



Central Valley Regional Water Quality Control Board

March 10, 2020

United States Forest Service
Upper Lake Ranger District
Attn: Frank Aebly
10025 Elk Mountain Road
Upper Lake, CA 95485

CERTIFIED MAIL
70172620000113591410

United States Forest Service
Upper Lake Ranger District
Attn: Hilda Kwan
10025 Elk Mountain Road
Upper Lake, CA 95485

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Central Valley Water Board staff is requesting additional information from the United States Forest Service (USFS) to determine compliance with the assigned load allocation under the Clear Lake Nutrient TMDL, as required by the 2006 Amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Nutrients in Clear Lake (Basin Plan Amendment).

USFS is one of the responsible parties identified and assigned a load allocation in the 2006 Clear Lake Nutrient TMDL. The Clear Lake Nutrient TMDL Control Program was adopted in 2006. The waste load allocations were based on modeling studies that predicted a 40% reduction in average phosphorus loading would significantly reduce the frequency of algae blooms. The load allocation for nonpoint source dischargers is 85,000 kg/year average annual phosphorus load (five-year rolling average). The U.S. Forest Service (USFS), U.S. Bureau of Land Management (USBLM), Lake County (County), and Irrigated Agriculture are responsible for controlling phosphorus discharges from those portions of the watershed within their respective authority. The compliance date for the TMDL was 19 June 2017.

In 2016, Central Valley Water Board issued a 13267 Enforcement Order to USFS. The information from the 13267 Order response was summarized in the [Technical Memorandum](#) released in July 2018. Based on the information provided in 2016, staff was unable to determine whether USFS is meeting their load allocation.

In 2019, Central Valley Water Board staff received new information from USFS regarding their management practices and erosion control efforts. Based on this information, staff concludes that there is enough data to link management practices evaluations and sedimentation reduction projects to a 40% phosphorus loading reduction prior to the Mendocino Complex fire. This is based on an evaluation of the effectiveness of the management practices implemented.

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Since the nutrient control program was adopted, the Mendocino National Forest, Upper Lake Ranger District has:

- Implemented management practices for areas that cause steep erosion. Examples include constructing drain dips to prevent tread soil loss, which can accelerate sediment deposits into stream channels, and redepositing the soil in steep trails sections with deep ruts where there has been drain dip failure.
- Evaluated the implementation and effectiveness of management practices for all project activities including: Range, Timber, Roads and Recreation. USFS has scored highly in both national and regional best management practices evaluations in recent years with less than 10% of evaluations showing any problems or issues.
- Surveyed at least 50% of their OHV trails system on a rotating basis during each grant application cycle.
- Constructed a native vegetation sediment basin adjacent to the OHV practice area in the Middle Creek campground.
- Closed OHV established and illegal trails that were steep and eroding in the watershed and added rock to channel crossings to harden the crossing and preclude erosion. Sediment reduction was 100% in closed areas within a few seasons due to natural revegetation.
- Utilized storm proofing methods to decrease contributions of sediment into the stream system. Eighty percent of roads in the 42-mile project area were disconnected, leading to a potential sediment decrease from 2,263 tons/year to 1,063 tons/year (>50% reduction in sedimentation). These 42 miles represent all the roads in the Middle Creek Watershed on USFS lands. USFS staff concluded via Water Erosion Prediction Project (WEPP) modeling that the project completion resulted in a 50% reduction in sedimentation from Forest roads in the watershed.
- Completed two projects, the Bartlett Hazard Tree Abatement and Deer Valley Hazard Tree Abatement, to determine if there were any indicators of Significant Existing or Potential Problems (SEPP). The Deer Valley project includes all roads within the Middle Creek watershed.

Based on the additional information received, Water Board staff has determined that USFS has achieved a 40% reduction in sediment loading into Clear Lake prior to the Mendocino Complex fire. However, in order to fully address the changed landscape caused by the Mendocino Complex fire and evaluate sediment inputs into the lake, staff is requesting additional information regarding the implementation of post-fire management practices.

Within three months of the notification that this letter has been received, USFS shall submit written technical information that describes management practices implemented to reduce phosphorus loads to Clear Lake. Staff is requesting the following information:

- Reports and/or monitoring data available associated with the Bartlett Hazard Tree Abatement and Deer Valley Hazard Tree Abatement projects.

- Monitoring data available for the OHV trails mentioned in the Post Ranch Clear Lake TMDL assessment (submitted by USFS staff to Water Board staff on 09 December 2019) that have had maintenance work completed.
- Next steps planned for the 3 SEPES locations identified for the Bartlett Hazard Tree Abatement project.

The Porter-Cologne Water Quality Control Act authorizes regional water boards to investigate water quality within their regions or to issue investigative orders to certain persons. Water Code section 13267, subdivision (b)(1) specifically authorizes the Central Valley Water Board to require any person who “has discharged, discharges, or is suspected of having discharged or discharging” waste to submit technical or monitoring reports. Discharges of phosphorus fall within the reach of Water Code section 13267, subdivision (b). As described above, the USFS is responsible for the phosphorus discharges coming from land under their authority.

The technical information required under this Order is necessary to assess potential threats and impacts to water quality. Specifically, the information is necessary to determine what impacts the recent fires have had on phosphorus loads and determine whether USFS is still achieving the necessary 40% reduction in sediment loading into Clear Lake.

The burdens, including costs, of complying with this Order are reasonable in relation to the urgent and important needs for information that are outlined above. The burdens of these reports bear a reasonable relationship to the benefits to water quality and human and wildlife health from the reduction of phosphorus discharges that lead to algal blooms.

All submittals pursuant to this Order must be accompanied by a signature statement whereby the person submitting the report represents:

“I certify under penalty of law that to the best of my knowledge and belief, this document and any attachments submitted is true, accurate, and complete and was prepared by me or under my direction or supervision. I am aware that there are significant penalties for knowingly submitting false information.”

If the Central Valley Water Board determines that there is a threatened or continuing violation of this Order, it may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule (Water Code § 13308, subd. (a)). The amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance and may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs under Water Code section 13308, subdivision (b). Any person who fails to achieve compliance in accordance with the schedule established in an order issued pursuant to Water Code section 13308, subdivision (a) shall be liable civilly in an amount not exceed the amount prescribed by the order. The Central Valley Water Board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323) of Porter-Cologne.

You have the right to appeal the Central Valley Water Board's issuance of this order by submitting a petition for review to the State Water Resources Control Board (State Water Board). The State Water Board must receive the petition by 5 p.m., 30 days after the date this Order is issued, unless the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, in which case the petition must be received by 5 p.m. on the next business day. The regulations applicable to filing petitions may be found on the State Water Board's public notices website or will be provided upon request.

If you require more time than allowed by this Order to submit the information, please submit a written request for a time extension to the Executive Officer. The Executive Officer will review and approve requests for time extensions on a case-by-case basis.

For any questions regarding the USFS load allocation, please contact Taran Sahota at (916) 464-4716 or via email at taranjot.sahota@waterboards.ca.gov.

ORIGINAL SIGNED BY PATRICK PULUPA
PATRICK PULUPA, Executive Officer