations,
- d. Ground based heavy equipment operations on slopes exceeding 50 percent (%).

A Sediment Prevention Plan must be designed and implemented to prevent and minimize the discharge of sediment to waters of the State and submitted as part of a Project seeking coverage under the Categorical Waiver. A Sediment Prevention Plan differs from an Erosion Control Plan in that it is intended to prevent and minimize creation of *new* sources of sediment discharge from operations conducted under the current Project, while an ECP is intended to prevent and minimize sediment discharge from *existing* sources.

The Sediment Prevention Plan (SPP) shall be developed by a qualified professional. The Sediment Prevention Plan (SPP) shall include site specific measures that can reasonably be expected to prevent and minimize creation of new sediment discharge sources from proposed timber harvest activities. The sediment prevention plan must include a map clearly showing the location(s) of the site(s) where prevention and minimization measures described in the plan will be implemented.

## **SECTION II: APPLICATION PROCEDURES AND SUBMISSION REQUIREMENTS FOR CATEGORICAL WAIVERS**

The first step in seeking coverage is to determine if a given Project meets one of the five Waiver categories. If the Project meets the eligibility criteria for a given categorical waiver, the Discharger must comply with all the general and specific waiver conditions, starting with submittal of the application documents, as required.

If a Project does not meet the eligibility criteria for one of the categorical waivers, the Discharger must seek enrollment under an individual waiver, general WDRs, individual WDRs, or watershed wide WDRs.

Generally, the Regional Board receives approved or accepted Project documents from CAL FIRE or the lead agency. These documents are part of the record for each categorical waiver. However, the discharger is responsible to ensure the Regional Board receives the approved THP, NTMP, environmental document, ECP or other documents that may be part of an approved THP, NTMP, or other timber project.

- A. To seek coverage for Projects under a categorical waiver set out in Section I, Categorical Waivers C - F, the Discharger must submit to the Regional Board a "Certification Notice" that:
  1. Is signed by the land owner or designee proposing the project,
  2. Identifies the type of categorical waiver requested (Categorical Waiver C: Total Maximum Daily Load Plan Projects; Categorical Waiver D: Modified Timber Harvest Plan Projects; Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F: Other Projects, THPs),
  3. Acknowledges, that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and all general and specific conditions identified within the appropriate waiver category .
  4. Submits the applicable application fee for Categorical Waiver E and F established by this Order.
- B. The submission of a Certification Notice is not required for projects qualifying for coverage under the categorical waiver set out in Section I Categorical Waiver B: Emergency and Exemption Projects. Such Projects must, however, meet the eligibility criteria and conditions, both general and specific, to obtain and maintain coverage under Section I Categorical Waiver B.
- C. For project proponents applying for coverage under Categorical Waiver C-F, the Discharger may not commence timber harvesting activity until the Discharger has received written notification from the Executive Officer

stating that coverage under this Categorical Waiver is appropriate. The Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate. It is anticipated that projects which have had thorough Regional Board staff involvement in the review and approval process will receive written notification of coverage within ten (10) working days of receipt of a complete Certification Notice.

- D. For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) may seek coverage under this Order for each new PTHP. If the PTHP did not qualify for coverage under this Order, the Discharger may seek coverage under the Order No. R1-2004-0030, General Waste Discharge Requirements for Timber Harvest Activities on Non-Federal Land. Alternatively, Dischargers may seek coverage under an individual waiver or individual waste discharge requirements.
- E. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an unpermitted discharge of waste.

**SECTION III: WAIVER OF REPORTS OF WASTE DISCHARGE AND WASTE DISCHARGE REQUIREMENTS FOR PROJECTS PREVIOUSLY WAIVED UNDER ORDER NO. R1-2004-0016**

Projects that were previously waived under Order No. R1-2004-0016 may be covered under this Order provided they qualify for one of the categorical waivers described in Sections I(B)-(F) and meet the General Conditions described in Section I(A) and the eligibility criteria for each Categorical Waiver. No application is required for Projects that meet the eligibility criteria for Categorical Waivers B, C, D, and F.

However, Non-Industrial Timber Management Plans that were waived under Order No. R1-2004-0016 must apply for coverage under Categorical Waiver E prior to the next notice of timber operations (NTO) submitted after June 4, 2010. Those NTMPs applying for coverage under this Order must meet the applicable eligibility criteria and conditions. Previously waived NTMPs must develop and submit an ECP as specified in Attachment B for each NTO submitted after June 4, 2010. Such previously waived plans must complete and submit, an ECP for the entire NTMP area to the Regional Board by the first NTO submitted after June 4, 2014.

The Executive Officer may, upon receipt of a NTO, modify the ECP and/or road plan requirements, (including timing and extent of the required submittal), based on the following:

- terms and conditions of the NTMP,
- amount of total NTMP acreage,
- existence of a Ranch or Road Plan prepared by a qualified professional,

- CESA compliance or acceptable CAL FIRE impaired or special watershed prescription or T/I rule,
- the need for fire reduction,
- applicable Regional Board adopted sediment Best Management Practices for roads or ranches or,
- other relevant characteristic of the hydrographic unit.

#### **SECTION IV: TERMINATION OF COVERAGE**

- A. To terminate coverage under a categorical waiver upon completion of the Project, a Discharger must submit a final certification to the Regional Board. The certification shall:
1. Be signed by the landowner,
  2. Document the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order,
  3. Document that discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements, and
  4. Include a final annual inspection summary report to the Regional Board along with the final certification.
- B. Notwithstanding any other provision of this Order, the burden of proof is on the Discharger to demonstrate that each finding required for coverage under this Categorical Waiver can be made, and that each and every term, eligibility criterion, and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage is valid unless each and every term, eligibility criterion, and condition is met.
- C. The Executive Officer shall terminate the applicability of a categorical waiver to a specific project if the Executive Officer makes any of the following determinations:
1. The Project does not comply with the eligibility criteria for the waiver;
  2. The Project is not in compliance with the applicable conditions of the waiver;
  3. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
  4. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality;
  5. Where conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation;

6. Where past land use activities unique to the watershed or watershed segment resulted in the discharge of human generated sediment in amounts which warrant further regulation;
  7. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
- D. Upon receipt of a Notice of Termination of a categorical waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges of waste to waters of the state, other than activities necessary to control erosion. Upon notice of termination, the Discharger must apply for coverage under general WDRs or file a Report of Waste Discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive Officer under general or watershed wide WDRs, the adoption by the Regional Board of an individual waiver of WDRs or individual WDRs, or in accordance with Water Code section 13264(a).
- E. The applicability of this Order to a specific project is immediately terminated upon the discharger's receipt of a Notice of Termination of applicability or on the effective date of a different or new categorical waiver of WDRs, an individual waiver of WDRs, individual WDRs, general or watershed WDRs or a NPDES permit that covers or permits the specific Project.
- F. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Categorical Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.
- G. The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
- H. Order No. R1-2009-0038 shall expire five years from the adoption date.
- I. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under California Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.
- J. As provided by Water Code section 13350(a), any person may be liable for civil penalties if that person is in violation of a waiver condition, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.

## SECTION V: PROHIBITIONS

1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.
3. The Discharger must not cause or threaten to cause pollution, contamination, or nuisance, as defined by Water Code section 13050.
4. This Categorical Waiver does not waive WDRs for other regulatory programs, such as grading and land clearing for any type of construction of 1-acre or more. Such construction requires that the discharger obtain a construction stormwater permit and possibly a federal dredge and fill permit with accompanying 401 water quality certification if discharge occurs in waters of the United States.
5. The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.
6. The Discharger and Project shall comply with applicable local, state or federal laws and regulations.

### Certification:

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 4, 2009.

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Catherine Kuhlman  
Executive Officer

## Attachment A

### DEFINITIONS

- A. "Controllable sediment discharge source" means sites or locations within the Project area that meet all the following conditions:
1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Categorical Waiver,
  2. was caused or affected by human activity, and
  3. may feasibly and reasonably respond to prevention and minimization management measures.
- B. "Discharger" means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.
- C. "Erosion Control Plan" (ECP) means a plan designed and implemented to prevent and minimize the discharge of sediment from existing sites to waters of the state in violation of water quality requirements or other conditions of this Order and submitted with the Project seeking coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs) and Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects). The Erosion Control Plan (ECP) must be developed by a qualified professional. The ECP must include but is not limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, site specific designs and/or management measures to prevent and minimize the discharge of sediment, and a time schedule for implementation of site specific designs and/or management measures. Specific instructions to complete an ECP are included in Attachment B.
- D. "Minimization" means the discharge or threatened discharge of sediment that cannot be prevented during design and implementation of the Project.
- E. "Monitoring" refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions. This includes, but is not limited to, assessment monitoring, trends monitoring, Basin Plan compliance monitoring, forensic monitoring, hillslope and instream effectiveness monitoring, and implementation monitoring.
- F. "Prevention" means the Project has been designed with the intent of preventing the discharge or threatened discharge of sediment waste through the use of all feasible and reasonable project design, timing, and sediment control practices.

- G. "Project" means any Timber Harvest Plan, Nonindustrial Timber Management Plan, other discretionary permits issued by the California Department of Forestry and Fire Protection (CAL FIRE) to harvest timber, including all amendments thereto that propose a change in timber harvest activities that in any way could adversely affect water quality, or any Notice of Exemption or Notice of Emergency Timber Operation accepted by CAL FIRE, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project has compliance with CEQA.
- H. "Qualified professional" means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to, Certified Erosion Control Specialists, Registered Professional Foresters, Professional Geologists, Certified Engineering Geologists, and Professional Engineers.
- I. "Sediment Prevention Plan" (SPP) means a plan designed and implemented to prevent and minimize the creation of new sites that discharge sediment to waters of the State. The Sediment plan is submitted by a discharger seeking coverage for a Project under Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects). The SPP must be developed by a qualified professional. The Sediment Prevention Plan (SPP) must include, but not be limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, and site-specific designs and/or management measures to prevent and minimize the discharge of sediment.
- J. "Timber Harvesting Activities" means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products, excluding Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging.
- K. "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state; heat; petroleum products; and nutrients. Not all wastes are covered by this waiver. Examples of wastes not specifically regulated or waived under this Order include: pesticides, hazardous materials, or human wastes.

- L. "Water Quality Requirements" means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement contained in a Water Quality Control Plan (Basin Plan) adopted by the Regional Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Board or State Water Board, including, but not limited to, State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California.

All other terms shall have the same definitions as prescribed by the California Forest Practice Act and Rules in effect as of June 4, 2009, and the Porter-Cologne Water Quality Control Act.

## Attachment B

### **CONTENTS OF AN EROSION CONTROL PLAN (ECP)**

An Erosion Control Plan, must be developed and implemented for timber harvesting, including the logging area, roads and skid trails used to access or haul timber harvesting materials that are owned by or under the control of the Discharger. The ECP must be designed to prevent and minimize the discharge or threatened discharge of sediment from existing Controllable Sediment Discharge Sources into waters of the state in violation of water quality requirements or other provisions of this Order. The Discharger must develop and submit an ECP for coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs) and Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects) as follows:

CSDS are defined as sites or locations, within the Project area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of these General WDRs,
2. was caused or affected by human activity, and
3. to the maximum extent practicable may feasibly and reasonably, respond to prevention and minimization management measures.

Controllable sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging or threatening to discharge waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard. No Project may conduct activities that can reasonably be expected to create new sediment discharge sources where none previously existed.

The ECP may be included with the initial submittal of a project, in which case it can be reviewed concurrently with the project, or separately as part of the application for a Categorical Waiver.

#### Contents of an ECP

- a. An Inventory and Treatment of Controllable Sediment Discharge Sources within the logging area.

The inventory must identify controllable sediment discharge sources and inform the development of a time schedule for implementation of prevention and minimization management measures. The inventory must include an on-the-ground survey and site evaluations, and may be

augmented by additional information sources such as aerial photographs or previously prepared reports. Any method or model used to develop the inventory must be briefly described and must be reasonably expected to detect sediment discharge sources and to effectively prevent and minimize sediment discharge. The inventory must include:

- i. A brief description of the method(s) used to conduct the inventory. This description provides the reviewer with an understanding of the thoroughness of the survey method and the likelihood that CSDSs have been identified. For example, the description identifies any aerial photographs used, and whether the Discharger inventoried all watercourses and skid trails,
- ii. A description of each site, including sufficient information to provide the reviewer with an understanding of current conditions and why the site meets the definition of a CSDS,
- iii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the logging area and the location of all controllable sediment discharge sources included in the inventory,
- iv. An estimate of the potential deliverable sediment volume for each inventoried site. The potential deliverable sediment volume represents an estimate of the maximum volume of sediment that could discharge to waters of the state in the event of complete failure of a site,
- v. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory. Prevention and minimization management measures must be reasonably expected to effectively prevent and minimize specific sediment discharge sources in the logging area. The description must provide sufficient design and construction specifications, including but not limited to diagrams, minimum rock size, or performance standards as needed, to allow on site personnel to implement prevention and minimization measures as intended,
- vi. Priority for implementation of prevention and minimization measures. The priority must be used to develop the time schedule for implementation and must be based on the potential impacts to the beneficial uses of water. The priority must consider at a minimum the estimate of the deliverable volume of sediment, the imminence of failure, and the sensitivity of beneficial uses of water in receiving streams. In general, the highest priority is assigned to sites with large sediment discharge sources that show an imminent risk of failure and that will discharge to waters that support domestic water supplies or fish. Priority may be indicated as low, medium, or high,

vii. A time schedule for implementation of prevention and minimization management measures contained in the ECP that provides for timely implementation to prevent and minimize sediment discharge from sites in the order of priority. For THPs, implementation must be during the time an individual THP is active, or during the NTO covering the area in which a CSDS is located, unless an alternative time schedule is agreed to in writing by the Executive Officer. The schedule may specify a time range for implementation, for example the plan may state that a site shall be completed during the first two years of operations on the plan, as long as the schedule includes a final completion date. The time schedule for implementation may be revised as warranted by changed conditions if agreed to in writing by the Executive Officer.

b. Inspection Plan and Reporting Requirements

For each Project enrolled in Categorical Waivers E and F, Dischargers must follow the Inspection Plan detailed below for evaluating the implementation and effectiveness of the management measures in the Erosion Control Plan, to determine if any new controllable sediment discharge sources have developed within the Project area, and to ensure that all drainage facilities and erosion control structures are functioning properly in order to prevent sediment discharge to waters of the state.

The Inspection Plan must include a narrative discussion of the program to inspect and maintain all identified management measures designed to prevent and minimize sediment discharge throughout the duration of the Project. A site map that depicts the inspection locations to be visited before and after the winter period must be included in the Inspection Plan. Inspections must include, at a minimum, logging area roads that could discharge sediment, sites and locations addressed in the sediment prevention plan, and controllable sediment discharge sources contained in the ECP.

Each CSDS must be inspected during each required inspection. Additionally, inspectors should strive to inspect all accessible portions of the road system that have the potential to discharge sediment to watercourses to ensure roads are draining adequately and watercourse crossings are functioning properly and identify any new CSDS sites that may have developed. Inspectors must note the conditions of CSDS sites and any failures or ineffectiveness of management measures.

Inspections conducted prior to the winter period must be designed to assure that management measures are properly installed and maintained. Post-winter period inspections must be designed to assure that the management measures have functioned adequately and to determine whether any new controllable sediment discharge sources have developed. Management measures must be evaluated for adequacy and

proper implementation and whether additional management measures are required in accordance with the terms of this Order.

Landowners and Qualified professionals must conduct all specified inspections of the Project site to identify areas causing or contributing to a violation of applicable water quality requirements or other provisions of the Categorical Waiver. The name(s) and contact number(s) of the assigned inspection personnel must be listed in the Inspection Plan.

The following inspection requirements begin once the startup of timber harvest activities begin within Project areas:

- i. Inspections must be conducted as follows:
    - By November 15 to assure Project areas are secure for the winter; and
    - After April 1 and before June 15 to assess the effectiveness of management measures designed to address controllable sediment discharges and to determine if any new controllable sediment discharge sources have developed.
    - For THPs and other non-NTMP projects, inspections must be conducted each year according to the schedule specified above until the Project has been completed and the Discharger has submitted a Notice of Termination.
    - For NTMPs, inspections must be conducted each year according to the schedule specified above until a final completion report for each NTO has been signed by CAL FIRE.
  - ii. Projects for which Timber Harvest Activities have not yet Commenced: No inspections are required.
  - iii. If any new controllable sediment discharge sources are identified during inspections, prevention and minimization measures must be implemented as soon as is feasible. New controllable sediment discharge sources shall be evaluated and addressed in accordance with the provisions described above, and included in a revised ECP. The revised ECP must be submitted to Regional Board staff with the annual summary inspection report.
  - iv. Equipment, materials, and workers must be available for rapid response to failures and emergencies, and implement, as feasible, emergency management measures depending upon field conditions and worker safety for access.
- c. Reporting Requirements  
Discharger must submit an inspection summary report to the Executive Officer by June 30<sup>th</sup> for each year of coverage under these Categorical Waivers and upon termination of coverage. The inspection summary report must include the following information, at a minimum:

- the date of each inspection,
- the inspector's name,
- the location of each inspection,
- the title and name of the person submitting the summary report,
- a brief narrative description of observed conditions,
- a description of any new controllable sediment discharge sources identified during inspections or throughout the course of routine timber harvest activities,
- a description of any corrective action taken to prevent and minimize sediment discharge as a result of observations made during the inspections, as well as the date the corrective action was taken,
- a description of prevention and minimization measures contained in the ECP implemented up to the date of submission of the report, the date those measures were implemented, and an evaluation of the effectiveness of those measures,
- a description of where management measures have been ineffective and when the Discharger will implement repairs or design changes to correct management measure failures.

A final inspection summary report shall be submitted with the final Certification Notice.

**EXH. C**

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2004-0016

Categorical Waiver of Waste Discharge Requirements  
For  
Discharges Related to Timber Harvest Activities  
On Non-Federal Lands in the  
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) finds that:

1. California Water Code (CWC) Section 13260(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 board a Report of Waste Discharge (ROWD) containing such information and data as may be required by the Regional Board.
2. The Regional Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest pursuant to CWC Section 13269.
3. CWC Section 13269 provides that any such waiver of waste discharge requirements shall be conditional, enforceable and may be terminated at any time by the Regional Board.
4. The Regional Board, in accordance with CWC Section 13269, waived waste discharge requirements for timber harvest activities in 1987 as set forth in Regional Board Resolution No. 87-113.
5. Recent amendments to CWC Section 13269 (Senate Bill 390) provide that existing waivers expired effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be reconsidered and, if appropriate, be renewed every five years.
6. The Regional Board, in compliance with CWC Section 13269, reviewed the previously issued categorical waiver for timber harvest activities (Regional Board Resolution No. 87-113) and adopted Order No. R1-2002-0109 Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region on December 10, 2002. Order No. R1-2002-0109 sunset on December 31, 2003, and was replaced with Order No. R1-2003-0116, which was adopted on November 5, 2003.
7. On March 24, 2004, the Regional Board adopted Order No. R1-2004-0015, Categorical Waiver for Discharges Related to Timber Harvest Activities on Federal Lands in the North Coast Region. Order No. R1-2004-0015 rescinded sections of Order No. R1-2003-0116 that pertained to federal lands.
8. In accordance with CWC Section 13269, the waste discharges for timber harvest activities shall be regulated in the future by waivers, or individual or general waste discharge requirements.

9. The US Environmental Protection Agency and the State Water Resources Control Board are authorized to certify that the California Forest Practice Rules are Best Management Practices for timber operations on non-federal lands. When or if both entities so certify, timber harvest activities on non-federal lands will be exempt from waste discharge requirements pursuant to the Z'berg-Nejedly Forest Practice Act Section 4514.3, except as provided for in Section 4514.3(b)(1)-(3). That has not occurred to date.
10. A Memorandum of Understanding (MOU) was entered into between the State Water Resources Control Board, Regional Water Boards and the California Department of Forestry and Fire Protection in March 2003 for the purpose of identifying procedures that will be used by each agency in carrying out their statutory responsibilities to prevent adverse effects on beneficial uses of water from silvicultural activities on non-federal land. Issues addressed in the MOU include application of CEQA to timber harvest review process, use of water quality standards and Basin Plans in timber harvest review process, monitoring of water quality, conflict resolution process, staff coordination and training and further actions.
11. This Order establishing a categorical waiver shall not create a vested right and all discharges covered by it shall be considered a privilege, not a right, as provided in CWC 13263.
12. This Order does not apply to discharges requiring an National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act, including, but not limited to, silvicultural point sources as defined in 40 Code of Federal Register (CFR) 122.27.
13. Pursuant to CWC Section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that this action waiving the issuance of waste discharge requirements for certain specific types of discharges (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 Regional Board from administering enforcement remedies (including civil penalties) pursuant to the CWC.
14. The Executive Officer or Regional Board shall terminate the applicability of this Order to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the state.
15. The Regional Board may determine that discharges for projects where the applicant proposes to obtain coverage under categorical waivers contained herein would be better regulated under individual waivers, individual waste discharge requirements (WDRs), under general WDRs, watershed WDRs, or ownership WDRs.
16. A waiver of waste discharge requirements for a type of discharge may be superceded by the adoption by the State Water Resources Control Board or Regional Board of specific or general waiver or waste discharge requirements.

17. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
  - a. Municipal and Domestic Supply (MUN)
  - b. Agricultural Supply (AGR)
  - c. Industrial Service Supply (IND)
  - d. Industrial Process Supply (PROC)
  - e. Groundwater Recharge (GWR)
  - f. Freshwater Replenishment (FRSH)
  - g. Navigation (NAV)
  - h. Hydropower Generation (POW)
  - i. Water Contact Recreation (REC-1)
  - j. Non-contact Water Recreation (REC-2)
  - k. Commercial and Sport Fishing (COMM)
  - l. Cold Freshwater Habitat (COLD)
  - m. Warm Freshwater Habitat (WARM)
  - n. Wildlife habitat (WILD)
  - o. Preservation of Areas of Special Biological Significance (BIOL)
  - p. Rare, Threatened, or Endangered Species (RARE)
  - q. Marine Habitat (MAR)
  - r. Migration of Aquatic Organisms (MIGR)
  - s. Spawning, Reproduction, and/or Early Development (SPWN)
  - t. Shellfish Harvesting (SHELL)
  - u. Estuarine Habitat (EST)
  - v. Aquaculture (AQUA)
18. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Order implement these previously developed water quality objectives. Compliance with Water Quality Standards will protect the beneficial uses listed in Finding 17 above.
19. This Order is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California"
20. The Regional Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (CEQA), has conducted an Initial Study in accordance with Title 14, CCR Section 15063.
21. Timber harvesting activities covered under these Waste Discharge Requirements must, as a precondition, have achieved compliance with CEQA, which for most of the activities covered will have been through the Timber Harvest Plan (THP) approval process at the California Department of Forestry (CDF). In issuing THPs, CDF acts as "lead agency,"

using a certified "functional equivalency" process, producing the equivalent to an Environmental Impact Report.

22. The Regional Board does not grant timber harvest permits, but reviews these permitted activities and their attendant environmental documents to determine and require compliance with the Basin Plan and the Porter-Cologne Water Quality Control Act. In that process, the Regional Board acts as a responsible agency under CEQA, relying on the environmental review documents prepared by CDF. CEQA specifically provides that in so doing, the environmental documents prepared by the lead agency are to be conclusively presumed adequate, with limited specified exceptions, and must be relied upon by the responsible agency in complying with CEQA. (Pub. Resources Code, section 21167.2; Title 14, California Code of Regulations, section 15231.) In acting as a responsible agency reviewing these permitted operations, the Regional Board exercises its authority to require any additional regulatory restrictions that may be necessary to go beyond mere avoidance of "significant adverse environmental impacts," to require whatever is necessary to comply with the requirements of the Basin Plan and Porter-Cologne Water Quality Control Act.
23. Consistent with the CEQA Guidelines' Class 7 Exemption, this Order is an action taken by a regulatory agency "to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (14 CCR § 15307.) Similarly, consistent with Class 8, this Order is an action taken by a regulatory agency "to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (14 CCR § 15308.)
24. Despite the eligibility for these exemptions, out of an abundance of caution, and knowing the controversial nature of timber harvest activities and all regulatory actions relating thereto, the Regional Board has prepared a CEQA document. That Negative Declaration is fully supported by the record and the law. There is no evidence in the record to support a fair argument that this Order will result in significant environmental effects
25. The Regional Board staff has prepared a proposed Negative Declaration, a copy of which is attached hereto, in accordance with CEQA and the CEQA Guidelines (Title 14, CCR Section 15000 et seq.). The Negative Declaration concludes that the waiver of waste discharge requirements for timber harvest operations pursuant to Order No. R1-2004-0016 will not have a significant impact on the environment.
26. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA.
27. The Regional Board conducted a public hearing on May 11, 2004 and on June 23, 2004, in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order, Categorical Waiver for Timber Harvest Activities On Non-Federal Lands in the North Coast Region.
28. The Regional Board, based on the testimony received at the aforementioned hearings, and the Initial Study and Negative Declaration, determines that the adoption of the waivers of

waste discharge requirements for timber harvest activities in accordance with Order No. R1-2004-0016 will be consistent with the Basin Plan, will be in the public interest, and will not have a significant impact on the environment.

29. The Regional Board, in accordance with CEQA and State Guidelines, determines that there will be no significant adverse environmental impacts, individually, or cumulatively from this Order provided that there is compliance with its prohibitions, provisions, criteria, and conditions.
30. As provided by CWC Section 13350(a), any person may be liable for civil penalties if that person in violation of a waiver condition, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.
31. Most water bodies in the North Coast Region are listed as impaired due to either sediment and/or temperature (Section 303(d) of the Clean Water Act). Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. TMDLs for North Coast water bodies are scheduled to be completed. In the absence of an applicable TMDL Action Plan (also known as a TMDL Implementation Plan), waste discharge requirements or conditional waivers are necessary to control pollutants of concern in discharges to 303(d) listed waters. Discharges cannot cause or contribute to water quality or beneficial use impairment.
32. Effective January 1, 2004, Water Code Section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. The categorical waivers set out herein are only for Projects that do not pose a significant threat to water quality. Discharges that pose a significant threat to water quality are not permitted by this Order. Any project covered hereby that warrants it and meets the criteria of CWC section 13267(b), however, will be subject to a monitoring program as directed by the Executive Officer.

THEREFORE, the Regional Board hereby approves and adopts the Negative Declaration and Initial Study prepared on this Order, and directs the Executive Officer to file all appropriate notices; and

IT IS HEREBY ORDERED that effective June 23, 2004, Order No. R1-2003-0116 is hereby rescinded, except for application to Projects that have been accepted for filing but not yet approved by the California Department of Forestry and Fire Protection as of the adoption date of Order No. R1-2004-0016 and Order No. R1-2004-0030. Such Projects are eligible for coverage under Order No. R1-2003-0116 until October 15, 2004, should they qualify under the terms and conditions of that Order. All other dischargers seeking coverage under this Order shall comply with the following:

## SECTION I: DEFINITIONS

- A. "Controllable sediment discharge source" means sites or locations, both existing and those created by proposed timber harvest activities, within the Project area that meet all the following conditions:
1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of these General WDRs,
  2. was caused or affected by human activity, and
  3. may feasibly and reasonably respond to prevention and minimization management measures.
- B. "Discharger" means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.
- C. "Erosion Control Plan" means a plan designed and implemented to prevent and minimize the discharge of sediment to waters of the state in violation of water quality requirements or other conditions of this Order and submitted with the Project seeking coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs). The Erosion Control Plan (ECP) shall be developed by a qualified professional, included in the approved Project, and shall incorporate Regional Water Board recommendations generated as part of the Project review and approval process that were designed to prevent and minimize discharge of sediment. The ECP shall include but is not limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, site specific designs and/or management measures to prevent and minimize the discharge of sediment, and a time schedule for implementation of site specific designs and/or management measures.
- D. "Minimization" means the discharge or threatened discharge of sediment that cannot be prevented during design of the Project.
- E. "Monitoring" refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions. This includes, but is not limited to, assessment monitoring, trends monitoring, Basin Plan compliance monitoring, forensic monitoring, hillslope and instream effectiveness monitoring, and implementation monitoring.
- F. "Prevention" means the Project has been designed with the intent of preventing the discharge or threatened discharge of sediment waste through the use of all feasible and reasonable project design, timing and sediment control practices.
- G. "Project" means any Timber Harvest Plan, Nonindustrial Timber Management Plan, other discretionary permits issued by the California Department of Forestry and Fire Protection (CDF) to harvest timber, including all amendments thereto that propose a change in timber harvest activities that in any way could adversely affect water quality, or any Notice of Exemption or Notice of Emergency Timber Operation accepted by CDF, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project has complied with CEQA.

- H. "Qualified professional" means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to, persons successfully completing the Ranch Water Quality Planning Short Course, Certified Erosion Control Specialists, Registered Professional Foresters, Registered Geologists, Certified Engineering Geologists, and Professional Civil Engineers.
- I. "Sediment Prevention Plan" means a plan designed and implemented to prevent and minimize the discharge of sediment to waters of the State and submitted as part of a Project seeking coverage under Categorical Waiver F: Other Projects when applicable. The Sediment Prevention Plan (SPP) shall be developed by a qualified professional, included in the approved Project, and shall incorporate Regional Water Board staff recommendations generated as part of the timber harvest review and approval process for each Project. The Sediment Prevention Plan (SPP) shall include, but not be limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, and site-specific designs and/or management measures to prevent and minimize the discharge of sediment.
- J. "Timber Harvest Activities" means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products, including Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging.
- K. "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state; heat; petroleum products; and nutrients. Not all wastes are covered by this waiver. Examples of wastes not specifically regulated or waived under this Order include: pesticides, hazardous materials, or human wastes.
- L. "Water Quality Requirements" means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement contained in a water quality control plan adopted by the Regional Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Board or State Water Board, including, but not limited to, State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California.

All other terms shall have the same definitions as prescribed by the California Forest Practice Act and Rules in effect as of June 1, 2004, and the Porter-Cologne Water Quality Control Act.

## **SECTION II: STRUCTURE OF ORDER, APPLICATION PROCEDURES AND SUBMISSION REQUIREMENTS**

This section briefly explains the structure of this Order, application procedures, and specifics regarding submission requirements.

This Order sets out definitions (Section I), application procedures and submission requirements (Section II), categorical waivers (Section III), waiver for Projects previously waived under Order No. R1-2003-0116 (Section IV), and termination of coverage (Section V) for categorical waivers from timber harvest activities conducted on non-federal lands in the North Coast Region. These categorical waivers are for low impact Projects that do not pose a significant threat to water quality. Six separate categorical waivers are set out in Section III. Each waiver is delineated by a set of eligibility criteria, and in some cases, specific conditions. Section III also contains a set of general waiver conditions that apply to all waiver categories Section III (A) - (E). Section IV sets out eligibility criteria and conditions for waiver coverage for Projects previously waived under Order No. R1-2003-0116.

The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of the six waiver categories. If the Project meets the eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific and general waiver conditions, starting with submittal of the application documents, as required.

If a Project does not meet the eligibility criteria for one of the categorical waivers, that Project is then subject to an individual waiver, general WDRs, individual WDRs, or watershed wide WDRs.

Generally, the Regional Board receives approved or accepted Project documents from CDF. These documents are part of the record for each categorical waiver. Provided the approved or accepted Project documents are received from a lead agency, the Discharger will not be required to submit a copy to the Regional Board.

- A. To seek coverage for new Projects (i.e. Projects not previously permitted or waived by the Regional Water Board) under a categorical waiver set out in Section III Categorical Waivers C - F the Discharger shall file a "Certification Notice" (described below). The Certification Notice shall be signed by the Discharger and shall state that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and conditions, specific and general, of the appropriate categorical waiver. The Certification Notice shall also indicate the type of categorical waiver (Section III Categorical Waiver C: Total Maximum Daily Load Plan Projects; Categorical Waiver D: Modified Timber Harvest Plan Projects ; Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F: Other Projects) being sought.
- B. The submission of a Certification Notice is not required for Projects qualifying for coverage under the categorical waiver set out in Section III Categorical Waiver A: FireSafe Projects and Categorical Waiver B: Exemption and Emergency Projects). Such Projects must, however, meet the eligibility criteria and conditions, both specific

and general, to obtain and maintain coverage under Section III Categorical Waiver A and Categorical Waiver B.

- C. Unless other timeframes are specified, discharges associated with Projects that comply with the eligibility criteria, conditions, and procedures for a categorical waiver pursuant to Section III Categorical Waiver C: Total Maximum Daily Load Plan Projects, Categorical Waiver D: Modified Timber Harvest Plan Projects, Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F: Other Projects may commence no sooner than fourteen (14) days after receipt by the Regional Board of the applicable documents as described in Section II(A). The Regional Board Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate.
- D. For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) would need to seek coverage under this Order for each new PTHP.
- E. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under California Water Code (CWC) Sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.

**SECTION III: WAIVER OF REPORTS OF WASTE DISCHARGE AND WASTE DISCHARGE REQUIREMENTS FOR NEW PROJECTS ON NON-FEDERAL LANDS**

Section III sets out six (6) separate categorical waivers for new Projects (i.e. Projects not previously permitted or waived by the Regional Water Board). Each waiver category is delineated by a set of eligibility criteria, and in some cases, specific conditions. Section III also contains a set of general waiver conditions that apply to all six categorical waivers. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of the six waivers categories. If the Project meets the eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific and general waiver conditions necessary to obtain and maintain waiver coverage, starting with submittal of application documents described in Section II.

**Categorical Waiver A: Fire Safe Projects**

In the case of FireSafe Projects, the following eligibility criterion and condition apply:

Eligibility Criteria:

1. Projects within 150 feet of existing structures (i.e., "FireSafe" treatments) that are conducted pursuant to a Notice of Exemption accepted by CDF under 14 CCR Section 1038(c) or subsequent fuel treatment exemptions adopted by the Board of Forestry and Fire Protection or another lead agency.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**Categorical Waiver B: Emergencies and Exemptions Projects**

In the case of Emergency and Exemption Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. Projects that are defined as an Emergency or an Exemption pursuant to the FPRs.
2. The Project has been accepted by CDF.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**Categorical Waiver C: Total Maximum Daily Load Projects**

In the case of Total Maximum Daily Load Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Project has been approved by CDF or an authorized lead agency, and
2. The Executive Officer has determined that the Project is in compliance with an adopted sediment TMDL Action Plan (also known as a TMDL Implementation Plan).
3. The Executive Officer has determined that the Project is in compliance with an adopted temperature TMDL Action Plan.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**Categorical Waiver D: Modified Timber Harvest Plan Projects**

In the case of Modified Timber Harvest Plan Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. Projects that are defined as a Modified Timber Harvest Plan pursuant to the FPRs.

2. The Project has been approved by CDF.

Conditions:

The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**Categorical Waiver E: Nonindustrial Timber Management Plan**

In the case of Nonindustrial Timber Management Plan Projects, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Project is a Nonindustrial Timber Management Plan (NTMP) under the FPRs.
2. The Project has been approved by CDF
3. No Non-Concurrence has been filed with CDF by Regional Water Board staff which was not resolved prior to Project approval.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).
2. Dischargers shall incorporate into the approved NTMP or submit with each Notice of Timber Operations (NTO) an Erosion Control Plan as follows:

Erosion Control Plan

An Erosion Control Plan, as described below, shall be developed and implemented for the NTMP or the area covered by each NTO, including roads used for timber harvest activities owned by or under the control of the Discharger. The ECP shall be designed to prevent and minimize the discharge or threatened discharge of sediment from controllable sediment discharge sources into waters of the state to the degree necessary to avoid a violation of water quality requirements or other provisions of this Order. Sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard.

a. Contents of an ECP

- i. An inventory of all controllable sediment discharge sources within the NTMP or NTO area, and
- ii. A time schedule with each NTO for implementation of prevention and minimization management measures to address the inventoried controllable sediment discharge sources, and

b. Inventory and Treatment of Controllable Sediment Sources

The on-the-ground inventory of controllable sediment discharge sources will be used to identify the existing or threatened controllable sediment discharge sources and provide a time schedule for implementation of prevention and minimization management measures. Any method or model used to develop the inventory shall be briefly described and shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources to attain compliance with applicable water quality requirements. Site evaluations are required in preparing the inventories to fully assess on-the-ground conditions and to facilitate the detection of threatened or existing controllable sediment discharge sources. The inventory shall include:

- i. A brief description of the inventory method(s) and/or model(s) used,
- ii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the NTMP and/or NTO boundary and location of all inventoried controllable sediment discharge sources, and
- iii. An estimate of the sediment volume and the relative potential for sediment delivery from each inventoried site.

c. Implementation Schedule

Each NTO shall develop an area-wide (i.e. the NTO area) time schedule for implementation of prevention and minimization management measures will be used to guide corrective actions. Prevention and minimization management measures shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources in the NTO area to achieve compliance with applicable water quality requirements. The time schedule must be during the time an individual NTO is active, and provide for timely implementation to prevent and minimize sediment discharge sites in the order of priority, unless an alternative time schedule is agreed to in writing by the Executive Officer. The time schedule will include:

- i. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory, and
- ii. A schedule for implementing prevention and minimization management measures for controllable sediment discharge sources. The priority shall be based on the volume of sediment and threat to water quality with the highest priority assigned to the largest sediment discharge sources that discharge to waters that support domestic water supplies or fish.

**Categorical Waiver F: Other Projects (Timber Harvest Plans)**

In the case of Other Projects, the following eligibility criteria and conditions apply:

Eligibility Criteria

1. The Project has been approved by CDF or an authorized lead agency.
2. Ground based heavy equipment operations on slopes greater than 50% are prohibited unless the Project contains a Sediment Prevention Plan.
3. No construction of new skid trails on slopes over 40% within 200 feet of a watercourse unless the Project contains a Sediment Prevention Plan.

4. Timber harvest activities on all slides and unstable areas must retain at least 50% evenly distributed total overstory and understory canopy with a higher canopy retention standard at the toe of the feature. Timber harvest activities on these features shall be accompanied by a geologic report prepared by a licensed California Certified Engineering Geologist or Registered Geologist. The report shall, at a minimum, be prepared in conformance with California Geologic Survey Note 45. The geologic report shall address the degree to which proposed Project activities on slides or unstable areas increases the risk of sediment delivery to watercourses, identifies current condition of downslope waters, estimates the amount of sediment that could be delivered from the slides or unstable areas from Project activities, and identifies and incorporates into the Project recommendations for preventing and minimizing the discharge of sediment from these sites.
5. New road construction is limited to 1000 linear feet, unless explained and justified in a Sediment Prevention Plan. All watercourse crossing construction and reconstruction shall occur under a California Department of Fish and Game Streambed Alteration Agreement (Permit) where required by DFG.
6. No heavy equipment use within a watercourse or lake protection zone (WLPZ) or equipment limitation zone of a watercourse, except for use and maintenance of existing permanent roads, use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures. Upgrading of roads to permanent standards by rocking, paving or other suitable surfacing materials to establish a stable operating surface prior to the start of hauling operations is allowed. If ground based yarding equipment or other heavy equipment is proposed for use in these areas, the Project shall contain a Sediment Prevention Plan.
7. No hauling on roads within a WLPZ except on existing permanent roads or on existing seasonal roads unless the Project contains a Sediment Prevention Plan.
8. Post harvest stocking within the Project area shall comply with the uneven aged stocking requirements of the FPR or in the case of even-aged harvesting methods shall maintain a canopy closure of at least 75% comprised of commercial species at least 30 feet in height.
9. Within a WLPZ for Class I waters, at least 85 percent overstory canopy shall be retained within 75 feet of the watercourse or lake transition line, and at least 65 percent overstory canopy within the remainder of the WLPZ. The overstory canopy must be composed of at least 25 percent overstory conifer canopy post-harvest.
10. When timber harvest activities are proposed within a WLPZ for Class II waters in watersheds that are either 303 (d) listed as temperature impaired or are located within a watershed with threatened and impaired values, at least 70 percent overstory canopy shall be retained. The overstory canopy must be composed of at least 25 percent overstory conifer canopy post-harvest.
11. No log hauling, ground based yarding, road construction, road reconstruction, or road rocking during the winter period (November 15 to April 1). This measure does not apply to erosion control maintenance of existing roads and watercourse crossings, timber falling, or use of cable or helicopter yarding methods.
12. With the exception of non-mechanized timber falling, fuels treatment such as hand piling and burning, hand fire line construction, or other activities which do not involve the use of heavy equipment or timber hauling, no timber harvest activities during measurable rain events (defined as greater than 1/4" in a 24-hour period). This measure does not apply to maintenance of existing roads and watercourse crossings.

13. No timber harvest activities within the channel zone of a Class III watercourse, except for use and maintenance of roads and crossings.
14. No Non-Concurrence has been filed with CDF by Regional Water Board staff which was not resolved prior to Project approval.

Conditions:

1. Recommendations and mitigation measures proposed by Regional Board staff during the Project review and approval process are incorporated into the approved Project document.
2. Sediment Prevention Plans, where applicable, shall incorporate Regional Water Board staff recommendations generated as part of the Project review and approval process that were designed to prevent and minimize discharge of waste.
3. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**G. General Waiver Conditions:**

In order to obtain and maintain coverage under Sections III(A) - (F) above, the Discharger shall comply with the following conditions:

1. The Discharger shall file the documents set out in Section II, as appropriate.
2. The Discharger shall comply with all applicable water quality requirements and as these may be modified from time to time pursuant to amendments to water quality control plans adopted by the Regional Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
3. The Discharger shall conduct timber harvest activities in accordance with the approved or accepted Project.
4. The Discharger shall not cause or threaten to cause pollution, contamination, or nuisance, as defined by CWC Section 13050.
5. The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.
6. The Discharger and Project shall comply with applicable local, state or federal laws and regulations.
7. The Discharger shall comply with a monitoring program when directed in writing by the Executive Officer.
8. Any Project seeking coverage under this Order shall be in compliance with CEQA prior to the Executive Officer issuing, authorizing or otherwise approving coverage under this Order.
9. The Discharger shall allow Regional Water Board staff entry onto the affected property, with reasonable notice, for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section V.
10. For those Projects where application of pesticides is proposed or being considered, before or after the Project is approved, the Discharger shall notify the Regional Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30

days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements. This Order does not itself authorize the application or discharge of pesticides.

11. For an approved Nonindustrial Timber Management Plan, written notification indicating the commencement of timber harvest activities shall be submitted to the Regional Board at least five (5) days prior to commencement of timber harvest activities.

#### **H. Amendments**

All approved amendments shall conform to the Eligibility Criteria and Conditions set forth for the originally waived Project. Failure to do so shall result in a termination of Project waiver coverage and the Discharger shall seek Project coverage under an individual waiver, general WDRs, or individual WDRs.

#### **SECTION IV: WAIVER OF REPORTS OF WASTE DISCHARGE AND WASTE DISCHARGE REQUIREMENTS FOR PROJECTS PREVIOUSLY WAIVED UNDER ORDER NO. R1-2003-0116**

Projects that were previously waived under Order No. R1-2003-0116 can be covered under this Order. Such Projects must have been previously waived under Order No. R1-2003-0116, are not the subject of an unresolved water quality issue or non-concurrence filed by the Regional Water Board staff, must meet one of the following eligibility criteria, and must comply with the applicable conditions, as specified below, except for the requirement to submit a Certification Notice for new Projects under section II.A.

#### **Categorical Waiver A: Fire Safe Projects**

In the case of FireSafe Projects previously waived under Order R1-2003-0116, the following eligibility criterion and condition apply:

##### Eligibility Criterion:

1. Projects within 150 feet of existing structures (i.e., "FireSafe" treatments) that are conducted pursuant to a Notice of Exemption accepted by CDF under 14 CCR Section 1038(c) or subsequent fuel treatment exemptions adopted by the Board of Forestry and Fire Protection.

##### Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

### **Categorical Waiver B: Emergencies and Exemptions Projects**

In the case of Emergency and Exemption Projects previously waived under Order R1-2003-0116, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. Projects that are defined as an Emergency or an Exemption pursuant to the FPRs.
2. The Project has been accepted by CDF.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

### **Categorical Waivers D and E: Modified Timber Harvest Plan Projects and Nonindustrial Timber Management Plan Projects**

In the case of Modified Timber Harvest Plan Projects and Nonindustrial Timber Management Plan Projects previously waived under Order R1-2003-0116, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. Project is defined as a Nonindustrial Timber Management Plan or a Modified Timber Harvest Plan pursuant to the FPRs.
2. The Project has been approved by CDF.
3. No Non-Concurrence has been filed with CDF by Regional Water Board staff which was not resolved prior to Project approval.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

### **Categorical Waiver F: Other Projects (Timber Harvest Plans)**

In the case of Other Projects (Timber Harvest Plans) previously waived under Order R1-2003-0116, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Project has been approved by CDF or an authorized lead agency.
2. No Non-Concurrence has been filed with CDF by Regional Water Board staff which was not resolved prior to Project approval.

Conditions:

1. The Discharger and Project complies with the general waiver conditions set out in Section III(G).

**SECTION V: TERMINATION OF COVERAGE**

- A. The Executive Officer shall rescind the applicability of a categorical waiver to a specific Project if the Executive Officer makes any of the following determinations:
  1. The Project does not comply with the eligibility criteria for the waiver;
  2. The Project is not in compliance with the applicable conditions of the waiver;
  3. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
  4. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality;
  5. Where conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation.
  6. Where past land use activities unique to the watershed or watershed segment resulted in the discharge of human generated sediment in amounts which warrant further regulation.
  7. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
- B. Upon receipt of a rescission notice of a categorical waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges of Waste to waters of the state, other than activities necessary to control erosion. Upon notice of termination, the Discharger must apply for coverage under general waste discharge requirements or file a Report of Waste Discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive Officer under general or watershed waste discharge requirements, the adoption by the Regional Board of an individual waiver of waste discharge requirements or individual waste discharge requirements, or in accordance with CWC Section 13264(a).
- C. The applicability of this Order to a specific Project is immediately terminated on the receipt of a notice of termination of applicability or on the effective date of either a categorical waiver of WDRs, an individual waiver of WDRs, individual WDRs, general or watershed WDRs or a NPDES permit that covers or permits the specific Project.
- D. The Discharger may terminate coverage under a categorical waiver for a completed Project by submitting, forthwith upon completion of the Project, to the Regional Board a final certification signed by the landowner certifying that: (1) the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this

- Order, and (2) discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements.
- E. Notwithstanding any other provision of this Order, the burden is on the Discharger to demonstrate that each finding required for coverage under this waiver can be made, and that each and every term, eligibility criteria and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage shall be valid unless each and every term, eligibility criteria and condition is met.
- F. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.
- G. The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
- H. Order No. R1-2004-0016 shall expire five years from the adoption date.

Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 23, 2004.

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Catherine Kuhlman  
Executive Officer

**EXH. D**



Linda S. Adams  
Secretary for Environmental  
Protection

**California Regional Water Quality Control Board**  
**North Coast Region**  
**Bob Anderson, Chairman**

[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)  
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Arnold  
Schwarzenegger  
Governor

October 8, 2009

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

Dear Ms. O'Haire:

Subject: 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 August 27, 2009, the State Water Resources Control Board (State Board) requested a response and administrative record within 30 days, and reissued that request by letter dated September 9, 2009, to an expanded interested parties list. Numerous parties have written to the State Board in support of the petitions, particularly small landowners that have existing nonindustrial timber management plans (NTMP). As indicated in this detailed response, changes made to the Categorical Waiver are appropriate given the prevalence of impaired waterbodies throughout the North Coast Region, reasonably necessary to protect and restore beneficial uses, and therefore in the public interest. The Regional Board crafted the Waiver conditions to provide TMDL coverage in what it intended to be a streamlined and least-burdensome way, and did not expect the outpouring of negative reactions expressed since the Waiver was adopted from our sister agency CalFire and individual NTMP landowners. It was not the Regional Board's intent to adopt a Waiver that generated such discord.

The Regional Water Board has other regulatory tools available to monitor and enforce water quality requirements for problematic NTMPs and is willing to consider relying on those, rather than the newly-adopted Waiver conditions for existing NTMPs. While this

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approach would not necessarily provide TMDL compliance for NTMP owners, the Regional Water Board and its staff believe that it is possible to modify the Waiver as it relates to existing NTMPs in order to resolve conflicts in an efficient manner and to promote a successful working relationship with CalFire in the future. In an August 4, 2009, letter to Crawford Tuttle, Chief Deputy Director of CalFire and Ginevra Chandler, CalFire Chief Counsel, the Regional Board Executive Officer offered to meet with CalFire at the soonest possible opportunity to explore solutions. The Regional Board has not received a response as of the date of this letter.

On September 25, 2009, Petitioners submitted a Request to Supplement Record through Administrative Notice with an action taken by the Central Coast Regional Water Board. The Regional Board reserves the right to respond to this request in a separate correspondence.

Enclosed is the Regional Board's response to the Consolidated Petitions and a copy of the administrative record. The record maintained by the Regional Board includes public documents related to the hearing item, an audio recording of the permit adoption hearing,<sup>1</sup> environmental documents submitted to the State Clearinghouse, and comments from interested parties and responses to comments. The file is reproduced in its entirety and accompanies this response. An index to the record is attached at the back of this memo (Attachment 1).

The Water Quality Control Plan for the North Coast Region (September, 2006), Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Resolution R1-2004-0087), the Action Plan and Staff Report for the Scott River Sediment and Temperature Total Maximum Daily Loads, Policy for the Implementation and Enforcement of the Non-Point Source Pollution Control Program, 2004 Categorical Waiver, Order No. R1-2004-0016, and the Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, presented as Exhibits QQQ-BBBB, are part of the administrative record, but hard copies are not included in the record because they are readily available at the State Water Board and on the internet. (Cal. Code Regs., tit. 23, § 648.3.)

Pursuant to California Code of Regulations, title 23, section 2050.6, we request that the State Water Board consider the following evidence that has become available since the Regional Water Board's action that is the subject of these petitions: 1) Board of Forestry Proposed Anadromous Salmonid Protection Rules, 2009, (originally published May 8, 2009, Re-noticed on July 24, 2009); and 2) Comments on the Proposed Anadromous Salmonid Protection Rules by Regional Board (September 3, 2009). (Exhibits NNN-PPP.)

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<sup>1</sup> The audio recording of the hearing is also available at: [http://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/06\\_2009/index.shtml](http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2009/index.shtml). Accessing the audio recording on the internet is the easiest format; however, we have provided a compact disc of the hearing identified as Exhibit BBB.

This response will be posted on the Regional Board website at:

[http://www.waterboards.ca.gov/northcoast/publications\\_and\\_forms/available\\_documents](http://www.waterboards.ca.gov/northcoast/publications_and_forms/available_documents)

### **FACTUAL BACKGROUND**

Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (section 303(d) of the Clean Water Act). (Exhibit WWW.) Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. (Exhibit VVV.) Sediment discharge sources, or threatened discharge sources, from past and current timber harvest activities are present throughout the North Coast Region and continue to pose risks to water quality.

California Water Code section 13260(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 Board a Report of Waste Discharge (ROWD) containing such information and data as may be required. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Basin Plan, 4-33.00).

In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality are regulated by conditional waivers of WDR. Senate Bill 390 amended Water Code section 13269 to require that all existing waivers expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be reconsidered and, if appropriate, be renewed every five years. On June 23, 2004, the Regional Board adopted Order No. R1-2004-0016, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, and superseded the previous Categorical Waiver (Order No. R1-2003-0116, Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region). (Exhibit XXX.) That Order No. R1-2004-0016 was set to expire in 2009.

In preparation for the Waiver update and renewal, Regional Board staff provided formal noticing, both broad (newspapers and timber industry groups) and specific (individual foresters and interested parties), and conducted extensive early outreach efforts in order to make materials and staff available to answer questions from the timber industry and interested parties, including a public workshop on March 24, 2009, in Fortuna, and presentations at two CalFire-sponsored workshops in Ukiah on December 10, 2008 and in Eureka on January 14, 2009. Regional Board staff conducted an Initial Study and prepared a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA). (Exhibits NN and OO.) On April 9, 2009, staff submitted the CEQA documents along with a draft Order to the State Clearinghouse. (Exhibits MM-

PP) On that date, staff posted a Notice of Public Hearing and Proposed Negative Declaration on the Regional Board web site along with the CEQA documents. (Exhibit QQ.) Substantial changes were made to the early draft Waiver in response to public comments. (Exhibit HH.) The Regional Board conducted a public hearing on June 4, 2009 in Santa Rosa, California, and after considering all evidence and hearing public comment, adopted Order No. R1-2009, the *Categorical Waiver of Waste Discharge Requirements for Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (Categorical Waiver), which revised and superseded the 2004 Categorical Waiver. (Exhibit AAA.)

The Categorical Waiver defines five categories of timber harvest activities, detailed in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions result in timber harvesting projects that are considered to be low impact, and therefore pose no significant threat to water quality. To ensure that the Categorical Waiver is in the public interest and consistent with the Basin Plan (including TMDLs), the Waiver includes new or modified eligibility criteria and general and specific waiver conditions. Revisions were made based on experience with implementation and oversight of the 2004 Categorical Waiver over the past five years and to changes in response to changing conditions, such as declines in populations of anadromous salmonids and increased listings for under section 303(d) of the Clean Water Act for impairment due to elevated water temperatures.

The State Water Board received and accepted as complete three petitions for reconsideration in this matter. All three petitions raise issues primarily pertaining to revised conditions for Categorical Waiver E, for Non-Industrial Timber Management Plans (NTMPs), and to a lesser extent, Categorical Waiver E, for Timber Harvest Plans (THPs).

## **RESPONSE TO PETITIONS**

The following section summarizes and responds to the issues raised in the three petitions. Where issues raised by more than one petition overlap or are identical, they will be addressed together.

### **THE REGIONAL WATER BOARD MET PUBLIC NOTICE REQUIREMENTS**

Both Weger and Farm Bureau maintain that the Petitioners and other landowners were unable to provide testimony to the Regional Board because they did not receive adequate notice. On August 12, 2009, the Regional Board responded to a request by Elizabeth Miller Jennings, Office of Chief Counsel for the State Board, to demonstrate that Petitioners received adequate notice of the revision of the Categorical Waiver, and any relevant information concerning the notice requirements and how they were addressed. The response to that request, included as Attachment 2 to this letter, demonstrates that the Regional Board met and surpassed the noticing requirements of Water Code section 13269 (waiver of waste discharge requirements) and Government Code section 11125.

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CalFire and Farm Bureau argue that the Regional Board made changes to the Categorical Waiver during the June 4, 2009 hearing that "were substantial, changed the Waiver dramatically, and were not a logical outgrowth of the previously noticed process." (CalFire Petition at 4.) This is incorrect. None of the changes made at the hearing required the postponement of adoption. The original draft Order containing requirements for existing NTMPs was released March 20, 2009 for the March 24, 2009 public workshop in Fortuna (Exhibit HH), and a subsequent draft was released to the public and submitted to the State Clearinghouse on April 9, 2009 (Exhibit PP). Changes made to early drafts based on public comments were substantial; however, changes made to the draft Order during the June 4, 2009 Regional Board meeting were relatively minor. The only substantive changes made were actually either neutral or favorable to landowners in response to comments presented at the hearing. All other changes were minor clarifications or grammatical corrections.

Substantial changes are shown in Attachment 3 in strike-out and underline. The most substantive amendment made during the hearing was a provision added as Section III, paragraph 3, which is clearly responsive to landowner concerns about costs and is well within the action as originally noticed. The draft Order required the submittal of an Erosion Control Plan and Road Management Plan over an extended timeframe, based on submittal of Notices of Timber Operations (NTO). Landowners provided testimony at the hearing that these plans would cost too much in light of the current economic realities for timber in the Region, and may be duplicative to already existing plans. The Regional Board amended this provision at the June 4, 2009 public hearing in order to provide the Executive Officer greater flexibility to work with landowners as conditions may warrant, including the ability to extend deadlines and streamline submittals, thereby reducing the impact on small landowners. The full text of the amendment is as follows:

Section III, paragraph 3: The Executive Officer may, upon receipt of a NTO, modify the ECP and/or road plan requirements, (including timing and extent of the required submittal), based on the following:

- terms and conditions of the NTMP,
- amount of total NTMP acreage,
- existence of a Ranch or Road Plan prepared by a qualified professional,
- CESA compliance or acceptable CalFire impaired or special watershed prescription or T/I rule,
- the need for fire reduction,
- applicable Regional Board adopted sediment Best Management Practices for roads or ranches or,
- other relevant characteristic of the hydrographic unit.

**SPECIFIC CONDITIONS OF CATEGORICAL WAIVER E AND F ARE NOT INCONSISTENT WITH THE FOREST PRACTICE RULES AND SHOULD NOT INCREASE CALFIRE WORKLOAD FOR EXISTING NTMPS**

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CalFire and other Petitioners raise objections to Specific Conditions of Categorical Waiver E and F for being inconsistent with the Forest Practice Rules (FPR), particularly in the context of nonindustrial timber management plans (NTMP) already approved by CalFire. Much of the concern appears to stem from ambiguity regarding the procedure governing these specific conditions and whether their enforcement will add an additional workload to CalFire. As explained in more detail below, the proposed Waiver conditions are separate water quality provisions adopted independently pursuant to the Clean Water Act and Porter-Cologne Water Quality Act. They are not expected to create any additional workload for CalFire for NTMPs already approved by that agency.

A NTMP is a permit that applies to portions of a property consisting of less than 2500 acres of timberland, subject to conditions imposed in the permit. Like a Timber Harvest Plan (THP), the permit serves as a functional equivalent document under CEQA, must conform to the FPRs, and must be prepared by a licensed registered professional forester (RPF). Once approved, the NTMP is valid in perpetuity and requires notice to CalFire before operations begin. An owner may not take any action which "substantially deviates" from the approved plan unless an amendment is filed and CalFire's Director determines that the amendment is in compliance with the FPRs in effect at the time the original NTMP was approved. (Pub. Res. Code, § 4593.8.)

An NTMP is identical to a THP in the land use activities it authorizes and the threat that activity poses to water quality, except that water quality concerns are heightened because of the long-term nature of the permit. Some were approved as far back as the early 1990s, where it has been demonstrated that the FPRs were inadequate to fully protect water quality. (Exhibit YYY.) Regional Board staff have observed discharges or potential discharges on NTMPs. 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. Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. (Exhibit VVV.) 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.

Petitioners assert that Specific Conditions of Categorical Waiver E and F addressing canopy retention standards above those of the FPRs attempt to govern the conduct of timber operations, and therefore, exceed the authority of the Board of Forestry and CalFire. This is incorrect. While Public Resources Code sections 4551 and 4551.5 do provide the Board of Forestry and CalFire the mandate and authority to adopt forest practice rules and regulations which govern the conduct of operations, they do not preclude another agency with resource protection mandates from requiring additional measures to meet their regulations. The Regional Water Board has independent authority and obligations under the Clean Water Act and Porter-Cologne Water Quality Act to impose additional constraints on timber operations to protect water quality. The California Supreme Court has expressly rejected the argument that the Z'berg-Nejedly Forest Practice Act of 1973 provides the exclusive, "one stop" regulatory process for proposed logging activity that already incorporates detailed consideration of water

quality impacts. (Pacific Lumber Company et al., v. State Water Resources Control Board (2006) [relying on the Forest Practice Act's savings clause, which provides: "No provision of this chapter or any ruling, requirement, or policy of the [Board of Forestry] is a limitation on...the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer"].) "The savings clause can be read as consistent with—and indeed a vital part of—a regulatory scheme that encourages interagency teamwork in the THP approval process by providing forums for collaboration and the airing of any disagreements that may arise, but not at the cost of stripping state agencies of their respective authority to protect resources that may be affected by logging." (Id.)

The Regional Water Board and its staff support interagency teamwork. In exercising the Regional Water Board's independent authority, it is our intent to build on the FPRs and add conditions only as necessary to fully protect water quality. The Waiver contains conditions that are meant to be in addition to—not in conflict with—the Forest Practice Rules. Nor is our intent to impose conditions that increase the workload of CalFire or require that agency to conduct activities not authorized by its own statute and rules. Additional water quality conditions should not trigger the requirement to file an amendment of a NTMP. Operations that contain more stringent environmental protections should not be construed as an action that "substantially deviates" from the approved plan and therefore requiring an amendment under Public Resources Code section 4593.8.

Existing NTMPs enrolling in the Categorical Waiver must meet the eligibility criteria and conditions specified in the Order. Landowners will likely have to make the following changes to existing NTMPs in order to meet those conditions:

- Increase canopy retention standards on Class II watercourses to meet the temperature objective
- Prepare an Erosion Control Plan
- Prepare a Road Plan

These changes are intended to protect water quality and are expected to meet the criteria of "minor deviations" listed in the California Code of Regulations, title 14, section 1090.14, subdivision (a).<sup>1</sup> Under that provision, changes to NTMPs that are presumed to be substantial deviations include *inter alia*: 1) a change in the silvicultural method and cutting system on any portion of the plan area or volume planned to be cut; and 2) any change of operation in, or designation of, the Watercourse or Lake Protection Zone. (Cal. Code Regs., tit. 14, § 1090.14, subd.(b)(1) & (4)(A).) A small reduction in the number of trees harvested in the Watercourse or Lake Protection Zone to meet the Waiver canopy retention standards arguably could be construed as a change in silvicultural method or a change in operation; however, it is highly unlikely that such

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<sup>1</sup> "Minor deviations" means any change, minor in scope, in a plan which can reasonably be presumed not to make a significant change in the conduct of timber operations and which can reasonably be expected not to significantly adversely affect timberland productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment or to result in a violation of the applicable water quality control plan. (Cal. Code Regs., tit. 14, §1090.14.)

changes that are intended to protect water quality would be considered substantial deviations and treated as major amendments to the NTMP. Typically, when a landowner proposes changes such as these in operations in the Watercourse or Lake Protection Zone, CalFire would consult with Regional Board staff over whether the change should be considered a minor or substantial deviation. The key consideration is whether such change could potentially have a significant adverse effect on public trust resources, including water quality. Changes to existing NTMPs made to meet conditions of the Categorical Waiver would be designed to improve water quality and meet Basin Plan objectives.

Ultimately, CalFire is the agency that must interpret its own regulations, including what constitutes a major deviation to an NTMP. Given the regulation's own references to water quality, however, it is hard to imagine why CalFire would take such a difficult and contorted approach. The definition of a minor amendment includes changes that do not result in a violation of the applicable water quality control plan. (Cal. Code Regs., tit. 14, §1090.14, subd.(a.) Waiver conditions are intended to do just that. Moreover, the current CEQA analysis accompanying the proposed Waiver adequately addresses potentially significant impacts from the additional special conditions in the Waiver. Interpreting small changes as minor deviations would not trigger a discretionary act and additional CEQA review. CalFire's insistence that small changes to meet water quality standards will trigger a major NTMP amendment under FPRs is unnecessary, unreasonable and the sole cause of CalFire's perceived increased workload that it complains of in the petition.

CalFire also raises a workload issue in connection with the enforcement of the Specific Conditions in the Waiver. As explained above, Regional Water Board does not expect CalFire to process amendments associated with incorporating the "Specific Conditions" criteria into an approved NTMP and enforce these conditions. Any requirement or suggestion that a NTMP needs to be amended as a result of additional protective measures was removed from the Waiver. The Regional Board accepts full responsibility for enforcing any water quality requirements not added to a THP or NTMP through the CalFire process.

#### THE INSPECTION PLAN AND REPORTING REQUIREMENTS UNDER THE WAIVER DO NOT DUPLICATE FOREST PRACTICES ACT REQUIREMENTS

CalFire submits that the Waiver Inspection Plan and Reporting Requirements duplicate the Requirements of the Forest Practice Act. In fact, the Waiver inspections are completely different from those required under the FPR. The Waiver was modified to clarify when "qualified professionals" are needed and when not. Also, the description of the expectations of an inspection was clarified.

The preparation of the inspection plan should involve a "qualified professional," however the actual inspections can be carried out by the landowner. We disagree with CalFire's characterization of the need for "technical monitoring assessments" and its contention that landowners will be unable to perform the inspections. Our experience to date has demonstrated that landowners not only are able to determine if an erosion site

remediation is working properly, but also reap the benefits of learning about successes and failures as well as the opportunity to address some problems themselves while in the field. We also find that the landowner develops a level of responsibility associated with self-monitoring and takes pride in the role.

Regarding CalFire filling this role, if a CalFire inspection covers the needs of a landowner for the Waiver, we encourage the landowner to submit the inspection report. However, we cannot require that CalFire perform the monitoring. Joint agency inspections are an interesting concept in the context of landowner self-monitoring. While that requires twice the resources, it has the advantage of increasing understanding and knowledge about the agencies, their regulatory frameworks, and their logic in implementing their respective regulations. We welcome the opportunity, but must caveat that with considerations for staffing resources.

#### THE REGIONAL WATER BOARD'S CEQA ANALYSES IS SUFFICIENT

CalFire submits that at least two findings under the category of Land Use and Planning in the CEQA Initial Study supporting the preparation of a Mitigated Negative Declaration for the Waiver are not correct. Specifically, CalFire asserts that the Waiver will conflict with specific plans such as NTMPs, SYPs, HCPs, and NCCPs. As explained previously, there is nothing in the proposed Waiver, nor its implementation, that will prevent any agency from exercising its authority and mandate (CalFire included) or prevent a landowner from implementing any requirement of another agency. While there may be regulatory overlap, which is common but not always efficient, the addition of specific conditions to allow the Regional Water Board to waive the issuance of Waste Discharge Requirements is not in conflict with any of those processes.

CalFire suggests that the Regional Board staff missed the point they were trying to make regarding the CEQA issue. For the first time in its petition, CalFire maintains that it is likely that the result of new conditions to the Categorical Waiver is that landowners will cancel a portion of existing NTMPs and convert their timberlands to alternative uses. This, CalFire argues, would result in loss of habitat and potentially significant negative impacts to water quality. While we share the general concern over increasing conversion of forestlands throughout the state and to agricultural, residential, and urban uses and their associated impacts to water quality, to conclude that this phenomena results from the Categorical Waiver is speculative. Moreover, CalFire did not raise this CEQA comment in the hearing. (Exhibit S.) Presumably landowner's motivations for these conversions are quite diverse, but are generally based on the anticipation of increased economic value from developing their lands. We don't believe that CalFire has shown there to be any basis to their claim that the new waiver conditions will result in landowners cancelling NTMPs and convert their timberlands. We disagree that two findings in the initial study under Land Use and Planning are incorrect. Public Resource Code section 21064 requires that the initial study identify and evaluate potentially significant effects of the Project on the environment, which are defined as substantial, or potentially substantial, adverse change in the environment (Pub. Resources Code, § 21068). We have evaluated all reasonably foreseeable potential environmental impacts from the waiver and underlying activities that it covers.

THE REGIONAL BOARD'S FINDINGS ARE SUPPORTED BY EVIDENCE IN THE RECORD; SCIENTIFIC BASIS TO ESTABLISH SEPARATE WATERCOURSE PROTECTION; EROSION CONTROL PLANS; ROAD PLANS

Petitioners maintain that the Regional Board's findings are not supported by evidence in the record. CalFire challenges the scientific basis for establishing separate watercourse protections and others state that the Regional Board findings do not adequately support or explain the necessity for including the new specific conditions for Categorical Waivers E and F. In fact, the new specific conditions are expressly intended to identify and control nonpoint source waste discharges in violation of the Basin Plan. Waiver findings 13 through 19 directly link the new conditions to identification and reduction of discharges of pollutants that contribute to the impairment of waterbodies as required by the federal Clean Water Act. (Exhibit AAA.) The Staff Report further expands upon the link between the requirements of the Clean Water Act and Specific Conditions of Categorical Waiver E and F. (Exhibit III.)

TMDLs and Sediment Implementation Policy and Work Plan

The Total Maximum Daily Load (TMDL) process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. The United States Environmental Protection Agency (EPA) has established sediment TMDLs for 19 watersheds in the North Coast Region, and temperature TMDLs for seven of those watersheds. (Exhibit VVV.) Regional Water Board staff are also developing or in the process of developing TMDLs in additional watersheds, such as the Klamath River, Russian River, Elk River, and Freshwater Creek. EPA's TMDLs include recommendations to reduce sediment delivery from the major sources identified in those TMDLs. Based on a review of sediment TMDLs from throughout the North Coast Region, roads and road and harvest related mass wasting are among the most common and significant sources of anthropogenic sediment discharge. (Exhibit VVV.) On November 29, 2004, the Regional Water Board adopted the TMDL Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region, which is also known as the Sediment TMDL Implementation Policy (Resolution R1-2004-0087). (Exhibit PPP.) The Sediment TMDL Implementation Policy states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. The TMDL Implementation Policy also directed staff to develop the Staff Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan) that describes the actions staff are currently taking or intend to take over the next ten years, as resources allow, to control human-caused excess sediment in the sediment-impaired water bodies of the North Coast Region. (Exhibit ZZZ.)

The Categorical Waiver furthers the objectives defined in the TMDL Implementation Policy and Work Plan. Conditions and eligibility criteria required for enrollment in the

Categorical Waiver are intended to contribute to reductions in anthropogenic sediment discharges from the sources identified by EPA and constitute implementation of TMDLs.

The Waiver adds conditions designed to meet Basin Plan temperature objectives. The scientific reasoning behind requiring additional canopy is the wide-spread and continued listings of waterbodies in the north coast as impaired from unnaturally high water temperatures. In all cases, shade (and canopy) has been identified as significantly affecting water temperatures. Scientific modeling based on data collected in the Scott and Shasta river watersheds provided a conservative estimate that 85% canopy would meet the Basin Plan water quality objective for temperature. These studies have been presented in public meetings, have been in the public record, and were referenced in the findings 16 through 19 of the Categorical Waiver. (Exhibits RRR-SSS.) We have seen no proof that the FPR minimum 50% canopy retention for non fish-bearing streams maintains "natural receiving water temperature" as required in the Basin Plan water quality objective for temperature. Specific Conditions of Categorical Waivers E and F provide a strategy to manage riparian zones by retaining specific levels of stream side forest canopy that are considered to be adequate to meet the Temperature Objective. However, the Waiver also provides landowners the option of proposing alternative management strategies when they can demonstrate to the satisfaction of the Regional Board that such strategies will meet the Temperatures Objective.

The Weger petition presents water temperature data collected from streams on land owned by the Petitioners, which is said to verify that stream temperatures have remained cold before and after harvesting. The information provided in the petition does not include information describing stream conditions, harvest methods, pre- and post-harvest canopy closure or levels of direct shade on the watercourse or other information necessary to draw meaningful conclusions. However, data such as that provided in the petition accompanied by sufficient additional information to make meaningful conclusions can be used by landowners to demonstrate the effectiveness of site specific alternative prescriptions. The Regional Board encourages monitoring efforts such as this and intend to work with landowners to develop site specific prescriptions that meet their management objectives as well as the Temperature Objective.

There is an important distinction between watercourse protection standards designed specifically to protect water temperature in streams that support anadromous salmonids and standards designed to meet the Basin Plan Temperature Objective, which applies to all surface waters in the North Coast Region. Class II temperature protection provided by the FPRs is intended to prevent Class II watercourses from affecting water temperatures downstream of fish bearing portions of the watershed. The Temperature Objective is designed to protect all beneficial uses present, including those in the Class II watercourse. The Regional Board's approach to meeting the Temperature Objective is to maintain the natural thermal regime of surface waters by retaining or restoring shade on streams at unaltered levels. This is substantially different than the approach taken by the FPRs of determining how much streamside canopy can be decreased without impacting downstream fish bearing reaches.

### Erosion Control Plans

Under the previous waiver, ECPs were required for each Notice of Timber Operations (NTO) for new NTMPs.<sup>2</sup> (Exhibit XXX.) Previously waived NTMPs were not required to prepare and submit an ECP. Under the current waiver, previously waived NTMPs must submit an ECP for the first NTO submitted after June 4, 2010 (one year after approval of the waiver) and an ECP for the entire NTMP area by the first NTO submitted after June 4, 2014 (five years after approval of the waiver). An ECP includes an inventory of controllable sediment discharge sources, a prioritization of each site based on potential impacts to beneficial uses, and a schedule for implementation of corrective measures based on the priority. The waiver provides for a flexible and extended timeline by initially allowing submission of an ECP for portions of the plan area, followed eventually by an ECP for the entire plan area, all of which is due at a time of the landowners choosing, as submittal of the ECP is tied to NTOs. Therefore, landowners who are not actively conducting timber harvesting activities are not required to submit an ECP until such time as they choose to begin harvesting. The timeline for corrective action is further expanded, as landowners propose an implementation schedule, which is subject to approval by the Regional Board.

Erosion control plans are effective in identifying and treating controllable sediment source and have been widely accepted by the timber industry throughout the North Coast. Sediment source analyses from throughout the Region generally agree that much of the sediment impairment of watersheds came from intensive and unregulated tractor logging during the post-war period, essentially from the early 1950 to the early 1970s. This can be seen in aerial photographs from that period, which show large areas recently clearcut, dense networks of skid trails, and streams filled in by roads and debris. (Exhibit VVV.) Vast amounts of sediment was also discharged to streams from these disturbed areas by landslides following large storm events. Such large scale disturbance is no longer permitted under current regulations; however, large volumes of sediment remain in locations where it can discharge to watercourses from numerous sites throughout the region. (Exhibit VVV.) Such sites represent chronic sediment sources that will impede the natural recovery process currently under way if they are left untreated, as well as violations of waste discharge prohibitions in the Basin Plan.<sup>3</sup>

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<sup>2</sup> NTMPs may be up to 2,500 acres in size and last for a period of 80 years. After the initial approval of an NTMP by CalFire, portions of the plan area may be harvested each year upon submittal of an NTO to CalFire.

<sup>3</sup> The following waste discharge prohibitions from the North Coast Basin Plan pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

**Prohibition 1:**

The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

**Prohibition 2:**

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

Programs such as the ECP requirement of the Categorical Waiver and the General Waste Discharge Requirement (GWDR) (Exhibit AAAA) are essential components of region wide efforts to restore and recover impaired beneficial uses, and provide assurance that TMDL load reductions are met.

There is some overlap between the ECP and California Code of Regulations, title 14, section 916.9, subdivision (o), which provides:

"As part of the plan, the RPF shall identify active erosion sites in the logging area, assess them to determine which site poses significant risks to the beneficial uses of water, assess them to determine whether feasible remedies exist, and address in the plan feasible remediation for all sites that pose significant risk to the beneficial uses of water."

However, this rule only applies to those planning watersheds in which anadromous salmonids are present, and therefore, does not protect all beneficial uses presenting all watersheds. In addition, a program specifically intended for the purpose of identifying and correcting controllable sediment sources according to an implementation plan prepared by the landowners, may reinforce the above rule. Regional Board staff have found without a program that requires foresters to actively survey the plan area for these sites, a portion of existing sediment sources will not be identified and treated.

Since the Categorical Waiver and 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. The Regional Board does not track individual sediment sources or sediment volumes, but the majority of plans that are required to prepare ECPs typically do identify sites in their plan area. Controllable sediment discharge sources are so prevalent in timberlands of the Region, that they are found nearly everywhere that they are looked for. This underscores the point that without a program requiring landowners to actively conduct an inventory, such sites would remain untreated and eventually fail. Expanding the ECP requirement greatly expands the land base on which sediment sources will be identified and treated, and therefore, is one of the most effective tools for wide spread sediment source reduction.

Erosion control plans must include an inventory and corrective measures for sites that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Categorical Waiver,
2. was caused or affected by human activity, and
3. may feasibly and reasonably respond to prevention and minimization management measures.

Because the first condition specifies sediment discharges in violation of water quality requirements (ie. Basin Plan Prohibitions or Objectives), it may not be in the public interest to waive WDRs for plans that left such sites untreated. Because of the effectiveness in reducing sediment sources and the benefit to waterbodies throughout the Region, and the necessity of ECPs to support waiving WDRs, the additional expense borne by landowners to identify and reduce waste discharges from their property is justifiable and implements TMDLs.

#### Road Plans

Specific Condition 5 of Categorical Waiver E requires that landowners with NTMPs prepare and submit a long term management plan for roads in the plan area (Road Plan) within five years of enrolling in the Waiver. The goal of the Road Plan is to prevent and minimize sediment discharges from roads by ensuring regular maintenance and upgrading roads to current standards.

It is widely recognized throughout the North Coast Region and other forestland areas of the northwestern United States that roads can be significant contributors, if not the main source, of anthropogenic sediment discharge. (Exhibit VVV.) Implementation of proper management measures for roads is one of the most crucial components of any management plan for preventing and minimizing chronic sediment sources. The Road Plan is intended to work in conjunction with the FPRs addressing roads, and fill in the gap where those rules may not be applicable. The FPRs ensure that roads and watercourse crossings meet current standards during an NTO and for the maintenance period following the NTO (one year for non-T and I watersheds and three years for T and I watersheds). Those portions of the NTMP for which have not been under an NTO for several years may not be meet current standards or be maintained regularly or at all. In addition, many NTMP roads are also used for residential or recreational purposes.

The Road Plan is quite similar to provisions contained in section 923.9.2(f) (Measures to Facilitate Incidental Take in Watersheds with Coho Salmon) or section 1093 (Road Management Plan) of the FPRs; in fact, compliance with those rules would likely meet the requirements of the Road Plan. If NTMP roads already meet current standards and are being regularly maintained, a landowner can document that that is the case to satisfy this condition.

Landowners must submit the Road Plan to the Regional Board within five years of enrolling in the Categorical Waiver. The Road Plan requires that landowners submit an inventory of the road system in the NTMP areas, which describes current conditions, a long term inspection and maintenance schedule, and an implementation schedule to upgrade those portions of the road that do not meet current standards. The implementation schedule allows the landowner the flexibility to perform any needed work at a time that meets their management objectives. By allowing up to five years to prepare the plan, and implementation of needed work according to the landowners schedule, we anticipate that any additional expense that may be necessitated by the Road Plan can be spread out over an extended period, and incorporated to some extent into routine operating cost of operating ranch and timberlands.

Because of the role improperly managed roads have had in contributing to sediment impairment in watersheds throughout the Region, and the widely acknowledged benefit of bringing roads into conformance with current standards, the Waiver condition requiring the Road Plan is justifiable. In fact, a long term management strategy for roads on an NTMP can benefit a landowner. Roads are crucial infrastructure to the operation of an NTMP, and may be used for recreation, residential, and other purposes in addition to timber harvesting. Roads are costly to construct, maintain, and repair. Road failures can require costly emergency repair work and interrupt and divert resources away from standard operations on the ownership. Road standards required under the Road Plan designed to prevent or minimize sediment discharges do so by preventing and minimizing road failures. A long term plan to manage roads on an entire ownership can be significantly more cost effective than piecemeal upgrades or emergency repairs.

### Culverts

The Weger and Farm Bureau petitions assert that there is no evidence to support the requirement for upgrading culverts to meet the 100 year return interval flood (Weger petition at 12, line 10). This is in reference to Condition 5 of Categorical Waiver E, which requires landowners to prepare and submit a long term management plan for roads in the NTMP area within five years of enrolling in the Waiver. Under the Road Plan, NTMP roads must meet current standards, one of which is that, "*All stream crossings must have a drainage structure designed for the 100 year return interval discharge and pass any reasonable amount of debris.*" Culverts sized to pass the 100 year return interval discharge is widely accepted as the standard for forest and ranch roads. Section 923.3 of the FPRs, Watercourse Crossings, require that existing culverts must be sized to pass the 50 year return interval discharge and new culverts meet pass the 100 year return interval discharge plus debris.

There appears to be a good deal of misunderstanding regarding compliance with this condition. This condition requires that landowners prepare and submit a long term management plan for roads designed to prevent and minimize sediment discharge throughout the entire life of the NTMP, not just during and immediately after NTOs. A careful reading the of Waiver will explain that it is not a requirement that work to upgrade roads to the standards described on pages 16 and 17 be conducted immediately, but rather, landowners have five years from the time they enroll their plan in the waiver to develop and submit a schedule that informs the Regional Board when work necessary to bring their roads into conformance with current standards shall be implemented.

### COSTS TO NTMP LANDOWNERS BY CATEGORICAL WAIVER REQUIREMENTS ARE REASONABLE

Both Weger and Farm Bureau maintain that existing NTMP landowners would be "harmed" by the conditions of the new waiver. New conditions of the Waiver will place an additional burden on landowners to prevent and minimize waste discharges from their ownerships; however, these additional burdens are the costs required to comply with state and federal water quality laws. Petitioners argue that NTMP landowners give up the right to harvest timber at higher levels in return for regulatory certainty, and are

harmed by the Waiver, which now imposes the same burden on NTMPs as is placed on standard THPs. Petitioners maintain that because they only harvest 25% of their per acre timber volume, their logging costs are higher. In fact, many THPs harvest at similar levels as NTMPs. Landowners chose to invest higher initial costs in preparing an NTMP in order to gain the long term economic advantage of being able to harvest every year without the cost of preparing a new THP. The lower intensity harvest levels of NTMPs reduce the potential impacts to water quality from intensive canopy removal, and as a result, NTMPs as a whole are categorically waived from the requirement to submit a report of waste discharge and receive WDRs.

While it is true that NTMPs practice low intensity harvesting methods, Petitioners have not provided any evidence to show that water quality impacts from ground disturbance, particularly road use, is any less than that resulting from standard THPs. For this reason NTMPs are subject to the majority of FPRs that apply to THPs, such as those that regulate watercourse protection, erosion control, wet weather operations, and others. Nor have the petitioners made the claim that there are any fewer controllable sediment discharge sources on NTMPs than THPs. Because an NTMP can harvest every year, and many do, impacts from constant road use and other ground disturbing activities have the potential to result in chronic sediment impacts to watersheds for a much longer duration than a THP, which expire within three to five years.

Petitioners maintain that the Categorical Waiver "undermines the very nature of NTMPs as set forth by the Legislature, because it requires erosion control plans, road plan, and upgrading infrastructure on par with the standards set for THP and ignores the harvest practices specific to NTMPs." Erosion control plans and Road Plans are intended to prevent and minimize discharges of waste from roads and other sites related to management activities that can occur regardless of harvesting practices. In giving up the right to harvest timber at higher levels, NTMP landowners do not gain the right to discharge waste to waters of the state without any effort to identify and control those discharges to the extent feasible. All discharges of waste into waters of the state are privileges, not rights. (Wat. Code, §13263, subd.(g).)

The conditions of the waiver are intended to apply specifically to impacts from NTMPs that may occur regardless of the intensity of harvest, namely those from existing controllable sediment sources, roads, and streamside canopy removal. Some additional expense will be incurred by landowners in meeting these conditions, both in preparing the necessary technical reports, in implementing the work, and some reduction in revenue from higher streamside canopy retention. Regional Board staff made efforts to allow flexibility in meeting waiver conditions to the extent feasible so that landowners can coordinate compliance with the waiver with their harvesting activities, thus minimizing or spreading out any additional expenses.

During the process of revising the Categorical Waiver, Regional Board staff invited comments from members of the public, including consulting foresters and landowners with NTMPs. Based on comments we received from these interested parties, we incorporated many changes and expended considerable effort to allow landowners

flexibility in meeting the conditions of the Waiver. Among the most significant changes were extended timelines for submittal and implementation of technical reports such as ECPs and Road Plans, alternative riparian management to meet the Temperature Objective, partial harvesting of riparian zones adjacent to clearcuts [we included a new condition in Categorical Waiver F, which allows THPs that include clearcutting to be waived in an attempt to allow more plans to be eligible for the Waiver]. (Exhibit AAA.) In addition, during the June 4, 2009 public hearing, the Regional Board adopted a motion to provide the Executive Officer wide latitude and allow additional flexibility for landowners to meet the waiver conditions (Ex. AAA, Section III, paragraph 3.)

#### CONSIDERATION OF COSTS OF NEW WAIVER CONDITIONS

Both Weger and Farm Bureau maintain that the Regional Board did not consider the costs to landowners of implementing the new waiver conditions. This is incorrect. Prior to the June 4<sup>th</sup>, 2009 Regional Board meeting, our staff sent an economic questionnaire to a select group of consulting foresters and landowners to get some sense of the costs of preparing an ECP and Road Plan. (Exhibit RR.) We received three completed questionnaires. (Exhibits UU-WW.)

A full economic analysis was beyond the scope of the Waiver revision and would have required research on normalized costs of conducting inspections, preparing technical documents, implementing erosion control measures, and reducing harvest. It would also have required research into the cost equivalents of environmental benefits that would occur as a result of the increased protections under the waiver. Such an analysis would have been useful but would have required a staff time commitment greater than that for the entire Waiver renewal.

We agree with the Petitioners claim that additional costs to landowners resulting from the new waiver conditions include costs of preparing the ECP and Road Plan, costs of yearly monitoring and reporting, and costs of increased shade canopy requirements.

Much of the additional costs incurred to comply with the new waiver conditions will likely be minimal for new plans, as the ECP and Road plan can be prepared concurrently with development of the NTMP. Preparing these plans for previously waived NTMPs will require that qualified professional conduct additional site visits. The Regional Board provided extended timeframes for submittal of the plans (ECP only for each NTO submitted after June 4, 2010 and for the entire NTMP with the first NTO submitted after June 4, 2014 and the Road Plan within five years of enrolling in the Categorical Waiver). The extended timeframes were intended to provide landowners with flexibility in developing the plans, and preferably be able to conduct much of the fieldwork concurrently with other management activities. However, the new waiver conditions are intended to prevent and minimize sediment discharge and meet Basin Plan requirements. Costs incurred to comply with the Basin Plan are necessary and unavoidable.

This also applies to the assertion that additional cost will result from increased shade canopy requirements. The conditions requiring that sufficient shade canopy be retained to meet the Basin Plan Temperature Objective allows landowners substantial flexibility.

Landowners may use any method that can be demonstrated to meet the objective. It is possible that revenue generated from harvesting riparian zone trees will be less than if there was no requirement to meet the Temperature Objective. However, that is true of many of the rules that place limits on harvesting in order to protect public resources. The petitions state that the conditions addressing shade canopy are a, "numeric interpretation of the Basin Plan's temperature objective, which in effect creates a de facto new water quality objective." We disagree with this statement. Those conditions are explicitly intended to meet the existing Temperature Objective.

We do not agree with Petitioners' claim that there will be additional costs associated with upgrading roads and culverts, nor costs due to delays resulting from noticing requirements. The Road Plan requires that landowners submit an implementation schedule for upgrades to their roads and culvert. These upgrades must be implemented in a timely manner so as to prevent failure and associated sediment discharges. We recognize that maintaining forest and ranch roads in properly functioning condition is costly. The Road Plan is designed to ensure that landowners with NTMPs perform the necessary maintenance and upgrades to keep roads in the plan area functioning properly and in a condition to prevent and minimize sediment discharge. We believe that the cost of maintaining a road system on an NTMP under the Road Plan should not result in any additional expense beyond the cost of maintaining a road system in a responsible manner according to current standards.

Petitioners state that new noticing requirements may cause unnecessary delays the result in lost opportunities and lost income. Landowners seeking to enroll in the Categorical Waiver may not commence activities until they receive confirmation in writing from the Executive Officer that their plan has been accepted. It is our stated goal the projects that have had thorough Regional Board staff involvement will receive written notice within ten working days of receipt of a complete certification notice. Application procedures under the 2004 Categorical Waiver required that, "[u]nless other timeframes are specified...[Projects] may commence no sooner than fourteen days after receipt by the Regional Board of the applicable documents...." (Exhibit XXX.) We have now committed to providing documentation to landowners that their plans are enrolled in the Categorical Waiver, in essentially the same time frame as the 2004 Categorical Waiver.

Petitioners also maintain that additional delays and lost income will result from the requirement that landowners submit notice of operations on an NTMP, accompanied by an updated ECP, at least five days prior to commencement of operations. The five-day notification requirement has been carried over unchanged from the 2004 Categorical Waiver. We have received no comments or complaints during the past five years that the NTO notification has resulted in any additional expense. Petitioners mistakenly state that landowners must wait for written notification from the Executive Officer to approve the updated ECP for each NTO. Written notification from the Executive Officer is only required at the time of the initial enrollment in the Waiver. The updated ECP may either consist of an ECP for the NTO, if no ECP has been done for that area, or if an ECP has been done for the area, documentation that the ECP reflects current conditions.

### CATEGORICAL WAIVER DOES NOT VIOLATE WATER CODE SECTION 13360

Petitioners argue that when adopting waiver of waste discharge requirements, the Regional Board is prohibited under Water Code section 13360 from specifying the manner of compliance. The specific requirement of canopy retention to meet the Basin Plan Temperature Objective and those associated with the Road Plan specify the manner of compliance, and therefore exceeds the Regional Boards authority. This is inaccurate. The Specific Conditions of the Categorical Waiver are not requirements, but are conditions that must be met by landowners when voluntarily electing to enroll in a conditional waiver. The Categorical Waiver is just one option available to such landowners to cover liabilities from potential discharges of waste resulting from their timber harvesting activities. Moreover, the Waiver includes an option to propose alternatives in recognition of site specific conditions. (Exhibit AAA, Section I(E)(4)(b).)

### MITIGATION REQUIREMENTS MAY EXTEND BEYOND THE PERMIT

Farm Bureau objects to the terms of the Categorical Waiver exceeding the life of the Waiver, and concludes that this is contrary to the Water Code section 13269(a)(2)(f). This is incorrect. The Waiver expires on June 4, 2014, yet requires submission of an ECP for the entire NTMP by the first NTO submitted after June 4, 2014. The Water Code specifies that waivers may not exceed five years in duration, but does not prevent waivers from requiring conditions that may continue past the life of the waiver.

### THE FOREST PRACTICE RULES ARE CURRENTLY INADEQUATE TO PROTECT WATER QUALITY

Petitioners all ask for consideration of BOF rules in progress before creating a different regulatory framework that is "unnecessary" and "duplicative" for protection of beneficial uses. Petitioners reference section 916.9 of the Forest Practice Rules, Protection and Restoration in Watersheds with Threatened and Impaired Values (T & I rules). (Exhibit BBBB.) This section, along with section 923.9, Roads and Landings in Watersheds with Threatened and Impaired Values, apply to any planning watershed where populations of anadromous salmonids listed as threatened or endangered under state or federal Endangered Species Act are present. These rules are a suite of watercourse protection measures that are more stringent than the standard rules under the Forest Practices Act. Perhaps most pertinent to the Categorical Waiver are the rules regulating Watercourse and Lake Protection Zones (WLPZ), which specify buffer widths, minimum canopy retention levels, and measures to retain large trees for recruitment of large wood to streams. Under the T & I rules, the WLPZ on a Class I watercourse is a minimum of 150 feet wide. Within the inner 75 feet of that zone, post harvest overstory vertical canopy cover must be at least 85% and at least 65% for the remainder of the zone. Watercourse protection levels for Class II watercourses are the same for both T & I and non-T & I watersheds; 50 to 100 feet wide depending on hillslope gradient, and post harvest retention levels of at least 50% total canopy.

While the T&I Rules meets water quality needs in many ways, there are areas of disagreement with regard to the protection of water quality. For one, applying the rules only to the limit of anadromy ignores the upstream cold water beneficial uses that the water boards are charged with protecting. Warm upstream waters can impact

downstream areas, and there are cold water beneficial uses in water bodies that do not contain listed anadromous species.

The BOF released proposed revisions to the T & I rules, which are now called the Anadromous Salmonid Protection rules (ASP), for public comments on May 8, 2009 and a revised draft on July 24, 2009. (Exhibit NNN.) Regional Board staff have participated throughout the revision process and submitted comments on the draft versions distributed on May 8, 2009 and July 24, 2009. While Regional Board staff believe that the proposed rules represent a substantial step forward in protection of stream temperatures in California, they do not adequately ensure protection of all beneficial uses present throughout the North Coast Region and therefore cannot be considered to meet the water quality standards in all cases.

On September 3, 2009, Regional Water Board staff submitted detailed comments to the BOF on the proposed ASP Rules finding that operations conducted under timber harvesting plans, including NTMPs, that incorporate the proposed ASP rules could result in violations of the Basin Plan. (Exhibits OOO-PPP.) The Rules do not recognize the need to protect all beneficial uses of water and comply with water quality objectives, and do not address waterbodies listed as impaired under Section 303(d) of the Clean Water Act. As before, they only apply to watershed where listed salmonids are present, and therefore are geographically limited. The "Preferred Management Practices" are included as suggestions only, and therefore lack necessary assurances that the practices will be implemented. Section 9169(k)(1)&(2) and (l)(3)&(4), for winter road use provisions do not comply with the Basin Plan and may lead to discharges because it allows wet weather road use to continue *until* a discharge occurs.

Farm Bureau argues that the Waiver is inconsistent with the State Water Resources Control Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program by failing to enter into a Management Agency Agreement with CalFire to take the lead in implementing the Nonpoint Source Program. Farm Bureau argues that the Categorical Waiver fails to adequately consider the activities of CalFire, particularly its development of the new rules for watersheds with Threatened and Impaired values. This is incorrect. In fact, the Categorical Waiver relies heavily upon CalFire in its role as lead agency in reviewing and approving timber harvesting plans and builds on the Forest Practice Rules. We continually work with CalFire and the BOF to incorporate adequate water quality protection into the FPRs and believe that if done adequately, this is the most effective and efficient way to protect waters of the state from the impacts of timber harvesting and associated waste discharges. However, we also recognize that our agencies have different mandates and responsibilities, and we are not always successful in getting the measures we believe to be necessary to meet all applicable water quality regulations incorporated into the FPRs (see discussion on ASP Rules above).

## **CONCLUSION**

Revisions to the Categorical Waiver are designed to meet Basin Plan objectives and implement sediment and temperature TMDLs and the State Non-Point Source Policy. The Regional Board made a determination that the timber harvest activities conducted

in compliance with the conditions described within the Categorical Waiver are consistent with the Basin Plan and is in the public interest pursuant to Water Code section 13269, subdivision (a)(1). The Regional Board has made a significant effort to provide a comprehensive, consistent, and flexible mechanism for landowners to comply with various water quality regulations and policies through their timber harvesting plans, thereby minimizing the regulatory burden.

The Categorical Waiver does not limit or change the existing authorities or responsibilities of other agencies, including CalFire. The Waiver contains conditions that are meant to be in addition to the Forest Practice Rules in order to fully protect water quality. These conditions were designed to ensure that landowners enrolled in the Waiver are in full compliance with state and federal water quality laws, including TMDLs. While there maybe other mechanisms to ensure compliance, particularly for existing NTMP owners, it was the Regional Board's intent to consolidate its requirements in one permit for efficiency and effectiveness.

Sincerely,

*Original signed by*

Catherine Kuhlman  
Executive Officer

#### ENCLOSURES

Attachment 1—Administrative Record Index  
Attachment 2— August 12, 2009 Regional Board Notice Requirements Response Letter  
Attachment 3—Substantive Changes to Waiver During June 4, 2009 Hearing

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**EXH. E**

**COAST ACTION GROUP P.O. BOX 215 POINT ARENA, CA 95468**

Catherin Kuhlman, Executive Officer  
Regional Water Quality Control Board, Region 1  
5550 Skylane Blvd  
Santa Rosa, CA 95403

Attn: Jim Burke

March 3, 2011

**Comment:** Limited Term Amendment to NTMP Provisions of Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region - Proposed Suspension of 2009 NTMP Provisions

Dear Mrs. Kuhlman

In response to the proposed suspension of the 2009 NTMP Provisions Coast Action Group is presenting the following arguments and documents to support the maintenance of those NTMP provisions under the current resolution defining the terms of for Waste Discharge Requirements and related Categorical Waiver for Timber Operations.

**Coast Action Group - History and Credentials in Timber Harvest Review**

I, as Director of Coast Action Group, have been reviewing Timber Harvest Plans (THPs) and Non-Industrial Timber Harvest Plans (NTMPs) for almost 20 years. I have read the entire Administrative Record of over 680 THPs/NTMPs for the years 1987 to 1995, and have read the commented on and read the Administrative Record of over 150 THPs/NTMPs from 1995 to the present. I have attended Second Review (Review Team Agency administrative review/reconciliation) of numerous THPs/NTMPs. I have worked with Regional Board staff, Department of Forestry Staff, and Department of Fish and Game Staff on issues related to Timber Harvest Review. I have appeared on panels before the Board of Forestry. I have organized and sponsored successful litigation on nonconforming THPs and NTMPs. I have written the treatment and participated in the production of the book *The Forest Practice Act and Related Laws*. I have participated in the planning and approval process of all North Coast Rivers TMDLs to date.

## Summary

The overwhelming mass of evidence shows that timber harvest operations, including both Timber Harvest Plans (industrial and non-industrial) and Non-industrial Timber Harvest Plans are responsible for a large share of overall pollution on our north coast rivers and watercourses.

No party, including Cal Fire, can demonstrate ( with any new information at hand or in the files), that the administration of the Forest Practice Act effectively controls the threat, or the actual introduction, of pollutants into relevant watercourses. Nor is any information provided that would support rational argument that all land use (regulated, unregulated, Timber Harvest Plans, Non-industrial Timber Harvest Plans, Grazing, Irrigation Tailwaters, Urban Stormwater, etc..) should not all be subject to Implementing Programs (Waste Discharge Requirement and/or Categorical Waiver) to control pollutants in a way the supports the maintenance of all beneficial uses and water quality objectives with the goal of attaining Water Quality Standards.

In fact, suspension of WDR and Categorical Waiver provisions for NTMPs would substantially weaken control of pollutant effects from timber harvest operations (as non-industrial ownership and NTMPs are a significant part of the north coast timber land base) by compromising the WDR and Categorical Waiver (as Implementing Program) process designed to control such effects on impaired waterbodies.

The words, discussion, and argument in this document provided by CAG ( including supporting documents) and also including the well written and detailed argument and discussion provided by this Regional Board staff addressing issues related to **Petition A-2029, A-2029(a), & A-2029(b) -CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION; CALIFORNIA FARM BUREAU FEDERATION, FOREST LANDOWNERS OF CALIFORNIA.** **Note: These comments by the Regional Board support all discussion and argument presented by CAG in this comment letter and in attached documents – and – thus, are to included by reference and should be considered by the Board members and staff in the informed decision making process.**

Finally, the purpose of this proposed suspension of NTMPs from the WDR and Waiver process is for review of the shade requirement issue. The proposed action can be then questioned on several levels:

- 1) Does this action compromise the WDR/Waiver Implementing Program provisions?
- 2) If the shade requirement is an issue, what would differentiate that issue related to NTMPs as that issue related to THPs?
- 3) If there is no differentiation, why not just suspend the shade issue on both THPs and NTMPs?
- 4) There are no issues around the need for erosion control activity and the necessity of an ECP on NTMPs and/or THPs. Then why is it necessary to suspend the use of erosion control planning on NTMPs?
- 5) Why can't inquiry take place while shade and erosion control provisions remain in place?

## **Detailed Discussion**

Coast Action Group supports the Regional Board (Region 1) Resolution and Order 2009-0038 establishing Waste Discharge Requirements (WDRs) and Conditional Waivers to be applied to timber harvest activity - Timber Harvest Plans (THPs) and Non-industrial Timber Management Plans (NTMPs) in the north coast region. Both, THPs and NTMPs propose and comprise, essentially, the same activities related to timber harvest. There is little, or no, measurable difference in the application of these activities and the mitigations, or control language, that needs to be put in place to protect the beneficial uses of water. All scientific review, panels, and studies indicate that application of the Forest Practice Act, Forest Practice Rules (FPRs), for management and oversight of THPs/NTMPs is not, and has not been, capable of protecting beneficial uses (See - references - below in this document and in Background). Thus, additional measures (language) in the form of WDRs and related Waivers are absolutely necessary to assure beneficial use protection and recovery of impaired waters. And, in fact, without these measures in place as stated in the Order referenced above, all policy related to beneficial use protection in timber harvest would fail to meet the Legislatures stated goal to recover salmon in our north coast rivers.

Coast Action Group will provide argument and documentation in support of the Regional Board Order. Review of the documentation, and documents referenced, is necessary to give the State Water Board sufficient background upon which to make an informed decision regarding these petition and the application of WDRs and Waivers to control impacts from timber harvest operations.

## **History and Credentials in Timber Harvest Review**

I, as Director of Coast Action Group, have been reviewing Timber Harvest Plans (THPs) and Non-Industrial Timber Harvest Plans (NTMPs) for almost 20 years. I have read the entire Administrative Record of over 680 THPs/NTMPs for the years 1987 to 1995, and have read the commented on and read the Administrative Record of over 150 THPs/NTMPs from 1995 to the present. I have attended Second Review (Review Team Agency administrative review/reconciliation) of numerous THPs/NTMPs. I have worked with Regional Board staff, Department of Forestry Staff, and Department of Fish and Game Staff on issues related to Timber Harvest Review. I have appeared on panels before the Board of Forestry. I have organized and sponsored successful litigation on nonconforming THPs and NTMPs. I have written the treatment and participated in the production of the book *The Forest Practice Act and Related Laws*. I have participated in the planning and approval process of all North Coast Rivers TMDLs to date.

## **History and Purpose of Waste Discharge Reporting and Conditional Waivers for Timber Harvest Operations**

It is assumed that you are aware of the history and causes of the impaired listing of most north coast rivers. Timber Harvest is the predominant land use on most north coast rivers that are listed

as impaired. Land use impacts from timber harvest have been shown (in many scientific reports) to be a major cause of degradation in our north coast rivers. Control of timber harvest activities, THPs and NTMPs, is absolutely necessary to recover the beneficial uses in the north coast impaired rivers and streams.

From the 1980s to currently, the North Coast Regional Board has had staff reviewing THPs and NTMPs. The Regional Board staff has a history, knowledge, and background in timber harvest assessment. The Regional Board staff is trained in the assessment of the application all actions necessary and appurtenant to timber harvest - assessment of tree marking for harvest, assessment of hillslope activity/operations and propensity for erosion, assessment of roads and skid trails and their use and potential for erosions, assessment of the near stream marking for cut and relationship to retention of available shade, and assessment of stream classification and relationship to rules application and protections afforded to different class of streams, and finally the relationship of all of the above to existing aquatic conditions that may be affected by timber harvest activity. This history and knowledge is first applied in the initial paper review of an applied for THP - where questions are asked and issues raised. Then, there is a field inspection, Pre-Harvest Inspection, where Review Team Members (RB, DFG, CEG, and CDF staff) look at conditions in the field - related to what is written on paper in the plan (THP or NTMP). (Note: Regional Board Staff only get to the PHI on about 30% of the THPs/NTMPs, the same with DFG - this is one the problems relating to the failure of the process and sufficient reason to support the language in the current WDRs and Waiver). Review Team Members then file reports with recommendations to mitigate potential adverse affects (in this case water quality affects are addressed by the RB staff). CDF does not always agree with Regional Board recommendations. A meeting, Second Review, is held where these issues are to be ironed out.

As stated above, this process, does not always result in a THP/NTMP that will protect beneficial uses (review the various scientific reports noted in attached documents).

Historic WDRs and Waivers were sunset by SB 390 (Byron Sher). The opportunity for new, more effective WDRs and Waivers arose. The Regional Board took this opportunity to promulgate new, more effective WDRs, and Waiver, for Timber Operations - North Coast Region Resolution No. R1-2002-0109. This Resolution was a step forward in addressing some of the short falls in timber harvest management. However, the controls for the management of timber operations on NTMPs were weak or non-existent. There are a significant number of acres in NTMPs. And, this acreage is increasing.

With Resolution and Order 2009-0038 Regional Board improved upon the necessary protections needed to recover beneficial uses and included the language in the protections on THPs to also cover NTMPs.

### **THPs vs. NTMPs**

The act creating Non-Industrial Timber Management Plans proposed as a way to protect smaller (less than 2,500 acre) non-industrial land owners from the process of writing a THP for every timber harvest operation. The theory being - you could do it once - and it would last for ever - if you proposed low impact timber plans. As it turns out, the NTMPs are the same as THPs - with

the major exception that clear-cutting is forbidden. And, also as it turns out, clear-cutting is not the major problem. Erosion, road construction and management, and near stream riparian protection for shade and sediment filtration are the major problems - with none of these issues being appropriately addressed in the Forest Practice Rules. Thus, it is necessary to include NTMPs under the same language found in the WDRs and Waivers.

Very small landowners that are willing to harvest lightly can find relief in the Modified Timber Harvest Plan. The Modified Timber Harvest Plan is exempt from CEQA review, under the Forest Practice Rules, and is also exempt from WDRs and Waiver controls. Registered Professional Foresters do not promote the Modified THP because there is little money in it for them.

Mentioned above is the fact that CAG has commented on, and/or organized comments on many NTMPs. In fact, some NTMPs that CAG has commented on are still open, and have been open (not approved ) for years. The failure to approve these NTMPs (a review of the file will show) is due to CDF's, the Registered Professional Forester, and/or the landowner to get the mitigations (operational descriptions) correct - failure to do proper forestry, failure to address geologic, soils and erosion issue to protect water quality, and failure to comply with CEQA, the Basin Plan, and the Forest Practice Act. A list of these NTMPs are: 1-06 NTMP001 SON - water quality violations found on PHI, 1-06NTMP-011 SON - Bohemian Grove, NSO problems, harvest growth rate forestry problems (canopy affects water quality), Erosion Control Plan issues, cumulative impact, 1-05-009MEN - geologic and erosions issues, road issues, 1-02NTMP-011 MEN - every kind of problem (comments on this NTMP included below in Background section). Review of the above mentioned files (though these NTMPs are not approved) will show that the Regional Board staff was working to correct issue - many issue have been corrected - and - there still are outstanding issues that are prohibiting approval. The whole review and approval process would be that much less difficult with the appropriate wording of Regional Board Order 2009-0038 establishing Waste Discharge Requirements (WDRs) and Conditional Waivers in place.

I would like it explained by the Board and/or staff just why it is that THPs should be subject to riparian protections, Erosion Control Plans, and road upgrades and NTMPs should not. What is the logic here?

**Please review additional discussion on NTMPs – under BACKGROUND – Below – in this document.**

#### **WDRs and Conditional Waivers are TMDL and Basin Plan Back-ups**

A review of the Scott and Shasta River TMDLs and Implementation Plan indicates reliance on the use of WDRs and Conditional Waivers for pollution control planning, standards, and actions. For Timber Harvest and Agricultural land use effects the Implementation Plans of these TMDLs (inclusive of the Klamath River, and tributaries the Scott and Shasta Rivers) is dependent on the language and controls inherent in these WDRs and related Conditional Waivers. CEQA review and Water Code compliance was dependent on the language these WDRs and related Conditional Waivers (dependent on the language that the Regional Board found necessary to recover beneficial uses). With the understanding that the Scott and Shasta Rivers are tributaries of the Klamath River and conditions on these tributaries effect the function and impaired condition of the Klamath system in general, it must be assumed that changes to the Implementation Plan (by

changing WDR and Conditional Waiver conditions) would have pervasive effects on the whole system. Thus, any changes to the WDRs and/or Conditional Waivers that would weaken the Implementation Planning and/or Timber Harvest and Agricultural land use standards and controls would compromise the TMDL implementation standards that had been relied up to attain Water Quality Standards over time and thus would not be in conformance with Cal Water Code and CEQA. Such changes would require re-visitation to these respective TMDL Implementation Plans.

*Note: WDR and Conditional Waiver language as mitigation (under CEQA review and in conformance with Cal Water Code) was a condition of adoption of the Scott and Shasta TMDLs and Implementation Plan as amended into the Basin Plan. These conditions are considered binding and enforceable. If such WDR or Waiver conditions are ignored or violated, then such a conditions can be legally compelled to be obeyed. To change the conditions of an approved Implementation Plan (WDR or Waiver) would necessitate that it be amended according to the same process by which it was approved. In this case such changes would require substantiation that any such changes must be equal to or better than the previously applied conditions.*

*Implementation language as mitigation is compelled by substantial evidence in the record. The only way that the State Water Board or Regional Board can legally allow the mitigation to be removed or changed is if it determines that the substantial evidence that prompted the mitigation has somehow disappeared. If a particular mitigation is necessary to control the adverse impacts of a project over a certain period of time and if it is feasible, its implementation is legally mandated.*

Any diminished capability in the Regional Board administration of these WDRs and Conditional Waivers (possibly by State Wide WDRs and Waivers as proposed by the State Board) would necessarily effect the potential effectiveness of any TMDL that relies on these WDRs and Waivers for pollutant control. Thus the Implementation policy effectiveness of these TMDLs would, and should, be called into question. Loss of WDR and Waiver utility should bring the approved Scott and Shasta TMDL Implementation language into question. In addition, the Scott and Shasta are Klamath problems.

Final Report on Sediment Impairment and Effects on Beneficial Uses of The Elk River and Stitz, Bear, Jordan and Freshwater Creeks (Humboldt Watersheds Independent Scientific Review Panel); and (2) Phase II Report: Independent Scientific Review Panel on Sediment Impairment and Effects on Beneficial Uses of the Elk River and Stitz, Bear, Jordan and Freshwater Creeks (Humboldt Watersheds Independent Scientific Review Panel) - and - other studies and scientific review panels document and contain substantial evidence that CDF's Rules and best management practices fail to protect water quality from the adverse effects of logging. These documents should be referenced in review and discussion of Implementation Planning (Implementing Programs - inclusive of WDRs and Conditional Waivers).

### **Arguments Submitted Under Petition by CalFire and Landowners**

Both CalFIRE and Landowners/Farm Bureau's Petitions claim that there is no adverse water quality effects from NTMPs documented in the file. As pointed out, all of the science and panels

at the disposal of the Regional and State Board indicated that the application of the Forest Practice Act (Rules) do not protect the beneficial uses of water. There is no measurable difference between what occurs on a THP or NTMP - and - in fact, most all of the applicable rules and regulations are the same - as are the operational effects on water quality.

## **CalFIRE**

CalFIRE submitted argument and discussion in a letter to the Board. Issues were extra work for CDF created by the WDR and Waiver and problems related to the review process. I would like to point out to you that when a RPF or landowner wishes to amend a THP or NTMP CalFIRE is happy to accommodate any change - without complaining about the extra work or cost. CalFIRE is, and has, been reticent to accept the fact that all science and review panels determined effectiveness of the Forest Practice Rules and their application and CalFIRE has resisted most attempts and recommendation by the Regional Board to Remedy outstanding issues. The attitude is that only one agency can be the boss and we are it. Thus, this reticence has led to diminished water quality on north coast streams. The background text here is that CalFIRE (and the landowners and the Farm Bureau) resent Regional and State Board intrusion into the domain into timber harvest management - thought the implementing language of the Forest Practice Act calls for a multi-disciplinary approach.

CalFIRE, in their Petition, requests rescission of the WDRs and Waivers for Timber Operations on private lands. These WDRs and Waivers, for many reasons, should not be rescinded.

## **Landowners and Farm Bureau Petition**

The claim to protect long term public trust forest values is not valid, nor is it substantiated. Yes there are some good operations with NTMPs and they do fine, and there are some very bad examples too. The fact is that the WDRs and Waivers are a necessity to protect water quality values. Good operators should have no complaints. Note: When they talk about NTMPs they also use and reference THPs - they are being considered the same in this document. WDRs and Waivers are to assure Basin Plan compliance - only those failing to comply with the Basin Plan might have a problem.

Notes that the Regional Board may use discretion when applying WDRs, Waivers, and other implementing programs. True - such permit and programs are only applied as needed - that is the responsibility of the State and Regional Board(s)

Notes that the Regional Board applied slightly stricter standards than on the previous waiver. The file does show that stricter standards are needed to recover beneficial uses. Some standards that were applied to THPs and not NTMPs were amended to apply to NTMPs. That is true and justified by evidence in the file.

It is argued that the Regional Board should withhold the new WDRs and Waiver and see what the new Board of Forestry Threatened and Impaired rules look like. This is sort of bogus argument as these petitioners threaten to weaken the existing Threatened and Impaired Rules. There is no backstop if the Threatened and Impaired Rules are weakened.

They complain about adequate notice. There should be no problem in checking on this one.

It appears that they do not like erosion control plans. Every ranch and timber land owner in the Garica seemed to be able to produce one. All timber plans should be subject to Erosion Control Planning.

Categorical Waivers do not implement TMDLs. I do not understand what the problem is if they did. They are back-up or control language for some approved TMDLs and the Basin Plan for the North Coast - found to be necessary if Water Quality Standards are to be attained on impaired waterbodies.

Claims that the Regional Board does not demonstrate why the requirements are necessary. The record clearly states why they are necessary and how they are to be implemented. And - if they were not necessary there would be no need for the Threatened and Impaired Rules that the Petitioners say should rule the day. Is this not circular reasoning? "Wait for the Threatened and Impaired Rules (which we are trying to bury - and may go away) because there is a need - but we certainly do not need WDRs and Waivers with any rules and Erosion Control Plans.

Studies relied on are quite recent and appropriate.

Note: WDR and Waiver language is very similar to language changes to update the Forest Practice Rules proposed to the Board of Forestry by the Regional Board. The Board of Forestry was effective in ignoring such rules proposals - for years. Thus, impaired waterbodies from timber harvest activity.

Providing culverts to meet the 100 year flooding event is standard procedure in road upgrades and should be accomplished on all rural roads. It is not that expensive and solves a lot of erosion problems.

Conditions imposed for near stream shade, and to lower the level of disturbance near stream, are appropriate. These conditions conform to many scientific studies indicating appropriate conditions necessary for aquatic recovery - sediment control and stream temperature.

The argument related to exceedence of authority by the Regional Board has no merit. Both, Regional and State Boards can impose reasonable and accepted standards for water quality protection. It is claimed by CalFIRE and the Landowners/Farm Bureau petitions that because THPs and NTMPs are governed by the Forest Practice Act, that application of Water Code by the Regional Board to THPs and NTMPs is somehow illegal. This is wrong. Both the Regional and State Boards have a legal mandate to apply State Code and Basin Plan requirements to protect water quality values.

Manner of compliance is not necessarily "dictated" by the State (Regional Board). The landowner can derive a plan, but the plan must be approved by the Regional Board under standards that conform to the Basin Plan and Water Code.

They claim "Due to the nature of NTMPs, water quality impacts from timber harvesting are not likely." This statement is not supported by fact. Impacts from operations associated from NTMPs are as likely to effect water quality as operations from THPs.

They talk of sustainable timber practices. When has that occurred in this state? CDF can not define or assure sustainability. Yes, some trees are left, but the level of production has been reduced to a mere fraction of what the land is capable of. This is from over and inappropriate harvest regimes - with obvious and continuing effects on water quality.

A claim of economic harm is grossly overstated - exaggerated. It always cost a little more to do it correctly. Shall we compromise water quality to save on culvert sizing? Road repairs and upgrades are not demanded to be accomplished at once. Upgrades are to occur over time. However, it is illegal to discharge sediment into waters of the State - at any time. Legally, a failed culvert is a Basin Plan violation subject to penalty. So how and when do we fix them - and - which is least expensive in the long run? Back to the Garcia TMDL - they have done it. In one planning watershed 360 culverts were replaced. There are fish there where there were none before. These permits (programs) are not so costly that landowners will be put out of business (we have heard this before - on the Garcia and elsewhere - these folks will survive).

Claim of inconsistency with the State Non-point source program. These WDRs and Waivers are part and parcel of the State's Non-Point Source Program and compliance with Coastal Zone Management Act mandate to clean up these rivers.

This discussion and the attached documents are provided for your review and consideration.

## **BACKGROUND ON FOREST PRACTICE RULES AND NTMPs**

### **Forest Practice Rules - General**

Report of the Scientific Review Panel On California Forest Practice Rules and Salmonid Habitat, Prepared for The Resources Agency of California and the National Marine Fisheries Service, State of California selected panel of scientists, 1999, indicates that "the Forest Practice Rules" and their administration by the California Department of Forestry "do not protect the beneficial uses of water." ""Silviculture is the leading source of impairment to water quality in the North Coast of California. Related to these water quality problems, California has a number of species, in particular salmon, that are endangered threatened or otherwise seriously at risk, due in very significant part to forestry activities that impair their spawning, breeding and rearing habitat." (Findings for the California Coastal Non-point Program and CZARA Action Plan, USEPA/NOAA, 1999) A Scientific Basis for the Prediction of Cumulative Watershed Effects, UC, Berkeley, June 2001, and finally the Final Report on Sediment Impairment and Effects on the Beneficial Uses of Elk River and Stitz, Bear, and Jordan Creeks, Concur, 2002. All of these noted scientific reviews indicate the Forest Practice Rules, including projects related to small landowners and Non-Industrial Timber Plans, are deficient in Cumulative Impacts Analysis and can not be counted on to protect the beneficial uses of water and meet Basin Plan water quality objectives. No study has shown that smaller timberland owners and/or Non-Industrial Timber Plans have lessened impacts related to pollutant inputs from timber harvest activity. Nor is there any justification for treating such operations as a separate class to be allowed lessor standards or criteria for meeting Waste Discharge Reporting requirements, or associated Waiver of same.

### **Non-Industrial Timber Harvest Plans, Report to the Legislature, California Department of Forestry, 2003**

Non-industrial private forest lands include 3.2 million acres or 41% of all forested land in the State of California. There are 314,000 non-industrial private forestland owners. In 2002 there

were over 210,000 acres in NTMP management (the current number of acres is being researched by CDF and is in the 300,000 acre range or more - with over 65% in the north coast region - and growing fast with addition of an average of 25,000 acres per year). The Report notes that timber harvest is an essential source of income for many of these private forestland owners. The report notes that one aspect of NTMPs is that income derived from timber harvest on non-industrial timber harvest is, in part, used to deal with legacy erosion problems and sediment production issue on these properties (p.4 - noting that sediment production is a continuing issue).

*“The Non-Industrial Timber Management Plan (NTMP) allows smaller NIPF timberland owners to prepare a long term management plan that reduces regulatory time and expense by providing an alternative to filing individual timber harvesting plans (THPs). In exchange, landowners agree to manage their forests through uneven-aged management and long-term sustained yield.”*

*“the Forest Practice Rules that are applied to these harvests are fixed to the Rules in place at the time when the NTMP is approved. This gives landowners both relief from the high cost of future THPs and a greater level of regulatory certainty, which in turn reduces the pressure to maximize short-term harvest intensity.”*

The NTMP as a one time planning document may save the landowner planning cost but one time planning presents great water quality management risk as NTMPs may not get any additional agency (RB, DFG, CMG) or public review of operations. Thus, it is important to get it right - by applying the reasonable standards for sediment control and stream protection (the same standards applied to all industrial timber harvest operations). Do you really want 41% of timber harvest operations not appropriately considering water quality values through the life of the plan?

*“current forest practice rules prevent the abuses of the past”*

The above noted statement is not consistent with all the scientific review panels assessment of the Forest Practice Rules. The rules have improved somewhat over the last 15 years. However, all scientific review of the FPRs and their application shows great insufficiency and failure to address water quality and beneficial use protection.

*“In exchange for the cost of creating a long-term management plan and commitment to using uneven-aged management, timberland owners are guaranteed regulatory certainty that comes in the form of: (1) not having to prepare individual Timber Harvesting Plans, (2) pre-approval of future harvesting that allows timber operations to commence on the same-day that a notice of operations is filed with CDF; and (3) "sheltering" the NTMP from subsequent rule changes by tying operations on the NTMP to the Forest Practice Rules that were in effect at the time the plan was approved -- except for certain overriding conditions. This regulatory guarantee is provided in PRC §4593, Legislative findings and declaration, which states:*

*“ The Legislature further finds and declares that it is the policy of the state to encourage prudent and responsible forest resource management of non-industrial timberlands by approving non-industrial timber management plans in advance and*

*withdrawing governmental discretion to disapprove non-industrial timber harvest notices submitted pursuant to the approved non-industrial timber management plans.”*

*And by PRC §4593.8, which requires that:*

*“... any amendment to the plan shall be judged for compliance with the rules and regulations of the board and the provisions of the Forest Practice Act that were in effect at the time the NTMP was approved.”*

The NTMP approval and pre-approval of harvesting issue suggest that similar rules applying to industrial timber harvest practices should and must apply to NTMPs - if Water Quality Standards are to be maintained (or attained in waterbodies listed as impaired - all north coast rivers, except the Smith River).

## **Buckeye Forest Project Report 2004**

### **2. Adaptations and Amendments**

*There is little or no opportunity for agencies to adjust a landowner's NTMP if new information becomes available or conditions on the landscape change. With few exceptions (such as new "listings" of threatened or endangered species) existing NTMPs are not modified when California FPRs are amended. This "regulatory certainty" is a benefit to landowners (although they remain uncertain over when amendments to their NTMP may be required.), but it gives others concern about damage to resources that weren't understood or assessed sufficiently when the NTMP was granted.*

The above noted section of this report focuses on "regulatory certainty" and inability of the NTMP to be adjusted to meet changed conditions or new information. This is a big problem when dealing with pollutant control issues on impaired waterbodies.

### **3. Public Review**

*There is only one opportunity—the initial plan review and approval period—for the public to review and comment on an NTMP; after approval, the permit remains in force until the landowner abandons it. This is seen as a good thing by landowners, but as a limitation by environmentalists.*

Again, the above noted issue is inability to address and adjust.

### **6. Constraints, Commitments and Complexity**

*NTMPs reduce the silvicultural options for landowner. With a few exceptions, landowners are prevented from doing clearcuts larger than 2.5 acres, a constraint on silvicultural methods that may have unforeseen impacts down the road. Maintaining an NTMP is not a simple investment, it requires committed, active management. NTMPs are*

*not able to force people to do "good stewardship", they only allow them to do "good stewardship." Only education (not regulation) can make good stewards*

The above noted section notes that for 'regulatory certainty' the option to clear-cut is given up. The complexity of NTMP management is noted without opportunity to adjust. Also, implied is the fact that some non-industrial timberland owners are good managers and some are not. Yes! Education is an essential component of good management. The NCRWQCB has made extensive efforts in education and has done a good job here - with more to be done.

### **Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, 1999**

This independent panel, that included industry representatives (and several other scientific panels, EPA/NOAA CZARA findings, and the Dunne Report) found that the Forest Practice Rules as administered by the California Department of Forestry do not protect the beneficial uses of water. Included in the analysis (specifically) were mentioned Timber Harvest Plans and Non-Industrial Timber Management Plans - both. The Report noted that non-industrial timber lands represented over 40% of the private forest lands on the north coast. The report noted variability in management - including application of rules. The Report noted that non-industrial timber land owners wanted incentives to supplement good management practices. The Report recommended serious upgrading of the Forest Practice Rules - some of which occurred and some of which are addressed by the Regional Board WDR and Waiver policy for Timber Harvest Operations on Private lands.

### **CalFire Challenge to the WDR and Waiver Program**

Cal Fire has provided evidence that they indeed do inspect both THPs and NTMPs for compliance and that compliance does indeed lead to actions necessary to meet Basin Plan Standards. **Note: Cal Fire inspections do not always include the entire plan area – nor are follow up inspections assessing compliance effectiveness part of their inspection program.** There are a number of issues here: 1) that some part of the basic standards and conditions needed to protect water quality are set by the Regional Board (not the FPRs or Cal Fire in their administration), and 2) there are degrees in variation in detail across the landscape as far as inspection and compliance is concerned. You can go out on most executed timber plans (THP or NTMPs) and find existing issues that were either overlooked or that are in violation of the plan as written and approved (Cal Fire and Review Team agency reports, pre and post harvest, substantiate this).

### **Cal Firs attempts to support their arguments by:**

Using Jackson State Forest as an example: Jackson State as a demonstration forest is managed by a team to much higher standards than what is currently allowed under the FPRs and/or under WDR or Categorical Waiver standards. Thus, this is a grossly biased and unfair use of information.

Inclusion of some temperature data (Ten Mile River) that shows no impairment: Ten Mile River has significant segments that show severely elevated temperature statistics. There are areas

(reaches) in the temperature impaired listed rivers (Ten Mile, Garcia, Gualala, Big River, Russian, and Mad River) that show no temperature impairment. There are large segments of these rivers that show severe impairment. Thus, these waterbodies are listed under, both, State Board listing policy and EPA policy on the nature of temperature impairment.

**Hillslope Monitoring Project:** This project shows randomly secured data and does not include landscape wide analysis.

**Use of Casper Creek Study:** For years this study has been included in THPs/NTMPs stating that sediment impacts from timber operations would be minimal and that peak flow effects from timber operations would be minimal. Casper Creek, a small watershed, does not have similar slope or geologic factors as all north coast watersheds. Erosion propensity, is subject to great variability across the landscape and is dependent on geologic conditions, slope, soils, rain fall characteristics (which also vary greatly), and the type of land use operations (including road and skid trail construction) involved. The Casper Creek Study does show a diminished time lag from hydrologic event to peak flow as a result of timber operations. These concentrated flows can, and will, exacerbate erosion from roads and slopes that have been subject to timber operations (THP and NTMPs).

### **Regional Board Arguments**

The Regional Board argues that it is precisely the Erosion Control Plan and other Categorical Waiver standards (as Implementing Programs to back up the need to address impairment and as necessary for TMDL and Basin Plan Standard compliance) that are necessary for attainment of Water Quality Standards.

The Regional Board is correctly and appropriately using WDRs and Categorical Waivers to protect and recover water quality values. If this tool is taken away, or if some class of land use operations is exempted from such review and control, the opportunity and likelihood of WQS attainment is greatly diminished and the burden of corrective or attainment actions falls to the remaining classes of land use.

### **Evidence Not Supporting Cal Fire's Position**

Coast Action Group has previously submitted a compendium of Scientific Review documents. These documents more than qualify that Cal Fire's administration of the Forest Practice Act does not protect water quality values. This science based conclusion includes all types of timber operations (both Timber Harvest Plans and Non-industrial Timber Harvest Plans – no differentiation is noted). The detailed reasons for this conclusion are clearly stated in these documents.

Additionally, a very large amount of evidence supporting the above noted conclusion is contained in documents now available to the SWRCB – the EPA and State approved TMDLs on our north coast rivers. These TMDLs give a broad landscape picture of pollutant loading from various sources. Timber Harvest (THPs and NTMPs – related operations, including harvesting, yarding, tractors on slopes, road and skid trail construction and re-construction) related activities are

all serious sources of pollution. This basic landscape wide evidence indicates that Cal Fire does not have complete control of pollutant sources in their administration of the FPRs. Nor, does Cal Fire completely understand their responsibility to Basin Plan compliance relative to adverse effects to water quality from timber harvest operations. These TMDL documents attest (via data review and collection) to the current status and potential of pollutant delivery from timber harvest related activity. These EPA and State approved TMDL, as supporting evidence, are to be made part of this file – by reference. (there is no need to submit them).

### **Finally**

A Non-industrial Timber Management Plan (or a Timber Harvest Plan) is the Water Quality Control Plan for the project. NTMPs (and THPs) should be subject to all authorities under Cal Water Code, the Basin Plan (including anti-degradation language), and regulatory tools associated with timber harvest management - including WDRs and related Conditional Waivers.

Pursuit of policy that would exempt 40% of the area subject to regulation will never be capable of attaining Water Quality Standards for recovery of impaired waterbodies - in this case north coast rivers and streams

Sincerely,

Alan Levine for Coast Action Group

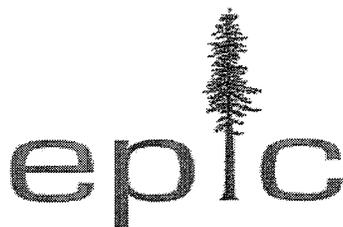
Attached are documents for review that support the above discussion:

Recent DFG and Regional Board recommendations for language needed to protect water quality values.

WDR comments by Mike Lozeau

STMP – outline of Stewardship NTMP – which actually outlines what a NTMP should look like if it was to be forest resource and water quality protective. This STMP language was developed by NMFS.

**EXH. F**



Keeping Northwest California wild since 1977

3/24/11

NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD  
5550 SKYLANE BLVD STE A  
SANTA ROSA CA 95403-1072  
Catherine Kuhlman, Executive Officer

Re: Comments regarding proposed Order No. R1-201-0038, Limited Term Amendment to Provisions of Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharge Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region.

Ms. Kuhlman,

The Environmental Protection Information Center (EPIC) and the other organizations listed at the end of this letter wish to submit the following comments regarding proposed Order No. R1-201-0038 (hereafter referred to as NTMP waiver suspension). The order would suspend the Waste Discharge Requirements Wavier program for Non-industrial Timber Management Plans (NMTPs) for one year. NTMPs are designed to allow smaller 'Non-industrial' landowners to harvest forestlands under increased restrictions as specified by the Forest Practice Rules. While these restrictions provide greater protection for beneficial uses of water than do Timber Harvest Plans, there are still significant concerns about the ability of NTMPs to protect beneficial uses of water in the absence of the WDR waiver program.

We do not understand how the proposed order will improve protection for listed fish species or waterbodies listed as imapirod. The premise of this proposed suspension is that the RWQCB must evaluate the efficacy of the Anadramous Salmonids Protection Rules (ASP) promulgated by the Board of Forestry in order to avoid unnecessary duplication of requirements and unnecessary burden to land owners and Cal Fire. However, the argument is not supported by evidence demonstrating a need. We are aware of no evidence of need to evaluate these new rules. In fact, both Regional Board staff and the National Marine Fisheries Service (NMFS) have clearly indicated that the ASP rules are not adequate to protect beneficial uses of water and listed salmonids and steelhead, particularly with

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regards to sediment and temperature impacts resulting from logging operations on non-Federal timberlands on the North Coast.

We are concerned that suspension of the NTMP Waste Discharge Requirement Waiver could result in a 'slippery slope' effect which would eventually result waiver suspension for Timber Harvest Plans as well under an equal protection argument. We are concerned that reliance on the ASP rules will fail to prevent deleterious effects on the quality and beneficial uses of water as required by the Regional Basin Plan. Regional Board staff have expressed significant concerns about the adequacy of the ASP rules to effectively meet the water quality objectives of the Regional Basin Plan and the specific targets established by applicable TMDL Implementation Plans.

In a comment letter to the Board of Forestry dated 9/3/09 regarding the proposed ASP rules, Regional Water Board staff indicated that the ASP rules as written failed to comply with the provisions of the Basin Plan and the Clean Water Act:

*“Regional Water Board staff recommended that the goals and objectives of the ASP Rules also recognize the need to protect all beneficial uses of water and comply with water quality objectives in accordance with the Water Quality Control Plan for the North Coast, also known as the Basin Plan. Although the proposed ASP rules leave intact the current wording with regards to watersheds listed under Section 303(d) of the federal Clean Water Act (303(d) listed), the proposed ASP rules do not adequately address the potential for cumulative effects from timber operations in 303(d) listed watersheds, particularly those watersheds listed for sediment and/or temperature impairments.”*  
(RWQCB 9/3/09)

An additional letter from Water Board staff evaluated the ASP rules relative to water quality objectives for temperature. This letter concludes:

*“Additionally, without these analyses the proposed rules are not sufficient for certification as a third party regulatory program, consistent with the Non-Point Source Policy, and thus cannot serve as the basis as a waiver of waste discharge requirements.”* (RWQCB 9/3/09)

In a recent review of Non-Industrial Timber Management Plans (NTMPs) EPIC has found that Regional Board staff have consistently raised concerns over inadequate canopy retention and other concerns that would result in further sediment and temperature impairment of 303(d) listed watersheds. In 2009, RWQCB staff commented on seven NTMPs filed in that year. RWQCB staff expressed concerns or made recommendations regarding canopy retention in order to comply with the Basin Plan on five of seven plans. In 2010, RWCB staff commented on only four NTMPs filed, and made recommendations related to protections from sediment and temperature effects on two. Here we quote from a Pre-harvest Inspection Report (PHI) for NTMP 1-09NTMP-013HUM:

*“While the Regional Water Board recognizes that many areas of watercourse protection were improved*

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*as part of this [ASP] rules package, we also noted during the comment period, that the new rules do not ensure adequate protection of all Cold Beneficial Uses of water (Cold BUs) in all streams, particularly those outside of what is considered the influence to anadromy under the new rules.”*  
(RWQCB staff, Joelle Geppert 12/13/10)

Regional Board staff have also raised concerns over the inadequacy of the so-called “Threatened and Impaired Watershed Rules (T&I), clearly stating that those rules do not address impaired watersheds (303(d) listed watersheds). The T&I rules eventually became the ASP rules. These concerns were part of the basis for creating the categorical WDR waiver requirement in the first place. In sum, the RWQCB staff have clearly indicated that ASP rules are not an adequate substitute for the WDR waiver program.

Similarly, the National Marine Fisheries Service (NMFS) has expressed concerns over the efficacy of the ASP rules to protect federally and state listed anadromous salmonids and steelhead trout. NMFS had recommended that the Board of Forestry adopt 'no take' rules to protect listed salmon and trout species, but found that the ASP rules did not meet a 'no take' standard:

*“However NMFS finds the proposed Anadromous Salmonid Protection Rules are not no-take rules, are unlikely to meet the intent of the rules themselves and are not likely to abate the risk of extinction for listed salmonids where these rules are implemented.”* (NMFS comments to the BOF, 9/8/09)

The Regional Water Board, as the responsible agency for protecting the quality and beneficial uses of waters of the North Coast must consider the advice of its own staff, as well as the National Marine Fisheries Service, both of which have decried the ASP rules as inadequate and failing to meet water quality, as well as federal ESA provisions. Suspending the waiver requirements for NTMPs would result in a significant roll back of protections for listed fish species, as well as for watersheds listed as impaired for sediment and temperature under Section 303(d) of the Federal Clean Water Act.

The Regional Board has not demonstrated that suspension of the waiver would provide equal or greater protection for beneficial uses of water. In fact, the available evidence strongly suggests that suspending the waiver could result in further impairment of waters and water quality values currently threatened by logging operations on private timberlands on the North Coast. NMFS has clearly identified inadequate regulatory mechanisms as a reason for the precipitous decline of North Coast salmon and steelhead. The Regional Water Board must consider carefully the implications of suspending the NTMP waiver on beneficial uses of water and federally listed fish species. The Regional Board is obligated to enforce the provisions of the Basin Plan and applicable TMDLs irrespective of the promulgation of the ASP rules.

In summary, there does not appear to be substantial evidence demonstrating that the ASP rules would provide an equal or environmentally superior substitute for enforcement of the Basin Plan and applicable TMDL Implementation Plans through the WDR waiver program. Rather, the evidence points to the inadequacy of the ASP rules to protect beneficial uses of water and listed fish species from harm. Thus the Board’s proposed CEQA finding is not accurate; adoption of the one-year suspension

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as proposed would be environmentally significant.

Suspending the NTMP WDR waiver is likely to result in further preventable deleterious effects to the quality and beneficial uses of waters on the North Coast resulting from inadequate regulatory protections provided by the ASP rules. The Regional Board must execute its statutory obligations to prevent such deleterious effects and continue to enforce the requirements of the Basin Plan and applicable TMDL Implementation Plans through application of the WDR waiver program.

For EPIC, and other listed parties,

Rob DiPerna  
Environmental Protection Information Center  
Industrial Forestlands Reform Program

### *References*

- Regional Water Quality Control Board Staff comments regarding ASP rules, 9/3/09
- Regional Water Quality Control Board Staff comments on ASP rules temperature impacts, 9/3/09
- Regional Water Quality Control Board Staff PHI report for NTMP 1-09NTMP-013HUM, 12/13/10
- National Marine Fisheries Service comments regarding ASP rules, 9/8/09

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