

Federal Lands Permit

Attachment G

Supplemental Order Findings

This attachment contains supplemental Order findings pertaining to 1) the legal and regulatory framework and basis of the Federal Lands Permit, 2) tribal consultations and outreach and engagement with the public and disadvantaged communities during Federal Lands Permit development, and 3) Federal Agency-specific information for the United States Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service (NPS).

I. Legal and Regulatory Framework Findings

A. Clean Water Act

1. Section 313 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)¹ provides for state regulation of federal facilities. (33 U.S.C. § 1323.)
2. Numerous streams in the North Coast Region are listed as impaired for sediment and temperature pursuant to Clean Water Act section 303(d). The Clean Water Act requires states to address impaired waters by developing a total maximum daily load (TMDL) or by implementing water quality programs that result in the attainment of water quality standards.
3. TMDLs have been developed for most of the sediment and temperature-impaired waters in the North Coast Region. While the actual load allocations and targets may vary from one sediment or temperature TMDL to another, all address the basic issues of reducing and preventing excess sediment inputs or decreasing water temperature by protecting and restoring natural shade, respectively.

B. Porter-Cologne Water Quality Control Act

1. The Porter-Cologne Water Quality Control Act, also known as Division 7 of the California Water Code² or simply Porter-Cologne, is California's comprehensive water quality control statute, which implements portions of the Clean Water Act. Under Porter-Cologne, water quality objectives are established to ensure the reasonable protection of beneficial uses and the prevention of nuisance, in

¹ The Clean Water Act: <https://www.govinfo.gov/content/pkg/USCODE-2018-title33/pdf/USCODE-2018-title33-chap26.pdf>.

² Water Code, section 13000 et seq.

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consideration of various factors including past, present, and probable future beneficial uses of water³.

2. California Water Code (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, must file with the appropriate regional water quality control board a report of waste discharge containing such information and data as may be required.
3. Water Code section 13263 authorizes the regional water quality control boards to “prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of section 13241.” A regional water board may prescribe requirements although no discharge report has been filed (Water Code section 13263, subdivision (d)).
4. Pursuant to Water Code section 13263, the North Coast Regional Water Quality Control Board (North Coast Water Board) determined that discharges from activities covered by the Order, except for those addressed in the WARP, are appropriately permitted by waste discharge requirements. The North Coast Water Board, in establishing the requirements contained within the Order, has considered the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, and the factors within section 13241.
5. Water Code section 13304 states, in part, the following: A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. As further detailed in Attachment F, the WARP requires the federal agencies to steadily and systematically advance the treatment of controllable sediment discharges sites over time to prevent further sediment pollution and ecosystem impairment to 303(d) listed waters and maintain

³ Water Code, section 13241.

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high quality, unimpaired waterbodies that are threatened by controllable sediment discharges.

6. This Order and any enrollment under this Order: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other federal, state, or local governmental agencies; and 5) does not preclude the North Coast Water Board from administering enforcement remedies pursuant to the Water Code.
7. This Order, including enrollments under this Order, does not create a vested right; discharges of waste are privileges, not rights, as provided for in Water Code section 13263, subdivision (g).
8. This Order and its attachments may be modified, revoked, reissued, or terminated. If unforeseen circumstances resulting from the Order have the effect of unreasonably constraining Federal Agency activities, Federal Agencies may seek consideration for modifications to the Order by written request to the North Coast Water Board.

C. State and Federal Endangered Species Act

1. The USFS, BLM, and NPS, as the Federal agencies responsible for oversight and management of federal lands, are required under the federal Endangered Species Act (ESA) to protect, assess, and restore the critical habitats upon which federally listed threatened and endangered species depend, and to take actions that will foster recovery of listed species. The Basin Plan identifies numerous beneficial uses of water to be protected and restored, including several related to California's native anadromous salmonids that are identified as either threatened or endangered under the ESA. The implementation of federally mandated actions under the ESA complements the goals of the North Coast Water Board, to protect and restore the beneficial uses of waters in the North Coast Region.
2. In 2012, the USFS adopted a new National Forest System Land Management Planning Rule that established a process for the development of national procedures, as well as individual plans for national forests and grassland, to protect and restore land and water ecosystems and to take actions to recover species listed on the ESA. Federal Rules and Regulations §36 CFR Part 219.9 (a and b) include requirements for, and definitions of, plan-related actions required to maintain or restore ecosystem integrity and ecosystem diversity, as well as species specific plan components. As provided by the accompanying Biological Assessment for conformance with the statutory requirements of the ESA, "the intent of the final [National Forest System Land Management] Planning Rule provisions is to provide broad ecosystem level and species-specific ecological conditions necessary to contribute to the recovery of federally listed species. Plan components designed to meet these requirements are expected to maintain or restore the ecological

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conditions on which threatened and endangered species depend, including designated critical habitat.”

3. The BLM has also developed a Threatened and Endangered Species Program⁴ and a Special Status Species Management Manual⁵, which specify actions to plan and implement measures to recover threatened and endangered species, and to establish policy for management of species listed or proposed for listing pursuant to the ESA and Bureau sensitive species which found on BLM-administered lands. As identified in the BLM’s Special Status Species Management manual, the objectives of these programs are identified below.
 - a. Conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for the species.
 - b. Initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.
4. The NPS has developed a program for At-Risk Species Program⁶, which coordinates and collaborates with partners on actions to sustain biodiversity and ecological systems that support at-risk species on NPS lands.
5. The NOAA-National Marine Fisheries Service (NOAA Fisheries) is the federal agency responsible for the protection and recovery of certain threatened and endangered species through the ESA. The NOAA Fisheries has adopted several recovery plans for threatened and endangered salmonids, including several populations of Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), and steelhead trout (*Oncorhynchus mykiss*). The purpose of these recovery plans is to provide a road map that focuses and prioritizes threat abatement and restoration actions necessary to recover, and eventually delist, a species.
6. The NOAA Fisheries’ Final Recovery Plan for Central California Coast Coho Salmon⁷ (2012), and the Final Recovery Plan for the Southern Oregon/Northern California

⁴ The BLM’s Threatened and Endangered Species Program can be found at the following location: <https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered/defined>.

⁵ The BLM Special Status Species Manual can be found at the following location: https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blm_policy_manual6840.pdf.

⁶ The NPS’s At-Risk Species Program can be found at the following location: <https://www.nps.gov/subjects/rareandendangered/index.html>.

⁷ The Recovery Plan for the Evolutionarily Significant Unit of Central California Coast Coho Salmon can be found at the following location:

Coast Coho Salmon⁸ (2014), Multi-Species Recovery Plan⁹ (2016), each promote a range of different restoration actions to support the recovery of these species, including but not limited to projects that improve the structure and complexity of riparian areas, erosion and sediment controls to prevent discharges to fish-bearing streams, reestablishment of off-channel habitats, removal of migration barriers, and the reintroduction of large woody material. Similarly, the California Department of Fish and Wildlife has adopted state-level recovery plans for anadromous salmonids protected through the California Endangered Species Act.

7. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act or the Federal Endangered Species Act. Federal Agencies are responsible for meeting all requirements of the applicable Endangered Species Act. Federal Agencies must obtain as necessary, and comply with, all other applicable local, state, and federal regulations and/or required permits. Additionally, this Order requires compliance with the Mitigation Monitoring and Reporting Program, which includes a mitigation measure to address potential impacts to sensitive biological resources.

D. Water Quality Control Plan for the North Coast Region

1. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains the regulations adopted by the North Coast Water Board to control the discharge of waste and other controllable factors affecting the quality of waters of the state¹⁰ within the boundaries of the North Coast Region. The Basin Plan, as amended periodically, establishes:
 - a. beneficial uses of water within the region;
 - b. water quality objectives necessary to protect those beneficial uses;
 - c. prohibitions, policies, and action plans to achieve water quality objectives;

<https://www.fisheries.noaa.gov/resource/document/recovery-plan-evolutionarily-significant-unit-central-california-coast-coho>.

⁸ The Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon can be found at the following location:

<https://www.fisheries.noaa.gov/resource/document/final-recovery-plan-southern-oregon-northern-california-coast-evolutionarily>.

⁹ The Final Coastal Multispecies Recovery Plan for California Coastal Chinook Salmon, Northern California Steelhead and Central California Coast Steelhead can be found here: <https://www.fisheries.noaa.gov/resource/document/final-coastal-multispecies-recovery-plan-california-coastal-chinook-salmon>.

¹⁰ Porter-Cologne defines “waters of the state” to mean any surface water or groundwater, including saline waters, within the boundaries of the state.

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- d. monitoring to ensure attainment of water quality standards; and
 - e. statewide plans and policies.
2. The existing and potential beneficial uses of waters in the North Coast Region include:
- a. Municipal and Domestic Supply (MUN)
 - b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Industrial Process Supply (PRO)
 - 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 (ASBS)
 - p. Preservation of Areas of Special 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)

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- 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)
 - bb. Inland Saline Water Habitat (SAL)
3. Compliance with the conditions in the Order will protect the beneficial uses listed above and promote attainment of water quality objectives.
 4. The Basin Plan was duly adopted by the North Coast Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
 5. The North Coast Water Board has reviewed the contents of the Order, the supporting Environmental Impact Report, written public comments and testimony provided after notice and hearing, and hereby finds that the adoption of the Order is consistent with the Basin Plan and is in the public interest.

E. Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program

1. In 2004, the State Water Board adopted the Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program¹¹ (Nonpoint Source Policy). The Nonpoint Source Policy requires nonpoint source discharges of waste to be regulated by waste discharge requirements, waivers of waste discharge requirements, or Basin Plan prohibitions to ensure compliance with North Coast Water Board water quality control plans.
2. The Nonpoint Source Policy states that implementation programs for nonpoint source pollution control must include five key elements:
 - a. Key Element 1: A nonpoint source control implementation program's ultimate purpose shall be explicitly stated. Implementation programs

¹¹ The Nonpoint Source Policy:
https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf.

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must, at a minimum, address nonpoint source pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

- b. Key Element 2: A nonpoint source control implementation program shall include a description of management practices and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop management practices, and the process to be used to ensure and verify proper management practice implementation. The Regional Water Quality Control Board must be able to determine that there is a high likelihood that the program will attain water quality requirements. This will include consideration of the management practices to be used and the process for ensuring their proper implementation.
 - c. Key Element 3: Where the Regional Water Quality Control Board determines it is necessary to allow time to achieve water quality requirements the nonpoint source control implementation program shall include a specific time schedule and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.
 - d. Key Element 4: A nonpoint source control implementation program shall include sufficient feedback mechanisms so that the Regional Water Quality Control Board, dischargers, and the public can determine whether the program is achieving its stated purpose(s) or whether additional or different management practices or other actions are required.
 - e. Key Element 5: Each Regional Water Quality Control Board shall make clear, in advance, the potential consequences for failure to achieve a nonpoint source control implementation program's stated purpose.
3. As stated in the Order, the purpose of the Order is to address discharges of waste to waters of the state from certain activities on federal lands to ensure conformance with California's water quality laws and regulations and the applicable federal requirements. The Order implements the Key Elements of the Nonpoint Source Policy, where applicable, by requiring:
 - a. control and treatment of sediment sources across federal lands by ensuring implementation of effective management measures, a monitoring program that provides critical information to both federal agencies and to the North Coast Water Board, and effective implementation of Federal Guidance Documents;

- b. a Monitoring and Reporting Program that is intended to provide the North Coast Water Board, communities of interest, and Federal Agencies information on the varied activities covered under the Order and establishes feedback mechanisms—such as BMP implementation monitoring, effectiveness monitoring, in-channel monitoring, and reporting—to ensure that protective measures are implemented and successful; and
- c. Order and Monitoring and Reporting conditions using clear language that outline the enforceability of the requirements and the regulatory and enforcement capability of the North Coast Water Board.

F. Statement of Policy with Respect to Maintaining High Quality of Waters in California

1. In 1968, the State Water Board adopted¹² the Statement of Policy with Respect to Maintaining High Quality of Waters in California, Resolution No. 68-16 (Antidegradation Policy)¹³. The Antidegradation Policy requires whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained. The Antidegradation Policy only allows change in existing high-quality water if it has been demonstrated to the North Coast Water Board that the change is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial uses of such water, and will not result in water quality less than that prescribed in the policies. The Antidegradation Policy further requires that discharges comply with waste discharge requirements that will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality, consistent with the maximum benefit to the people of the state, will be maintained.
2. High quality waters are those surface waters or areas of groundwater that have a baseline water quality better than required by water quality control plans and policies. This determination is made on a waterbody-by-waterbody and constituent-by-constituent basis. In the context of diffuse discharges regulated by a general

¹² Section 131.12 of the U.S. EPA's Water Quality Standards regulations includes the "federal antidegradation policy" which emphasizes protection of instream beneficial uses, especially protection of aquatic organisms, and required each state's water quality standards to include a policy consistent with the federal antidegradation policy. The State Antidegradation Policy is deemed to incorporate the Federal Antidegradation Policy where the federal policy applies under federal law. (State Water Board Order WQ 86-17.)

¹³ The Antidegradation Policy:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf.

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order, the State Water Board provided the following guidance on determinations of whether a discharge impacts high quality waters:

When assessing baseline water quality for a general order, we find a general review and analysis of readily available data is sufficient. . . . Regional Water Boards should not delay the implementation of a regulatory program in order to conduct a comprehensive baseline assessment and analysis—especially where, as here, the general order imposes essentially the same iterative approach for management practices and other requirements regardless of whether or not the receiving water is high quality¹⁴.

3. The Order is consistent with the Antidegradation Policy because implementing the conditions of the Order will result in a net benefit to water quality. The Order contains conditions that require Federal Agencies to implement best management practices and on-the-ground prescriptions for new activities, provide riparian and shade protections and enhancements, address controllable sediment discharge sources, and supports the implementation of beneficial aquatic habitat restoration projects. Effective implementation of best management practices and on-the-ground prescriptions coupled with monitoring of their effectiveness will result in the best practicable treatment or control of the discharge, assure that pollution or nuisance will not occur, and that the highest water quality, consistent with maximum benefit to the people of the state, is maintained.
4. This Order requires that discharges of waste from federal lands shall not cause surface water to be degraded, exceed water quality objectives, unreasonably affect beneficial uses of water, or cause a condition of pollution or nuisance. The attached Monitoring and Reporting Program requires surface water monitoring to evaluate whether the physical, chemical, and biological conditions of a waterbody are supporting beneficial uses and land use activities are sufficiently protective of water quality. Robust and sustained water quality monitoring programs can also provide insights into watershed impairments and whether a waterbody is suitable for listing or delisting under Section 303(d) of the Clean Water Act. The effectiveness of management measures will be evaluated through required monitoring and reporting. Management measures and monitoring may be modified as data are assessed and reported and whenever site evaluations show that measures need to be improved to meet water quality standards.

¹⁴ *In the Matter of Review of Waste Discharge Requirements General Order No. R5- 2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group*, SWRCB Order No 2018-0002 (2018): https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wgo2018_0002_with_data_fig1_2_appendix_a.pdf.

G. Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region

1. In 2004, as part of its efforts to control sediment waste discharges and restore sediment impaired water bodies, the North Coast Water Board adopted *the Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, Resolution R1-2004-0087 (Sediment TMDL Implementation Policy)¹⁵. The Sediment TMDL Implementation Policy states that North Coast Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Sediment TMDL Implementation 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.
2. The Sediment TMDL Implementation Policy directed staff to develop: 1) the Work Plan, which describes how and when permitting and enforcement tools are to be used; 2) the Guidance Document on Sediment Waste Discharge Control; 3) the Sediment TMDL Implementation Monitoring Strategy; and 4) the Desired Conditions Report.
3. This Order implements the Sediment TMDL Implementation Policy directives by requiring Federal Agencies to 1) protect and maintain designated riparian zones; 2) implement site-specific on-the-ground prescriptions to prevent and minimize sediment discharges to watercourses; and 3) systematically treat all controllable sediment discharge sources within each Administrative Unit through the implementation of a Sediment Source Treatment Plan.
4. The goals and requirements of the Sediment TMDL Implementation Policy apply region-wide, regardless of whether a project is located in a 303(d) listed watershed or not.

H. Policy for the Implementation of the Water Quality Objective for Temperature

1. In 2014, the North Coast Water Board adopted the *Policy for the Implementation of the Water Quality Objective for Temperature* (Temperature Policy)¹⁶, Resolution R1-2014-0006. The Temperature Policy directs the North Coast Water Board and its staff to develop and implement permits that prevent, minimize, and mitigate

¹⁵ Information about the Sediment TMDL Implementation Policy can be found at the following web address:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/sediment_tmdl_implementation/.

¹⁶ Information about the Temperature Policy can be found at the following web address:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/temperature_implementation/.

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temperature alterations associated with activities that have the potential to reduce riparian shading of waterbodies, increase sediment delivery, alter stream channel geometry, and reduce instream flows or sources of cold water and cold water refugia.

2. Page 28 of the Staff Report¹⁷ for the Temperature Policy contains the following passage:

Short-term reduction of effective shade associated with fuels reduction projects in riparian areas may be appropriate when the long-term benefits are considered. In such cases, the impacts of vegetation thinning are weighed against the long-term benefits of a riparian ecosystem that is resilient against fire impacts. Similarly, the short-term reduction of shade associated with thinning projects designed to increase the growth rate of retained trees or replace suppressed trees with vigorous saplings may represent an acceptable tradeoff if the project results in increased shade levels in a shorter timeframe. Likewise, a short-term reduction of effective shade associated with efforts to increase deciduous hardwood species in a riparian zone may be appropriate where it can be demonstrated that natural primary productivity levels are suppressed due to a lack of nutrients, leading to a reduced capacity to support beneficial uses, or actions proposed to improve conifer site occupancy in forest stands currently dominated by evergreen hardwoods.

In each of the situations described above, the North Coast Water Board considers the short-term impacts of the proposed action in light of the site-specific conditions in the affected area. Factors taken into consideration include existing water temperatures relative to biological thresholds, the level of solar radiation increase associated with the project, likely temperature impacts associated with the project, the current capacity for support of beneficial uses, condition of riparian vegetation in adjacent reaches, and the expected amount of time for necessary for riparian recovery.

3. This Order implements the Temperature Policy directives by requiring Federal Agencies to protect and maintain designated riparian zones (Order Condition E.1), describe and justify riparian shade removal activities in Section 6 of the Notice of Intent, and implement site-specific on-the-ground prescriptions to prevent and minimize sediment discharges to watercourses.
4. The Temperature Policy states, “Where non-Water Board programs provide riparian shade that result in attainment of water quality standards, the North Coast Water Board will rely on and incorporate those programs.” Refer to Section II.C of the Order, Federal Guidance, and Section III.D below for further information on

¹⁷ The Temperature Policy Staff Report:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/140516_temp/140327_Temp_Policy_Staff_Report_ADOPTED.pdf.

applicable Federal Agency guidance documents and programs, such as the Northwest Forest Plan’s Aquatic Conservation Strategy.

I. Policy in Support of Restoration in the North Coast Region

1. In 2015, the North Coast Water Board adopted the Policy in Support of Restoration in the North Coast Region (Restoration Policy)¹⁸. The Restoration Policy describes in detail 1) the importance of restoration projects for the protection, enhancement, and recovery of beneficial uses, 2) the obstacles that slow or preclude restoration actions, 3) the legal and procedural requirements for permitting restoration projects, 4) the ongoing North Coast Water Board effort to provide support towards the implementation of restoration projects, and 5) direction to staff to continue to support restoration in the future.
2. This Order supports the goals of the Restoration Policy by promoting the implementation of beneficial aquatic habitat restoration projects, identifying the appropriate permitting pathways for aquatic habitat restoration projects (See Order Finding D.5.a.) and allowing for the implementation of these projects for conformance with the Watershed Assessment and Recovery Program (WARP).
3. This Order promotes the goals of the Restoration Policy through its stated support for the USFS Watershed Conditions Framework, through which national forests develop priority watershed-based strategies to address sources of pollution and conduct aquatic habitat restoration activities.

J. State Water Board Resolution No. 92-49

1. State Water Board Resolution 92-49 sets forth the policies and procedures to be used for investigation and cleanup and abatement activities subject to Water Code section 13304. Resolution 92-49, among other provisions, requires that cleanup and abatement be consistent with State Water Board Resolution 68-16, the Statement of Policy with Respect to Maintaining High Quality Waters in California (Resolution 68-16) and that dischargers clean up and abate the effects of discharges in a manner that promotes attainment of background water quality or the best water quality that is reasonable if background levels of water quality cannot be restored. To the extent practical and unless regional board oversight is unnecessary, Resolution 92-49 directs regional board oversight of cleanup and abatement activities and appropriate reporting.
2. This Order is consistent with Resolution No. 92-49. Addressing controllable sediment discharges sources is necessary to address both sediment pollution and ecosystem

¹⁸ Information about the North Coast Water Board’s Restoration Program and Policy can be found at the following web address:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/Restoration/.

impairment and maintain high quality, unimpaired waterbodies. While past Waivers required CSDS treatment within a given project area, this Order replaces project-level treatment with the WARP. The WARP establishes regulatory requirements to advance the systematic treatment of CSDS across federal lands. WARP requirements will ensure appropriate CSDS treatment that promotes attainment of water quality standards and protection of beneficial uses. Additionally, effective implementation of best management practices and on-the-ground prescriptions coupled with monitoring of their effectiveness will result in the best practicable treatment or control of the discharge, assure that pollution or nuisance will not occur, and that the highest water quality, consistent with maximum benefit to the people of the state, is restored and maintained. The Federal Agencies are required to annually report on CSDS treatment obligations, in addition to other monitoring and reporting requirements under the MRP. Treatment obligations are anticipated to be adjusted over time, as treatments are applied, watershed conditions change, and management activities evolve.

K. California Environmental Quality Act

1. The North Coast Water Board, acting as the lead agency under the California Environmental Quality Act¹⁹ (CEQA), adopted an environmental impact report as part of the development of this Order. Two categorical exemptions are also applicable under title 14, California Code of Regulations sections 15307 and 15308, for certain actions by regulatory agencies to maintain, restore, or enhance natural resources and to protect the environment. Mitigation measures necessary to reduce or eliminate significant impacts on the environment and monitoring and reporting are incorporated as conditions in this Order.
2. The Order may authorize projects that temporarily exceed water quality objectives and/or result in temporary significant impacts. However, the net outcome of the Order requirements (e.g., implementation of best management practices, controllable sediment discharge source treatments, riparian/shade protections, etc.) are designed to avoid, minimize, or mitigate for any potential environmental impacts.

L. Other State or North Coast Water Board Orders

1. Certain federal land management activities not covered by this Order (Finding D.5) may require a Federal Agency to obtain a separate State or North Coast Water Board permit. Federal Agencies must contact the North Coast Water Board if they are unsure whether certain land management activities require enrollment under other State or North Coast Water Board permits.

¹⁹ Public Resources Code, sections 21000-21777.

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2. Discharges covered under this Order may be superseded if the State Water Board adopts specific WDRs or general WDRs to cover specific types of discharge.
3. Federal Agencies must obtain coverage under the statewide Construction Stormwater General Permit for construction projects unrelated to silvicultural activities on federal lands that disturb one or more acres of soil or less than one acre but are part of a larger common plan of development that in total disturbs one or more acres²⁰.

II. Tribal Consultations and Community Outreach and Engagement

A. Tribal Consultations

1. On July 1, 2022, tribal consultation invitation letters pursuant to Assembly Bill 52 and Executive Order B-10-11 were issued to 58 California Native American Tribes in the North Coast Region (Tribes). The purpose of the consultation invitation letters was to notify Tribes of the development of the Federal Lands Permit and supporting Environmental Impact Report and of opportunity to consult with North Coast Water Board staff on the project.
2. North Coast Water Board staff engaged in government-to-government consultations with seven Tribes and considered recommendations from Tribal representatives in the Federal Lands Permit and supporting Environmental Impact Report development process.

B. Community Outreach and Engagement

1. Water Code section 189.7 requires the Water Boards to conduct equitable, culturally relevant outreach when considering proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged or tribal communities. Water Code section 13149.2 requires the Water Boards to make findings on anticipated water quality impacts in disadvantaged or tribal communities as a result of a permitted activity or facility, any environmental justice concerns within a Water Board's authority that are raised by interested persons regarding those water quality impacts, and available measures within the Water Board's authority to address those water quality impacts when adopting water quality control plans; policies for water quality control; regional or statewide waste discharge requirements or waivers; or certain individual waste discharge requirements or waivers.
2. The Federal Lands Permit authorizes federal land management activities that have the potential to discharge waste to waters of the state, and as such, North Coast

²⁰ Construction Storm Water program information and eligibility requirements may be accessed at the following webpage:

https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html.

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Water Board staff conducted actions consistent with Water Code sections 189.73 and 13149.2 requirements as part of the development of the Order. All activities undertaken by Federal Agencies must comply with Federal Guidance and applicable federal best management practices (BMPs) for water quality protection identified in Conditions C.2-10 of this Order, which are designed to minimize potential water quality impacts at a given project location and in downstream receiving waterbodies. In some circumstances, however, a Federal Agency's land management activities could cause a significant discharge of waste, such as a landslide or hazardous materials spill, which may have the potential to result in a disproportionate impact to a disadvantaged community or tribal community.

3. North Coast Water Board staff conducted several actions to provide meaningful outreach to disadvantaged communities and tribal governments that could be affected because of the adoption and implementation of this Order, including the following:
 - a. Conducted outreach to 64 Tribes in the North Coast Region to provide an opportunity to conduct government-to-government consultations regarding the scope and purpose of the Federal Lands Permit and its supporting CEQA analysis.
 - b. Held government-to-government consultations with six Tribes over a six-month period to receive input on the overall structure of the Order, listen to any concerns regarding the activities covered through the permit, and modify its requirements as necessary.
 - c. Conducted two CEQA public scoping meetings in October 2022 with facilitation assistance from the State Water Board's Office of Public Participation.
 - d. Held a public workshop in April 2024, during the extended public review period, to provide an opportunity for communities of interest to learn about the draft Order and allow for written or verbal comments.
 - e. Held a public hearing in August 2024, including an opportunity for members of the public to provide written and oral statements to the North Coast Water Board as its members consider adoption of the Order.
4. Following Order adoption, all projects proposed to be enrolled under the Federal Lands Permit – except for some emergency actions taken through a categorical exclusion – will go through a public review and comment process administered by the federal agency conducting the activity. Additionally, North Coast Water Board staff will consider, on a project-by-project basis, whether additional outreach is appropriate. If North Coast Water Board staff determine that a land management activity poses an elevated risk to a community based on project characteristics (e.g., size, activity type, landscape condition, or beneficial use sensitivity), they will engage

with and seek input from those potentially affected communities in advance of enrollment under the Federal Lands Permit.

III. Federal Agency-Specific Findings

A. United States Forest Service

1. In 1981, the State Water Board signed a Management Agency Agreement with the USFS Pacific Southwest Region. In the Management Agency Agreement, the USFS proposed a BMP manual and the accompanying BMP Effectiveness Program to control nonpoint source discharges on National Forest lands. The State Water Board reviewed and accepted the BMP manual and BMP Effectiveness Program and designated the USFS as a Water Quality Management Agency²¹, pursuant to CWA Section 208. From 1981 until the adoption of the 2004 Nonpoint Source Policy nonpoint source discharges on National Forest lands were addressed through the administration of the Management Agency Agreement. Implementation of the North Coast Water Board nonpoint source permitting program on Federal lands in 2004 largely superseded the Management Agency Agreement as the primary federal nonpoint source pollution control program in the North Coast Region.

B. Bureau of Land Management

1. With the passage of the Federal Land Policy and Management Act in 1976, Congress directed the BLM to retain most remaining public lands in the United States. These lands included many undesirable Homestead Act tracts, which are noncontiguous, scattered, and isolated tracts that are difficult or uneconomic to manage. Many of the BLM lands in the North Coast Region follow this land area and distribution pattern. The Order and Monitoring and Reporting Program acknowledge the unique land management challenges presented to the BLM by the nature of these lands and aims to help facilitate productive water quality protection and monitoring as feasible.

C. National Park Service

1. The NPS and California Department of Parks and Recreation, in partnership with the Save the Redwoods League, collectively called the Redwoods Rising Collaborative, initiated two projects in Redwood National and State Parks – the Greater Prairie Creek Ecosystem Restoration and Greater Mill Creek Ecosystem Restoration Projects – to rehabilitate the Prairie and Mill Creek Watersheds and restore ecosystem processes that have been degraded by historical land use. These projects intend to

²¹ Background information on the designation of the USFS as a Water Quality Management Agency may be accessed at the following webpage:
<https://www.fs.usda.gov/detail/r5/landmanagement/resourcemanagement?cid=stelprdb5352594>

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accelerate development of forest characteristics more typical of late-seral forests, prevent and minimize further chronic and catastrophic sediment inputs to watercourses, and enhance aquatic species habitat. These projects commenced in 2020 and will be implemented over 30 to 35 years.

2. The Greater Prairie Creek Ecosystem Restoration and Greater Mill Creek Ecosystem Restoration Projects contain both federal and state lands within Redwood National and State Parks. State lands within the project areas are eligible for coverage under the Federal Lands Permit due to the 1994 Memorandum of Understanding between the NPS and California Department of Parks and Recreation, which established the cooperative management of the state and federal lands within Redwood National and State Parks²².

D. Federal Guidance

1. The following Federal Guidance documents apply to all Federal Agencies.
 - a. National Environmental Policy Act (1969) – requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
 - b. Administrative Procedures Act (1946) – provides a framework for how federal agencies develop and issue projects and regulations.
 - c. Clean Water Act (1972) – establishes the basic structure for regulating discharges of pollutants into waters of the United States and regulating quality standards for surface waters. The Clean Water Act delegates implementation authority to individual states.
 - d. Federal Land Policy and Management Act (1976) – establishes public land policy and establishes guidelines for its administration.
 - e. Wilderness Act (1964) – established to preserve and protect certain federal lands “in their national condition” and thus “secure for present and future generations the benefits of wilderness.”
2. The USFS and BLM must comply with the policy and associated documents identified below as Federal Guidance documents.

²² Appendix C of the Redwood National and State Parks General Plan – 1994 National Park Service and California Department of Parks and Recreation Memorandum of Understanding for the Cooperative Management of Redwood National and State Parks: <https://www.parks.ca.gov/pages/21299/files/GMP.pdf>.

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3. The Northwest Forest Plan, including the Aquatic Conservation Strategy and its management objectives, (1994) – requires the USFS and BLM to “Meet or exceed State water quality standards and protect designated beneficial uses²³.”
4. The USFS must comply with the policies and documents identified below as Federal Guidance documents.
 - a. National Forest Land and Resource Management Plans – guide natural resource management activities and decision-making and establish standards/guidelines for each National Forest.
 - b. USFS Pacific Southwest Region Forest Service Handbook 2509.22 – Soil and Water Conservation Handbook (2011) – provides guidance for protection and improvement of water quality on National Forest System lands in California.
 - c. USFS publication FS-977, Watershed Condition Framework (2011) – a comprehensive approach for proactively implementing integrated restoration on priority watersheds on National Forests and grasslands.
 - d. USFS Manual, Chapter 2020 (2008) – provides a policy for using ecological restoration in the management of NFS lands, further supporting watershed analysis and restoration, and the ACS.
 - e. USFS 2012 Planning Rule for National Forest System Lands (2012) – requires all National Forest Land and Resource Management Plans to include components to maintain or restore the structure, function, composition, and connectivity of aquatic ecosystems and watersheds in the Plan area, considering potential stressors, including climate change, how they might affect ecosystem, and watershed health and resilience.
 - f. USFS National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1, FS-990a (2012) – a nonpoint source pollution control program aimed at restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters located within or near the National Forests and grasslands.
5. The BLM must comply with the policies and documents identified below as Federal Guidance documents.
 - a. Field Office or Joint Field Office Resource Management Plans – establish goals and objectives to guide future land and resource management actions implemented by the BLM.

²³ Northwest Forest Plan Final Supplemental EIS, Appendix B, page B-12.

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- b. Best Management Practices for Water Quality, BLM California (2022) – incorporates Best Management Practices for BLM Field and District Offices in California to aid in compliance with the federal Clean Water Act and Porter-Cologne Water Quality Control Act.
6. The NPS must comply with the policies and documents identified below as Federal Guidance documents.
 - a. General Management Plans – ensure that each NPS area has a defined direction for resource preservation and visitor use, focuses on why the area was established, and what resource conditions and visitor experiences should be achieved and maintained over time.
7. The USFS and BLM must implement and comply with the Aquatic Conservation Strategy, Aquatic Management Strategy, and the Riparian Reserve program²⁴ to prevent, minimize, and mitigate sediment discharges by following the appropriate BMPs and standard erosion control techniques for activities adjacent to streams and drainages or other locations or situations where potential for discharge exists.

²⁴ The Aquatic Conservation Strategy, Aquatic Management Strategy, and Riparian Reserve program are included in the Northwest Forest Plan, which only applies to the USFS and BLM.