

**Central Valley Regional Water Quality Control Board  
13 December 2024 Board Meeting**

**Response to Written Comments on**

**Tentative Waste Discharge Requirements for Nonpoint Source Discharges  
Related to Certain Activities Conducted by the United States Forest Service and  
the Bureau of Land Management and Associated Draft Environmental Impact  
Report**

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At a public hearing scheduled for 12/13 December 2024, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Water Board) will consider adoption of Tentative Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities Conducted by the United States Forest Service and the Bureau of Land Management (referenced as Draft Order or Order) and certification of the associated Draft Environmental Impact Report (DEIR).

This document contains written comments received from interested persons on the Draft Order and DEIR and staff responses to those comments. The Draft Order and DEIR were issued for a 45-day public comment period on 9 May 2024 with comments due by 23 June 2024. During the public comment period, Staff received 13 letters. The organizations and individuals who submitted comments are listed in Table 1.

Written comments are summarized below, followed by Central Valley Water Board Staff responses to those comments. Complete copies of timely submitted comments have been included in the record and are available upon request.

To avoid repetition of responses, Staff reference prior responses where appropriate. Where a response does not identify proposed changes, staff are not recommending changes to the Draft Order or DEIR. Additional proposed changes initiated by Water Board Staff to the Draft Order are included at the end of this document.

**Table 1. List of Comments Received**

| <b>Identifier</b> | <b>Commenter</b>  | <b>Page(s)</b> |
|-------------------|---|----------------|
| A                 | U.S. Forest Service (USFS), Pacific Southwest Region, and Bureau of Land Management (BLM), State Office, Joint Letter | 2-17           |
| B                 | BLM, State Office   | 17-25          |
| C                 | USFS, Bill Wall   | 25-26          |
| D                 | USFS, Eldorado National Forest  | 27-33          |
| E                 | USFS, Lassen National Forest  | 33-37          |
| F                 | USFS, Mendocino National Forest   | 37-40          |
| G                 | USFS, Sierra National Forest  | 40-41          |
| H                 | USFS, Tahoe National Forest   | 42-45          |
| I                 | California Department of Fish and Wildlife  | 45-49          |
| J                 | Central Sierra Environmental Resource Center  | 49-67          |
| K                 | Center for Biological Diversity   | 67-68          |
| L                 | Sacramento and American Rivers Source Watershed Protection Program  | 68             |
| M                 | California Off-Road Vehicle Association   | 69-71          |

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**A. PERMITTEE - UNITED STATES FOREST SERVICE (USFS), PACIFIC SOUTHWEST REGION, AND BUREAU OF LAND MANAGEMENT (BLM), CALIFORNIA STATE OFFICE, JOINT LETTER**

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**A1. USFS AND BLM COMMENT #1 – Engagement**

The USFS and BLM (Federal Agencies) noted the importance of addressing nonpoint source issues and past engagement, since 2016, with Central Valley Water Board staff on permit development. The Federal Agencies believe most of their input has not been incorporated into the Draft Order and DEIR and noted they may pursue alternative paths to remedy what they believe are untenable permit requirements.

**A1. RESPONSE:** Central Valley Water Board staff (Staff) appreciate the significant time invested by both Federal Agencies throughout the Order development process. Throughout the Order development process, Staff have sought alternative proposals and, where appropriate, incorporated feedback and comments provided by the Federal Agencies. As described in the Draft Order and attachments, there are a number of statutes and regulations, such as the Nonpoint Source Policy, that govern the Board's permitting. The statewide Nonpoint Source Implementation and Enforcement Policy specifically requires that all current and proposed nonpoint source discharges be regulated under waste discharge requirements (like the Draft Order), waivers of waste discharge requirements, or a basin plan prohibition. Staff believe the Draft Order strikes a balance between the feedback and comments received from the Federal Agencies, and the need to consistently and appropriately regulate nonpoint source discharges throughout the Central Valley Region.

## **A2. USFS AND BLM COMMENT #2 – Statewide Consistency**

The Federal Agencies noted similar/related permitting efforts before the North Coast and Lahontan Regional Water Quality Control Boards and recommend a consistent statewide process for addressing nonpoint source issues on Federal lands.

**A2. RESPONSE:** Developing a statewide permit is not within the jurisdiction of the Central Valley Water Board. Given the unique waterbody attributes and varied beneficial uses, water quality conditions, and staff resources found across the different regional water quality control board boundaries, Central Valley Water Board Staff believe that establishing an independent regulatory program, specific to federal land management activities within the Central Valley Region, remains the best course of action. Staff have continued to seek administrative and compliance efficiencies throughout the development of the Draft Order and have incorporated lessons learned from permitting of USFS timber harvesting activities since 2005, most recently under the Waste Discharge Requirements General Order for Discharges Related to Timberland Management Activities for Non-Federal and Federal Lands, Order R5-2017-0061 (2017 General Order). Staff have also incorporated feedback gained from the Federal Agencies during development of the Draft Order and aligned requirements and definitions, where appropriate, with other regional water board permitting.

The State Water Resources Control Board (State Water Board) previously developed—but did not adopt—a statewide permit to address nonpoint source pollution on USFS lands from a variety of activities. In 2009, the State Water Board adopted Resolution No. 2009-0064, directing staff to develop a new statewide approach addressing forest activities on National Forest lands. After several years of development, the State Water Board’s Division of Water Quality (DWQ) proposed a new statewide Conditional Waiver of Waste Discharge Requirements and an accompanying CEQA mitigated negative declaration to the State Water Board for consideration of adoption during a December 2011 public meeting. At that time, the State Water Board decided to not move forward with a statewide permit and instead supported continuation of region-specific regulatory approaches led by the regional water quality control boards. Therefore, the Central Valley Water Board—as well as several other regional water quality control boards—continued to develop, implement and renew regulatory programs to address nonpoint sources of pollution within its regional boundaries, including on federally managed lands.

Central Valley Water Board Staff commit to ongoing coordination with the other Water Boards and Federal Agencies to assess additional improvements in efficiency and consistency and have added a finding to the Draft Order to memorialize this commitment.

**PROPOSED REVISION:** The following Finding has been added as Section I.6 of the Draft Order and the other findings renumbered accordingly:

6. Other regional water quality control boards have existing, or are currently developing, similar regulatory programs for federal land management activities. The Central Valley Water Board commits to ongoing coordination with the State Water Resources Control Board (State Water Board), other regional water quality control boards, and the Permittees to assess whether there could be improvements in efficiency and consistency by developing statewide standards for management of discharges from activities on federal lands, while recognizing regional differences.

### **A3. USFS AND BLM COMMENT #3 – Regulatory Authority and Funding Limitations**

The Federal Agencies suggest that the Central Valley Water Board lacks legal authority to institute watershed-scale sediment source planning and implementation and notes that these measures require a commitment to assessments and treatments for which no funding is allocated to the Federal Agencies outside of Clean Water Act Section 319 funding, which the State of California already receives from the Federal Government.

**A3. RESPONSE:** Central Valley Water Board Staff disagree that requiring compliance with the Controllable Sediment Source Reduction Program (CSSRP) is outside the Board’s water quality regulatory authority.

Pursuant to federal Clean Water Act section 313, “each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.” (33 U.S.C. § 1323, subd. (a).) “[F]ederal agencies managing federal lands generally must comply with the water pollution laws and regulations of the relevant State, including the State’s laws concerning discharges from nonpoint sources.” (*Central Sierra Environmental Resource Center v. Stanislaus National Forest* (9th Cir. 2022) 30 F.4th 929.)

The Central Valley Water Board, along with the State Water Board and other regional water quality control boards, is charged with coordination and control of water quality in the state of California. (Wat. Code, §§ 13001, 13200 et. seq.) The Central Valley Water Board exercises this authority through, among other tools, its authorities under Water Code sections 13267 and 13304. Water Code section 13267 authorizes the Board to require “any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste ” to provide technical or

monitoring reports. Water Code section 13304 requires any person "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" to clean up or abate the effects of the waste. Consistent with State Water Board Resolution 92-49 (Cal. Code Regs., tit. 23, section 2907), the regional water board generally requires a progressive sequence of actions when requiring cleanup or abatement of wastes, including site assessment, proposal and selection of cleanup and abatement action, implementation of cleanup and abatement action, and monitoring.

The CSSRP, as proposed, is intended to address and abate controllable sediment sources on federally managed lands in a systematic manner over time. As discussed in findings to the Draft Order, addressing controllable sediment sources, such as hydrologically connected unpaved roads and undersized watercourse crossings, is necessary to prevent sediment pollution and pollution by other constituents transported via sediment movement. Sediment discharges can result in negative water quality impacts including lowered dissolved oxygen conditions, increased stream temperatures, smothered fish redds and eggs, increased turbidity, infrastructure failure, and destabilization of stream channels. The CSSRP requires the Federal Agencies to identify one or more hydrologic unit code (HUC) 12 watersheds for assessment and treatment, prepare and implement an assessment plan, and prepare and implement a treatment plan. This process occurs over a number of years, allowing for 10 years to complete treatments, and repeats for one or more successor watersheds on a seven-year cycle through the duration of the Order. This program is appropriately imposed upon the Federal Agencies pursuant to the above authorities.

Central Valley Water Board Staff recognize potential issues with varying congressional appropriations and limitations on spending and, based on feedback from the Federal Agencies during permit development, inserted language in the Draft Order to this effect. As recognized in Section II.B.6 of the Draft Order, nothing in the Order shall be interpreted to require payment of unappropriated funds, and any specific project that involves commitment of funds are contingent upon the availability of appropriated funds. At the same time, the Board must uphold its mission to protect the qualities of waters within the region and implement its discharge authorities, and the Federal Agencies are responsible for ensuring sufficient funds for compliance with applicable pollution control standards are requested in agency budget. (Executive Order No. 12088 (43 FR 47707,47708) (Oct. 13, 1978), Section 1-5 (Funding) [Executive Order 13148 (Apr. 21, 2000) (65 Fed. Reg. 24595) revoked section 1-4 (Pollution control plan) of Executive Order 12088].) Furthermore, Clean Water Act section 313 addresses potential appropriation limitations. In particular, section 313(a) discusses the process for exempting projects from the requirements of section 313. Under this section, no such exemptions shall be granted due to lack of appropriation unless the appropriation was specifically requested as part of the budgetary process and Congress failed to make

available such requested appropriation. Accordingly, while the Board recognizes potential funding issues, it must fulfill its water quality charge and the Federal Agencies, in turn, must appropriately budget for regulatory compliance.

#### **A4. USFS AND BLM COMMENT #4 – Competing Priorities**

The Federal Agencies comment that the Draft Order effectively requires them to choose between implementing wildfire treatments or complying with the various permitting requirements.

**A4. RESPONSE:** Central Valley Water Board Staff have been heavily involved in multi-agency coordination efforts related to the Governor’s Wildfire and Forest Resilience Task Force and understand well California’s goals of increased pace and scale to prevent catastrophic wildfire. Staff believe the Draft Order creates regulatory efficiencies and will both protect water quality and not interfere with increased pace and scale of forest health activities.

The Draft Order’s programmatic approach creates efficiencies by leveraging existing federal mandates and processes and by reducing workload associated with a more traditional project-by-project permitting approach. With an individual permit approach, permitting a single project can take multiple months, if not years, and the resulting permit must contain standards for achieving water quality protection and monitoring and reporting requirements, including deadlines, tailored to the individual project. These project-specific requirements could result in changes to the originally proposed project, delays in implementation, and site-specific monitoring and reporting requirements.

Water Board Staff analyzed USFS and BLM projects available for scoping on their respective public-facing planning websites proposed between July 2022 and July 2024, and estimate that approximately 177 out of the 207 USFS projects and 79 out of the 179 BLM projects would be eligible for coverage under the Draft Order<sup>1</sup>. These projects would be covered through a simple notification process under the programmatic Order, instead of facing administrative burdens and time delays of engaging Water Board Staff to identify appropriate potential individual permitting mechanisms. Accordingly, staff do not believe that the Draft Order will interfere with necessary forest health projects.

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<sup>1</sup> Given the oftentimes generalized nature of information available for federal project scoping, the analysis required staff to make some assumptions about potential land-disturbance to determine which Order category the project would likely fall under. The analysis also excluded special use permits, planning type projects, mining development projects, grazing allotments, and those projects that would require construction stormwater permits and/or federal 404 permitting and associated state 401 certification.

## **A5. USFS AND BLM COMMENT #5 – Restoration of Beneficial Uses**

The Federal Agencies, referring to Draft Order Finding 3, commented that they continue to request evidence to support the need for “restoration of beneficial uses” or to demonstrate that water quality exceedances from land management activities have occurred.

**A5. RESPONSE:** As stated in Finding 3, the purpose of the Order is to ensure the protection and restoration of the beneficial uses of waters of the state from nonpoint source pollution resulting from activities conducted by, or on behalf of, the Federal Agencies. The Draft Order would regulate certain land management activities conducted by the Federal Agencies that may result in a discharge of waste to surface waters and require abatement of ongoing discharges or threatened discharges from controllable sediment sources in a manner that aligns with expectations/standards set out for private and state projects. Along with necessary monitoring and reporting, these requirements aim to fulfill the Order’s purpose and both protect and, where necessary, restore the Region’s waterways. Proof of impaired waterways or water quality exceedances is not a prerequisite to the Board’s regulation.

Water Board Staff have, on numerous occasions, encountered water quality concerns and complaints on lands managed by the USFS and BLM. In several instances over the last 15 years, these have resulted in issuance of Notices of Violation, 13267 Orders for technical reports, and/or Cleanup and Abatement Orders. As recognized in USFS and BLM comments (See Comments A12 and B2), sediment sources exist on the landscape that require treatment.

Specific to USFS projects enrolled under the Waste Discharge Requirements General Order for Discharges Related to Timberland Management Activities for Non-Federal and Federal Land, Order No. R5-2017-0061 (Timber General Order), Staff analyzed 60 enrolled projects for four National Forests and found that 675 Significant Existing or Potential Erosion Sites were identified (typically associated with unpaved roads) with no treatment proposed for 587 of these sites (approximately 89%). In total Forest Service staff estimated 13,961 cubic yards of sediment delivered and 40,963 cubic yards of sediment potentially subject to discharge from the identified sites.

It is also important to note the vast scale of federal lands within the Central Valley Region (roughly 10.9 million acres) and the extensive unpaved road network within those lands. As noted in Response A3, unpaved roads are a primary source of sediment discharges if not properly treated: within the Central Valley Region the USFS has approximately 27,767 miles of roads and trails and the BLM has approximately 2,986 miles of roads and trails.

## **A6. USFS AND BLM COMMENT #6 – Definition of Waste**

The Federal Agencies commented that the definition of “waste” under the Water Code does not appear to include “earthen” or “organic” materials and expanding the definition may impede land management project activities, such as vegetation and timber restoration.

**A6. RESPONSE:** Waste, as defined in Water Code section 13050, “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.” Sediment, when discharged to waters of the state stemming from the activities covered under the Order, is a waste under Water Code section 13050. (See *Lake Madrone Water Dist. v. State Water Resources Control Board* (1989) 209 Cal. App. 3d 163 [holding sediment from dam operation constituted waste under Water Code section 13050]; *Santa Clara Valley Water Dist. v. San Francisco Bay Regional Water Quality Control Board* (2020) 59 Cal. App. 5th 199 [holding increased sedimentation from creek widening constituted discharge of waste under Water Code section 13050].)

## **A7. USFS AND BLM COMMENT #7 – Reporting**

The Federal Agencies questioned the need for the robust reporting required under the Draft Order when there are only three locations that are 303(d) listed for sediment on or near federal managed lands within the Central Valley Region.

**A7. RESPONSE:** The Water Board's monitoring and reporting authority is not limited to 303(d) listed, or impaired, water bodies. Pursuant to Water Code section 13267, the Board may investigate the quality of any waters of the state within its region by requiring any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region to furnish technical or monitoring reports. As stated in the Monitoring and Reporting Program, Attachment B, the monitoring and reporting will be used to verify the effectiveness of best management practices in preventing discharges of waste and to evaluate each Permittee's compliance with the terms and conditions of the Order. Additionally, the Nonpoint Source Policy, among other requirements, requires sufficient feedback mechanisms so that the Board, dischargers, and the public can determine whether the nonpoint source program is achieving its stated purpose and whether additional or different management practices or other actions are required. Accordingly, Staff believes the minimal visual monitoring and reporting requirements within the Draft Order are justified.



## **A8. USFS AND BLM COMMENT #8 – Training and Certification**

The Federal Agencies commented that the Training Certification requirement under Draft Order Section II.I. is not practical to implement as many different federal personnel may have responsibility for project phases and there may also be frequent personnel turnover. Additionally, the Federal Agencies noted this requirement may burden the Water Board to frequently train new federal personnel.

**A8. RESPONSE:** The training program being developed will be available online for self-paced and on-demand viewing, completion, and refreshing on specific topics. It will provide training on Order conditions and requirements along with providing information on water quality specific BMPs. Based on feedback provided by the Federal Agencies, it will be accessible to any and all levels of staff to ensure that the Federal Agencies leverage even seasonal workers (should they wish to) in implementing Order requirements. This method of training will not burden existing Water Board Staff and offers the oft-requested flexibility for Federal Agency staff. This training is meant to assist the Federal Agencies in maintaining permit compliance, in part by allowing for training of a wider selection of staff that may be involved with permit compliance. This training requirement will help ensure an understanding of Order conditions and requirements, proper BMP selection and implementation and, given the scale of permitted activities, will supplement Water Board oversight of covered activities.

The Training and Certification requirement does not require that multiple staff areas within the USFS or BLM be certified, unless the Federal Agency requires such multiple area certification. Requiring the Federal Agency staff responsible for Order compliance to have a baseline level of understanding of Order requirements and the water quality BMPs of specific concern to Water Board Staff, while not equivalent to the licensed professional requirements other state and private land managers are subject to in California, provides the Water Board with assurance that projects will meet water quality protection and restoration standards, without necessitating Staff review and inspection of each individual project prior to operations. Therefore, Water Board Staff believe that individuals responsible for the design, implementation, or monitoring of projects covered under this Order must be certified or be working under the direction of an individual with current certification.

To alleviate concerns with the scope and burden of the requirement, Staff propose the below revisions to the Draft Order.

**PROPOSED REVISIONS:** Revise Order section II.C.8 as follows:

Persons responsible for the design, implementation, or monitoring of projects conducted under this Order shall have a current certificate of completion of the Training Program or work directly under staff that have completed the Training Program and retain current certification. (Order section II.I.)”

Revise Order, section II.I.1 as follows:

The Permittee must ensure that all staff (permanent or seasonal) responsible for Order compliance (i.e., submittal of reports and notifications, evaluation and assessment of water quality conditions including CSDS assessments, selection of BMPs, design of site-specific prescriptions, monitoring, and reporting, etc.) complete the Training Program and obtain a certificate of completion (certification) or work directly under staff that have completed the Training Program and retain current certification.

Revise Order, Section II.I.2 as follows:

All documents required for submittal under this Order (see also MRP, Attachment B) (e.g., NPO, Annual Report, Discharge Incident, Pesticide Notification, Reports under the CSSRP and associated WTPs, etc.) must be ~~submitted~~ signed by an authorized representative with current certification.

#### **A9. USFS AND BLM COMMENT #9 – Pesticide Application**

The Federal Agencies commented on pesticide application restrictions in the Draft Order, noting that spraying invasive species immediately after a fire is one of the best times to eradicate invasive species and waiting until the weeds cover the side of the hill increases costs and amount of herbicide needed.

**A9. RESPONSE:** Staff note a clerical error in Order section II.C.18.b.ii; please see the proposed revision below.

The Draft Order is intended to specifically restrict Category A and B projects from applying pesticides within buffer zones and in areas burned within the previous 3 years on slopes greater than 30% unless 50% or greater effective ground cover is present. This requirement is consistent with requirements for USFS timber harvest projects in the Central Valley region covered by the Waste Discharge Requirements General Order for Discharges Related to Timberland Management Activities for Non-Federal and Federal Land, Order No. R5-2017-0061 (Timber General Order). This requirement has been successfully met by the USFS since implementation of the Timber General Order in 2017.

To address similar concerns presented by the USFS and others during development of the Timber General Order, a provision to allow pesticide application in areas where effective ground cover is below the 50% requirement included the option to submit a post fire management plan; however, that option has rarely been utilized by the USFS throughout the significant fire seasons since 2017. Further, Staff's experience evaluating Timber General Order compliance on USFS and non-federal projects has shown that the 50% effective ground cover requirement is frequently met through protective soil rock content and natural revegetation processes, even immediately

post-fire and without dedicated efforts to restore ground cover, but that analyzing presence of effective ground cover to inform pesticide use is necessary to ensure water quality protection.

Water Board Staff acknowledge the value of pesticide use when conducting land management activities; however, pesticide use must be balanced with appropriate measures for the protection of water quality. In addition to concerns related to the direct discharge of pesticides to receiving waters, increased sedimentation resulting from prolonged ground cover reduction caused or maintained by pesticide effects is a primary concern for water quality impacts, especially in post-fire environments where anthropogenic activities should not exacerbate post-fire erosion. Multiple studies have shown that the percent of ground cover acts as the primary and dominate factor in controlling erosion and sediment yield in the post-fire environment. Research consistently indicates that 50% ground cover functions as the threshold where erosion and sediment production is significantly reduced (Draft Order, Attachment E Fact Sheet, Pesticide Application Requirements, Post Wildfire Management Ground Cover Requirements).

Per Draft Order Section II.C.13, projects, based on size, intensity, or potential water quality impacts, may not qualify for coverage under the Order. Where a Federal Agency plans activities, including pesticide applications, that do not qualify for coverage under the Order, Central Valley Water Board Staff will assist in identifying appropriate permitting mechanisms on a project-by-project basis.

**PROPOSED REVISION:** Revise Section II.C.18.b.ii. as follows:

Not apply pesticides in areas burned within the previous 3 years, ~~or~~ on slopes greater than 30%, unless 50% or greater effective ground cover is present to prevent chemical and sediment transport to downslope surface waters.

#### **A10. USFS AND BLM COMMENT #10 – Pesticide Application**

The Federal Agencies questioned the need to notify the Central Valley Water Board 15 days in advance of proposed pesticide applications when they notify the Board, in writing, at the time they complete a NEPA document and also notify the Board right after application.

**A10. RESPONSE:** The information related to pesticide application provided in the NEPA documents is often overly broad, lacks necessary details for Central Valley Water Board Staff review, and could be produced years ahead of the proposed application. The notification required in the Draft Order seeks information that should be readily available by those responsible for the applications, and provides Water Board Staff with additional site-specific details to assess risks to water quality, including planning and conducting water quality sampling. Staff will develop an optional pesticide notification form to

reduce the burden on the Federal Agencies and ensure that only necessary information is captured/transmitted to Water Board Staff.

#### **A11. USFS AND BLM COMMENT #11 – Pesticide Application**

The Federal Agencies commented on the requirement to notify the Board of changes to the pesticide application proposal in writing no less than 48 hours prior to pesticide application and questioned if this applies to third parties applying pesticides on federal lands.

**A11. RESPONSE:** As documented in Finding 1, the Draft Order is proposed to be issued to the USFS and BLM for activities that they undertake or that are undertaken on their behalf, and does not apply to third-party activities occurring on USFS and BLM land. Pesticide applications occurring outside of activities covered under the Order may require separate permitting coverage.

#### **A12. USFS AND BLM COMMENT #12 – Sediment Source Assessment and Treatment**

The Federal Agencies reiterated objections to the sediment source assessment and treatment requirements within the Draft Order. The Federal Agencies acknowledged the importance of treating sediment sources and implementing road repair and maintenance where needed, but commented that absent additional funds from Congress, the Draft Order does not provide an effective means of increasing these treatments, and the Federal Agencies assert these requirements exceed the scope of the Board's authority because there is no authorized funding outside of Clean Water Act Section 319. The Federal Agencies also noted that focusing road repairs based on a watershed scale treatment planning approach only, while beneficial in theory, becomes rapidly impractical given limited federal funding and the need for the Federal Agencies to balance all environmental factors and public safety and access concerns. The Federal Agencies commented that additional monitoring and reporting programs will consume significant staff resources with extensive administrative burdens and reduce the time the Federal Agencies will have to commit to actual substantive work.

**A12. RESPONSE:** See Responses A3 and A7 above.

Regarding sediment source assessment and treatment, Water Board Staff appreciate the shared recognition of the need for road repair, maintenance, and improvements and the importance of treating sediment sources on federally managed lands. The Draft Order includes (1) project-scale inventory and assessment for treatment; and (2) watershed assessment and treatment. Treatment of the former category may be deferred to a future project or as part of the watershed treatment approach. Assessment and treatment under the latter category occurs over a number of years, allowing for 10 years to complete treatments in a watershed, and was designed to ensure

systematic treatment of sediment sites while also providing the Federal Agencies flexibility to align restoration actions with their priorities and funding opportunities. In particular, the first step of the CSSRP, Targeted Watershed Selection Criteria, allows the Permittees to identify one or more HUC 12 watersheds for assessment and treatment based on several criteria.

Finally, Staff do not believe the minimal visual monitoring and reporting requirements within the Monitoring and Reporting Program, which are necessary to verify the effectiveness of best management practices in preventing discharges of waste and to evaluate each Permittee's compliance with the terms and conditions of the Order, are overly burdensome or will interfere with projects being conducted. To further ease compliance with reporting requirements, Staff have developed optional templates that will be available for use by the Federal Agencies.

### **A13. USFS AND BLM COMMENT #13 – Controllable Sediment Source Reduction Program**

The Federal Agencies commented on the numerous submittals associated with the CSSRP and that the time between completion of the Field Assessment Plan and submittal of the Watershed Treatment Plan is not realistic nor possible, given the potential need to outsource and contract with inventory crews, procure funds, and develop and award contracts for watersheds with larger road networks. The Federal Agencies commented that this could be incentivized through grants and combined inventory efforts across multiple ownerships.

**A13. RESPONSE:** Water Board Staff agree that the time between Field Assessment Work Plan submittal and submittal of the Watershed Treatment Plan for Board consideration is short and have made revisions to the Order to provide additional time and to clarify deadlines under the CSSRP. Order requirements do not preclude the USFS and/or the BLM from engaging in combined inventory efforts across multiple ownerships and the 10-year timeline for an individual WTP factors in time needed to secure funding, conduct NEPA analyses, and establish contracts for implementing projects, as necessary.

**PROPOSED REVISION:** Table 1 of the MRP has been revised to provide additional time between Field Assessment Work Plan completion and submittal of the Watershed Treatment Plan. The new timeline requires completion of the Field Assessment Work Plan no later than 1 July and submittal of the Watershed Treatment Plan no later than 1 December of the same year. Additional revisions have been made to Table 1 of the MRP to provide clarification of timelines.

#### **A14. USFS AND BLM COMMENT #14 – Statewide Consistency and Regulatory Authority**

The Federal Agencies commented on significant differences between regional water quality control board permit requirements and that the requirements to commit funds for roads assessments and treatments are outside the scope of nonpoint source permitting. The Federal Agencies reiterated comments that their budget is contingent on annual congressional appropriations and that Congress already allocates Section 319 funding to the states for nonpoint source purposes. The Federal Agencies also note that road and infrastructure repairs are not driven solely by sediment sources but also public safety, wildfire concerns, and NEPA requirements. For example, road treatments may increase air quality concerns in noncompliance areas or near sensitive sites due to Regional Water Board monitoring requirements that will introduce significant amounts of personnel and vehicular traffic to simply reach many of the sites in remote areas, as well as the near-urban ones.

**A14. RESPONSE:** Please see Responses A2, A3, and A12 above. With respect to concerns about air emissions and traffic associated with the Draft Order's monitoring requirements, these effects were evaluated in the EIR and found to be less than significant.

#### **A15. USFS AND BLM COMMENT #15 – Resource Limitations and Statewide Consistency**

The Federal Agencies commented that project-specific monitoring and reporting requirements are insufficiently described, will result in confusion and regulatory confrontation, will impede achieving mutual water quality goals, and will require significant resources to implement, particularly considering multiple overlapping regional water quality control board permitting requirements. The Federal Agencies further comment that staffing resources will not meet this need, given recent federal hiring constraints and limited federal budget dollars allocated to the Federal Agencies.

**A15. RESPONSE:** Please see Responses A2, A4, A7, and A12 above. There are no overlapping NPS permit processes within the Central Valley Water Board Region. The Monitoring and Reporting Program was designed with input and feedback from the Federal Agencies to allow maximum flexibility while ensuring Water Board Staff receive focused and necessary water quality information. The Training program is provided to facilitate the Federal Agencies' ability to leverage any and all staff, including seasonal employees. Reporting for individual projects has been minimized in comparison to the current Timber General Order, in particular regarding forensic monitoring and effectiveness results reporting. Water Board Staff have developed optional templates for use by the Federal Agencies to facilitate reporting; though, the use of the templates is not required should the Federal Agencies wish to create their own.

## **A16. USFS AND BLM COMMENT #16 – Monitoring and Reporting**

The Federal Agencies commented that the MRP requires a minimum of five separate reports for individual projects: (1) Notice of Planned Operations (NPO), (2) Implementation Monitoring Report, (3) Effectiveness Monitoring Report, (4) Final Completion Report, and (5) CEQA Reporting. The Federal Agencies further noted that additional reporting may be required for discharge incidents and projects extending past one year and that multiple projects will require additional annual reporting. The Federal Agencies agree that ensuring effective implementation should be a priority but are concerned the differing monitoring requirements required by the regional water quality control boards for nonpoint source permitting will cause considerable confusion that will most likely lead to violations. For this reason, the Federal Agencies object broadly to the Draft Order.

**A16. RESPONSE:** Please see Responses A2, A7, and A12 above. The commenters incorrectly associate the listed monitoring and reporting requirements to all covered individual projects. Please refer to Table 2 in the MRP and note the following requirements in the Draft Order MRP:

- Notices of Planned Operations (NPOs) are only required for Category B projects (Attachment B, MRP section C, Notice of Planned Operations Reporting Requirements (for Category B Projects)) where ground disturbing activities are planned to occur during the year (Attachment A Definitions – Operations means project implementation involving ground disturbing activities requiring permit coverage).
- Implementation monitoring is only required for Category B projects, and reporting of implementation monitoring findings is only triggered when a discharge incident is identified.
- Effectiveness monitoring is only required for Category B projects, and annual reporting of effectiveness monitoring findings is only triggered for projects where effectiveness monitoring identified water quality impacts, threatened or actual, associated with inadequate management measures or failure to implement management measures.
- Monitoring Results Annual Reporting for enrolled projects requires a simple list of all Category A and B projects that had operations during the reporting period along with minimal status and location information.
- Incident Discharge Reporting is required for Category A and B projects, and is necessary to provide Central Valley Water Board Staff with relevant information when a discharge has occurred or is threatened to occur. Timely notification allows Staff to respond to public complaints, prioritize inspections,

and communicate with the discharger regarding appropriate measures to prevent or mitigate discharges to waterbodies.

- The Final Completion Report, required under Attachment B, MRP section E.4, is only required for WTPs under the CSSRP, not individual projects, and is required once after completion of Watershed Treatment Plan activities or no later than 10 years from the date of WTP approval, whichever is sooner. The Final Completion Report will list the specific individual projects that were used to implement the WTP but does not require reporting of monitoring conducted on those individual projects.
- CEQA MMRP summary reporting is to be maintained by the Federal Agencies and only submitted upon request.

### **A17. USFS AND BLM COMMENT #17 – Best Management Practices**

The Federal Agencies commented that the national Best Management Practices implementation and effectiveness ratings from fiscal year 2013-2014, discussed in Attachment E, is flawed and the scores are not appropriate to use or glean information from, given changes to protocols and rulesets after 2014.

**A17. RESPONSE:** Water Board Staff did not rely solely on the FY 2013/2014 report to support any conclusions relative to the EIR or Draft Order. Staff provided review and comments/recommendations on the USFS BMP Evaluation Program (BMPEP) for many years prior to the establishment of the National Core BMP Program in 2012. Our review of the BMPEP and the first phase of the National Core BMP Program has generally supported years of field observations that BMPs are not consistently implemented, are not always effective, and that adaptive management is inconsistently applied across federally managed lands. However, BMPs are generally considered a fundamental tool for controlling NPS pollution, and Staff field reviews and experience show that when appropriately selected, implemented in consideration of site-specific conditions, and modified or adapted as necessary, prescriptive BMPs can be very effective.

### **A18. USFS AND BLM COMMENT #18 – Best Management Practices**

The Federal Agencies commented that the information gleaned and conclusions derived from the Water Boards' 2018-2019 field visits, discussed in Attachment E, are not representative of the National Core BMP program or of the USFS's overall BMP program implementation and are too small of sample size to draw substantive conclusions from.

**A18. RESPONSE:** Please see Response A17. During Order development, Water Board Staff proposed to Federal Agency executives to conduct the BMP evaluation in order to better understand the internal processes of both Federal Agencies for selecting, implementing, evaluating effectiveness and adaptively managing needed changes to



BMPs. Federal Agency staff participated in the evaluation and Water Board Staff presented the findings of the BMP evaluation to the Federal Agency executives following the exercise. Water Board Staff are unaware of the Federal Agency executives or other representatives raising these concerns during Order development. Ultimately, the results of the field visits confirmed Water Board Staff's experience that when appropriately selected, implemented and adapted, site-specific BMPs can be the effective tool for managing nonpoint source pollution that the NPS Policy envisions.

#### **A19. USFS AND BLM COMMENT #19 – Best Management Practices**

The Federal Agencies commented that the Water Board's conclusion on the USFS BMP program and concerns with water quality are without merit.

**A.19 RESPONSE:** Please see Responses A5, A17, and A18 above. In the absence of regular monitoring and reporting (as is the case with the National Core BMPs and BLM's recently approved BMPs), Water Board Staff have to rely on more than 20 years of experience reviewing the old BMPEP and first phase National Core BMP results, and responding to complaints on federal projects to conclude that federal BMPs will meet the verification requirements in the NPS Policy which states the following: "In addition to verification of proper [B]MP implementation (Key Element 2), feedback mechanisms are needed to clearly indicate whether and when additional or different [B]MPs or [B]MP implementation measures must be used, or other actions taken." (NPS Policy, p. 13.)

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### **B. PERMITTEE BUREAU OF LAND MANAGEMENT (BLM), CALIFORNIA STATE OFFICE**

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#### **B1. BLM COMMENT #1 – Pesticide Application**

The BLM noted that federal agencies are already required by law to adhere to pesticide labels and storage instructions, including conducting NEPA analyses to ensure appropriate herbicides are utilized for vegetative treatments.

**B1. RESPONSE:** Comment noted.

#### **B2. BLM COMMENT #2 – Sediment Source Treatment**

The BLM agrees that legacy sediment sources exist across the landscape and may require treatment. However, it commented that the Draft Order requires treatment of sediment sources at the project scale, in addition to a watershed-scale treatment program, which should be melded into one simple approach. The BLM further notes that funding sediment source treatment at the project scale may not be feasible and may divert resources from watershed-scale assessments. The BLM reiterated previous comments regarding constraints in only obligating funding when funds are available.

**B2. RESPONSE:** Please see Responses A3 and A12 above. Staff appreciate the BLM's acknowledgement that sediment sources that may require treatment exist across the landscape. The Draft Order does not require treatment of all sediment sources at the project-scale. Project-scale CSDS inventory and assessment is required for Category B projects; however, treatment may be deferred with justification. Deferred CSDS will be tracked for future treatment under a succeeding project or the CSSRP/WTP. An optional CSDS inventory template has been developed to assist the Federal Agencies with gathering and providing required information. The Draft Order also does not dictate which HUC 12 watershed is selected for assessment and treatment, providing the Federal Agencies with the flexibility to align restoration actions with funding and collaborative opportunities.

### **B3. BLM COMMENT #3 – Best Management Practices**

The BLM noted that several of its BMPs state the same intent as those required under the Draft Order (i.e., soil stabilization, 100-year crossing standard, roadside berms and waste products) and suggests removing these.

**B3. RESPONSE:** The Order requires additional water quality protective measures for covered projects. Given the ability of the USFS and the BLM to revise their BMPs through internal processes, Water Board Staff are formalizing these specific standards found to be critical in controlling/preventing NPS pollution from the covered land management activities within the Draft Order to apply for the duration of the Order.

### **B4. BLM COMMENT #4 – Reporting and Statewide Consistency**

The BLM commented that a consistent web-based approach for reporting would promote the most efficiency for the BLM. The BLM further commented on the different reporting requirements of the regional water quality control boards; reiterated the need for a uniform state-wide process that would promote a more efficient, streamlined process; and suggested the Lahontan Regional Water Quality Control Board's forms as a good starting point for such an approach.

**B4. RESPONSE:** Please see Response A2 above. While Water Board Staff support future development of a web-based approach for reporting, such an undertaking would likely require funding and long-term maintenance support that could detract from on-the-ground implementation of beneficial projects. Staff have reviewed the Lahontan and North Coast Regional Boards' forms and attempted to align our reporting templates, where feasible. These templates are optional and available for use by the Federal Agencies.

### **B5. BLM COMMENT #5 – Draft Environmental Impact Report, Executive Summary**

The BLM noted that Minimum Impact Suppression Tactics (MIST) is one of several tools to minimize the impacts of wildfire on natural resources and that Resource Management

Plans may outline how wildfire suppression is addressed in a certain area, or in other cases, on-site resource advisors may work with suppression resources to avoid areas entirely.

**B5. RESPONSE:** Comment noted. The Executive Summary within the DEIR provides an overview of reasonably foreseeable management measures analyzed by the environmental impact report but notes that federal best management practices generally allow for development of site-specific solutions. Specific to post-emergency recovery, the Executive Summary notes that MIST, or minimal impact suppression techniques, is the most common, but not only, strategy used for resource protection during active wildland fire suppression and includes actions such as using water as a fire line instead of handline or dozer line construction, using rubber wheeled vehicles instead of tracked equipment, or letting the fire burn to natural fire breaks.

#### **B6. BLM COMMENT #6 – Draft Environmental Impact Report, Executive Summary**

The BLM commented that the “Areas of known Controversy” section within the DEIR Executive Summary does not mention BLM’s objections to the Draft Order and DEIR, including that the Draft Order requires a commitment of staff resources and funding that does not exist, that inconsistencies with the nonpoint source process across three regional waterboards will create confusion, and that the DEIR contains elements that are controversial and not in line with Federal Law.

**B6. RESPONSE:** Please see Responses A2 and A4. Section 15132, subdivision (b)(2), of the CEQA Guidelines requires the environmental impact report to contain a brief summary of the proposed actions and its consequences, including areas of controversy known to the lead agency. The environmental analysis within the EIR focuses on the potential environmental impacts that could occur from implementation of the Draft Order and considers alternatives and mitigation measures to reduce those impacts. Central Valley Water Board Staff have considered BLM’s input on previous drafts of the Draft Order and, where appropriate, made adjustments accordingly.

BLM’s concerns regarding the Draft Order have been added to Section ES.4 of the Final EIR as noted below in ~~strikeout~~ and underline text.

**PROPOSED REVISION:** Section 15123(b)(2) of the CEQA Guidelines requires that the summary of an EIR identify areas of controversy known to the lead agency, including issues raised by agencies and the public. ~~To date, no areas of known controversy have been raised or identified. The BLM has objected to several facets of the Draft Permit and DEIR, including assertions that the Draft Permit requires a commitment of staff resources and funding that does not exist, that inconsistencies with the nonpoint source permitting across regional water quality control boards will create confusion, and that the DEIR contains elements that are controversial and not in line with Federal Law.~~

### **B7. BLM COMMENT #7 – Draft Environmental Impact Report, Alternatives**

The BLM commented that, under the No Project Alternative, Water Board Staff are free to review all projects in development on its ePlanning website: ePlanning.gov and thus the No Project alternative, similar to the Superior Alternative, allows for Water Board input and review on a project-by-project basis.

**B7. RESPONSE:** As noted in the Executive Summary discussion of alternatives, the Federal Agencies do not currently submit project materials or notifications for many projects that could impact waters in the region. While Water Board Staff may review projects on a case-by-case basis under the No Project Alternative, submission of project materials or notifications is not required. Conversely, the proposed project would require some level of reporting and notification to better facilitate Water Board Staff oversight. Further, the No Project Alternative would potentially require the USFS and BLM to submit individual permit applications to obtain regulatory coverage on a project-by-project basis, where appropriate.

### **B8. BLM COMMENT #8 – Draft Environmental Impact Report, Alternatives**

The BLM commented that the Reduced Management Measure Alternative would prohibit all ground disturbing activities, including those that are designed to be wholly beneficial (i.e., roads upgrading and restoration) and that prohibiting projects expressly designed to address water quality issues does not appear to be a “reasonable” alternative under CEQA.

**B8. RESPONSE:** The Reduced Management Measure Implementation Alternative would involve a more limited Order scope. Under this Alternative, activities not covered would not be prohibited but may instead require alternate or individual permitting.

### **B9. BLM COMMENT #9 – Draft Environmental Impact Report, Alternatives**

The BLM commented that the Environmentally Superior Alternative does not address the multiple monitoring, reporting, and assessments required and the impacts on BLM resources. While the BLM agrees that monitoring is crucial to evaluating the effectiveness of BMPs and project success, the numerous tasks and scales of reporting, compounded by the differing requirements among Water Boards, does not necessarily promote better outcomes.

**B9. RESPONSE:** Please see Responses A2, A4, A7, and A12. Staff appreciate the BLM’s acknowledgement that monitoring is crucial to evaluating the effectiveness of BMPs and project success. Staff disagree that monitoring and reporting are obstacles. Beyond the fact that feedback mechanisms on BMPs are necessary under the NPS policy, adaptive management of federal lands in California is only possible with adequate feedback. The Draft Order leverages federal processes where possible, and

Water Board Staff will continue to work with the BLM and USFS to explore opportunities for additional efficiencies.

**B10. BLM COMMENT #10 – Draft Environmental Impact Report, Alternatives**

The BLM commented that the description within the Executive Summary’s discussion of the Environmentally Superior Alternative regarding “unacceptable conditions and ongoing impacts to water quality on the USFS and BLM managed lands” implies impacts are widespread and ongoing on BLM lands but that evidence provided in the DEIR shows selected sites and a generalization, indicating that insufficient data was used in the analysis.

**B10. RESPONSE:** Please see Response A5 above. The purpose of this statement within the Executive Summary is to note that while implementation of the Draft Order would result in some potential adverse impacts to environmental resources, these impacts are reasonable and necessary in light of long-term water quality gains to be achieved by the Order.

**B11. BLM COMMENT #11 – Draft Environmental Impact Report, Introduction**

The BLM commented on the statement within the DEIR Section 1.1 that “sole reliance on the agreements has not led to sufficient protection of water quality nor substantial progress in addressing existing controllable sediment sources,” noting that USFS and BLM have conducted projects beneficial to water quality, including roads work. BLM commented that “substantial” should be defined here.

**B11. RESPONSE:** The EIR analysis is not intended to discount successful efforts and progress made on USFS and BLM managed lands. Water Board Staff agree that both the BLM and USFS have implemented many projects that reduce impacts to water quality since the signing of their respective agreements with the State Water Resources Control Board in 1993 and 1981. However, the USFS’s own Best Management Practices Evaluation Program (beginning year to 2011), National Core BMP evaluation (2017), and Watershed Condition Framework analyses continue to show numerous HUC 12 watersheds in “poor condition” relative to road condition and water health. The BLM’s comments A12 and B2 and B13 and SEPES inventory submittals for USFS timber harvest projects enrolled in the Timber General order both acknowledge the existence of erosion and sediment sites that need treatment. The recent development and formalization of statewide best management practices for water quality protection by the BLM indicate that the agency agrees that improvements are needed. Please also see Response A5 regarding identified untreated erosion sites on USFS timber projects.

## **B12. BLM COMMENT #12 – Draft Environmental Impact Report, Introduction**

The BLM commented that citations are needed within DEIR Section 1.1 to “The Plan for California’s Nonpoint Source Pollution Control Program (NPS Program Plan)”, and that wildlife agencies typically consult on actions rather than “approve” them.

**B12. RESPONSE:** The [original NPS Program Plan](https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_progplan_vi.pdf) can be found at the following link: (https://www.waterboards.ca.gov/water\_issues/programs/nps/docs/plans\_policies/nps\_progplan\_vi.pdf). The [most recent update to that Plan](#), adopted in 2020, can be found at the following link:

(https://www.waterboards.ca.gov/water\_issues/programs/nps/docs/plans\_policies/NPS%202020-25%20Accessible%20MH%203.9.21.pdf). While not available on the State Water Resources Control Board’s [NPS Program page](#),

(https://www.waterboards.ca.gov/water\_issues/programs/nps/plans\_policies.html), a copy of the U.S. EPA Approval Letter for the 2020 Plan can be requested from the State Water Resources Control Board. The

[Nonpoint Source Implementation and Enforcement Policy](#) (Cal. Code Regs., tit. 23, section 2915) can be found at the following link:

(https://www.waterboards.ca.gov/water\_issues/programs/nps/docs/plans\_policies/nps\_ipolicy.pdf).

## **B13. BLM COMMENT #13 – Draft Environmental Impact Report, Project Description**

The BLM commented that the statement within DEIR Section 2.2.5 that “Water quality conditions in many waterbodies within and/or downstream of federal lands managed by USFS and BLM within the Central Valley Region have been and continue to be affected primarily by sediment discharges, despite the history of agreements regarding BMP implementation between the federal agencies and the Central Valley Water Board” is misleading and without merit. The BLM noted that water quality conditions downstream of federal lands may be affected by a number of sources, such as private lands, historic and current mining, and wildfires. While the BLM agrees that NPS pollutants such as sediment from roads are an issue that requires further work, the statement implies that federal lands management is the primary driver of water quality in these watersheds.

**B13. RESPONSE:** Water Board Staff agree that there are a number of erosion and sediment sources that exist outside of public lands and strive to hold all dischargers to similar standards. Staff was not intending to imply federal lands management is the primary driver of water quality and recognizes that other dischargers in those watersheds are accountable for erosion and sediment management.

Staff propose revising Section 2.2.5 of the Final EIR as detailed below.

**PROPOSED REVISION:** Water quality conditions in many waterbodies within and/or downstream of federal lands managed by USFS and BLM within the Central Valley Region have been and continue to be affected primarily by sediment discharges. Many of these waterbodies are within or downstream of federal lands managed by the USFS and BLM and are impacted despite the history of agreements regarding BMP implementation between the federal agencies and the Central Valley Water Board.

**B14. BLM COMMENT #14 – Draft Environmental Impact Report, Project Description**

The BLM commented that restoration activities, as described in DEIR Section 2.5, also include fuels reduction projects such as forest thinning to reduce the potential for high severity wildfire.

**B14. RESPONSE:** DEIR Section 2.5.1 provides a non-exhaustive list of examples of common activities within the various land management activity categories, including common restoration activities. An activity's coverage under the Draft Order, assuming it falls within one of the covered land management activity categories, depends on its relative threat to water quality.

**B15. BLM COMMENT #15 – Best Management Practices**

The BLM commented that requirements for Category B Projects, discussed in Section 2.5.3. of the DEIR, are already captured in more detail in existing agency BMP documents.

**B15. RESPONSE:** Please see Response B3 above.

**B16. BLM COMMENT #16 – Draft Environmental Impact Report, Project Description**

The BLM requested clarification whether the projects within DEIR Table 2-9 are for the Central Valley or statewide.

**B16. RESPONSE:** Staff propose revising Section 2.6.2 of the Final EIR as detailed below.

**PROPOSED REVISION:**

**Potential Category A and B Projects**

To provide a sense of the frequency and extent of activities conducted by the USFS and BLM that may be covered by the proposed Federal NPS Permit,

Central Valley Water Board staff conducted research of potentially covered projects based on publicly available data. This data is shown in Table 2-409.

**Table 2-9.** Potential Category A and B Projects within the Central Valley Region

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As shown in Table 2-409, the number of projects that may be covered by the proposed Federal NPS Permit would vary from year to year.

**B17. BLM COMMENT #17 – Draft Environmental Impact Report, Agriculture and Forestry Resources**

The BLM requested clarification whether DEIR Table 3.2-2 timber harvest totals are a combined volume from both public, private, and state lands.

**B17. RESPONSE:** As suggested by text surrounding the Table, Table 3.2-2 contains combined timber harvest for federal, state, local, and private lands.

**B18. BLM COMMENT #18 – Best Management Practices**

The BLM commented on the statement within DEIR Section 3.7.4 that “the federal agency BMPs have not historically been completely effective in reducing adverse water quality effects on federal lands,” noting that the BLM has only recently adopted its BMP guidance for California and thus, any historical comparisons would be difficult.

**B18. RESPONSE:** While the BLM has only recently adopted formal BMP guidance for California, it has been informally implementing BMPs for many years. The BLM’s 1993 Memorandum of Understanding with the State Water Board, notes that the BLM agrees to integrate water quality concepts and management techniques into the BLM planning system and environmental review and clearance of land-use proposals to address surface and groundwater nonpoint source pollution. Furthermore, BLM agreed to incorporate BMPs into BLM land uses and BLM permitted land uses, when necessary, to protect or maintain water quality. Further, while historical comparisons are limited in value for the BLM, Water Board Staff review of the recently approved BMPs for California BLM indicates many similarities when compared to the USFS National Core BMPs, including the more generalized nature of the BMPs, and as such, assumptions that the BLM will encounter challenges implementing BMPs similar to the USFS are reasonable.

**B19. BLM COMMENT #19 – Draft Environmental Impact Report, Public Services**

BLM questioned how the Proposed Project would streamline the permitting process, as indicated in DEIR Section 3.13.4, and requested a comparison to evaluate this statement.



**B19. RESPONSE:** Please see Response A4 above. This section of the environmental analysis discussing potential impacts on public services from the proposed project notes that the Draft Order would streamline permitting for wildfire hazard reduction activities compared to obtaining individual permitting or the limited applicability of existing permits (e.g., Timber General Order).

#### **B20. BLM COMMENT #20 – Statewide Consistency**

The BLM commented that grazing is listed as a covered activity under the North Coast Regional Water Board’s nonpoint source permit but not covered by the Draft Order, reflecting another example of the inconsistencies among the various nonpoint source permits being proposed and the need for further exploration of a statewide alternative to provide consistency.

**B20. RESPONSE:** Please see Response A2 regarding statewide consistency above. Grazing activities on USFS and BLM managed lands are typically conducted by third parties. The Central Valley Water Board’s Draft Order only provides coverage for certain activities conducted by or on behalf of the USFS or BLM. Where the federal agencies propose activities not covered by the Order, Central Valley Water Board staff will assist in identifying appropriate permitting mechanisms on a project-by-project basis.

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### **C. BILL WALL, U.S. FOREST SERVICE, NORTH ZONE NATURAL RESOURCE TECHNICAL ADVISOR COMMENTS**

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#### **C1. BILL WALL COMMENT #1 – Regulatory Authority**

Mr. Wall commented on the need for the Draft Order, as opposed to continuing to rely on the MAA and MOU frameworks, given USFS data monitoring the status and trend of watershed conditions over the past 25 years indicating that improvements in roads and vegetation management appear to be having the desired effects of decreasing instream fine sediment concentrations, including 6.6% reduction in connected road length, 4% reduction in sediment delivery, and 11% reduction in landslide risk associated with roads. Mr. Wall noted there has been no specific information identified that would aid in appropriate improvements in the Forests’ management in meeting the Clean Water Act and questioned the statement within section E.4 of the DEIR, that states “no areas of known controversy have been raised or identified.”

**C1. RESPONSE:** Please see Responses A3, A5, and B6 above. Relying solely on the MAA framework to regulate nonpoint source pollution does not satisfy the Board’s obligations under the NPS Policy. The statewide NPS Policy specifically requires that “all current and proposed nonpoint source discharges must be regulated under waste discharge requirements, waivers of waste discharge requirements, or a basin plan prohibition.” (NPS Policy, p. 3.) The State Board’s MAA with USFS, adopted in 1981, predates the NPS Policy by more than two decades and does not relieve the Board of

its obligation to use one of the specified regulatory tools to address NPS discharges. Additionally, there are water quality issues that have not been addressed under the current framework and persistent resource limitations have prevented effective implementation of the MAA. Nothing in the MAA limits the Board's authority to regulate NPS pollution.

## **C2. BILL WALL COMMENT #2 – Engagement**

Mr. Wall commented on the need to improve collaboration in finding solutions to the Water Board's issues and concerns, especially with regards to the CSSRP proposal. In general, agencies are unaware of the budgetary process, organization, skills, and priorities of their partner agency. For an agency to independently define and require a process to meet a regulatory requirement is setting up both agencies for failure. However, by clearly defining the issue(s) collaboratively and then agreeing on what the change should look like using well thought out objectives usually brings about effective positive change. The collaborative focus is about what the change or final product should look like, not on a predefined process.

**C2. RESPONSE:** Please see Response A1. The Water Boards have the responsibility of implementing both federal and state clean water laws and related policies. Board staff have been engaged with USFS and BLM leadership in the development of the Draft Order for many years and believe the Draft Order balances the Water Board's obligations while acknowledging the federal agencies' existing processes and need for flexibility. Permitting/conditioning or prohibiting discharges to waterbodies is the Water Boards' primary responsibility.

## **C3. BILL WALL COMMENT #3 – Engagement**

Mr. Wall commented that the Federal agencies' responsibilities for ensuring sufficient funds in this case requires collaboration and strong partnerships. Mr. Wall noted recent congressional funding under the IRA and BIL and the opportunity for the Board and USFS to collaborate as strong partners to develop, design, and implement watershed strategies together resulting in more, better, and efficient restoration needs including BMPs in the coming years.

**C3. RESPONSE:** Water Board Staff look forward to continuing to collaborate and partner with the USFS to implement watershed restoration strategies.

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## D. U.S. FOREST SERVICE, ELDORADO NATIONAL FOREST

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### D1. ELDORADO NATIONAL FOREST COMMENT #1 – Resource and Funding Limitations

The Eldorado National Forest commented that it has worked with Board staff for many years in support of shared interest in meeting water quality goals but expressed concerns that the Draft Order will significantly exceed its staff and funding capacity, given the extent of managed lands, and may not truly be the best approach to achieving these goals.

**D1. RESPONSE:** Please see Responses A4 and A12. Water Board staff appreciate the relationship and shared goals we have with the Eldorado National Forest staff and believe that the Draft Order will result in a reduced compliance burden in comparison to the potential requirement to submit an application for individual project permitting.

### D2. ELDORADO NATIONAL FOREST COMMENT #2 – Project Enrollment

The Eldorado National Forest commented that time is needed to build internal understanding of the requirements of the new Order, identify all Category B projects in need of enrollment across a wide range of resources (vegetation management, transportation management, recreation facilities management, post-emergency recovery activities, and restoration activities) and complete the work needed to obtain coverage. Specifically, the Forest commented that approximately seven months would be needed following permit adoption to enroll projects and an additional 12 months for completion of Appurtenant Roads Assessments. Extension opportunities within the Draft Order will not alleviate the overall time needed.

**D2. RESPONSE:** Water Board Staff agree that a transition period is reasonable and prepared the revisions below.

#### **PROPOSED REVISION:**

Order Section II.B.3. Initial Order Implementation. During the first year (12 months) after Order adoption, the initial and appurtenant road Controllable Sediment Discharge Source (CSDS) assessments for Category B projects (Order sections II.E.3.b.) are waived. The Permittees must comply with all other provisions of the Order, including the requirement to submit a NPO, where applicable. Beginning 14 December 2025, the initial and appurtenant roads CSDS assessment requirements will be enforced for all new Category B NPO submittals.

Order section II.B.4. Timber General Order Enrollments. USFS projects enrolled under the Central Valley Water Board's Waste Discharge Requirements General

Order for Discharges Related to Timberland Management Activities for Non-Federal and Federal Lands, Order R5-2017-0061 (2017 Timber General Order) may proceed under the conditions of that Order until ~~March 31,~~ 15 August 2025 including submission of an Annual Report on 15 August 2025, at which time coverage will be terminated. USFS Pprojects that will operate past ~~March 31,~~ 15 August 2025, and that meet the eligibility requirements for Category B under this Order must submit a ~~Notice of Planned Operations (NPO)~~ prior to that date. No new applications for USFS ~~permit~~ project coverage under the 2017 Timber General Order will be accepted after the adoption date of this Order (No. R5-2024-XXXX).

Order section II.E.2. Order Coverage: Projects meeting the eligibility criteria listed above for Category B may be covered under this Order provided the Permittee submits a Notice of Planned Operations (NPO) to the Central Valley Water Board prior to commencement of ~~land-disturbing project activities,~~ except as provided by Order section II.B.3. A NPO is required for all Category B projects.

### **D3. ELDORADO NATIONAL FOREST COMMENT #3 – Project Enrollment**

The Eldorado National Forest highlighted projects that would need coverage within the first year following adoption, including timber projects, road work tied to timber and/or fuels treatment road access, trail maintenance, campground maintenance, and maintenance of parking lots and staging areas, but that the full scope of projects needing coverage would take additional time to determine. The Eldorado National Forest also expressed uncertainty about whether projects undertaken by FERC licensees on Forest Service land would be required to follow the requirements in the Draft Permit or whether those projects would be subject to a different standard.

**D3. RESPONSE:** Please see Response D2 above. The Draft Order applies to activities conducted by, or on behalf of, the USFS and BLM (Order finding I.1). It does not apply to FERC licensees nor any other third party. Specific to road assessments for roads tied to timber and/or fuels treatment access, time extensions are available for CSDS assessments under Order Section II.E.3.e. Further, under the Draft Order, Category A projects are those that typically include activities that result in no or minimal ground disturbance to areas that have the potential for hydrological connection to surface waters and meet Category A Eligibility Requirements. Category A Eligibility Requirements allow for some ground disturbing activities to occur. (See Order, Section D.1.b.i. – iv.). Water Board Staff expect that many maintenance projects will fall under Category A.

#### **D4. ELDORADO NATIONAL FOREST COMMENT #4 – Competing Priorities and Controllable Sediment Source Reduction Program**

The Eldorado National Forest commented that the work under the required Controllable Sediment Source Reduction Program (CSSRP) could redistribute the workload for projects where that route is chosen and that much of the potential for the type of projects required under the CSSRP is greatly dependent upon partner interests and grants or other supplemental funding.

**D4. RESPONSE:** Please see Responses A12, A13, and B2 above. To clarify, the CSSRP is a requirement separate from the project-specific CSDS assessment and treatment. Under the Draft Order, completion of the CSSRP is required whether or not the Permittee opts to treat CSDS as part of a Category B project. Water Board Staff understand that the USFS and BLM often rely on partnerships and funding opportunities and the CSSRP WTP timeline was developed in consideration of those needs. Once a single watershed is selected by the permittee using established criteria, a field assessment work plan to inventory CSDS is produced and implemented. Upon conclusion of field assessment work plan efforts, the WTP is due for Water Board consideration at a regularly scheduled public meeting. Once the WTP has been approved by the Water Board, the USFS and BLM will have 10 years to complete the identified work. This lengthy timeline for completion of controllable sediment discharge sites treatments on federal ownership in a single HUC 12 watershed factors in the time needed to complete NEPA, obtain funding, develop projects, and leverage partnerships.

#### **D5. ELDORADO NATIONAL FOREST COMMENT #5 – Monitoring and Reporting**

The Eldorado National Forest noted that beyond initial enrollment and to avoid termination of coverage, Category A and Category B projects would need to meet monitoring and reporting requirements, CEQA Mitigation and Monitoring Reporting requirements, and Category B projects would need to follow through with CSDS treatment or implementation of the Controllable Sediment Source Reduction Program and submit updated NPOs on a yearly basis.

**D5. RESPONSE:** Please see Response A16. The commenter is correct that both Category A and B projects would need to comply with applicable requirements within the Monitoring and Reporting Program; however, those requirements differ based on which category the permitted activity falls within. For CSDS treatment, the Draft Order does not mandate treatment of all CSDS within a Category B project area, it provides the option to prioritize treatment of sites as part of the project or as part of implementation of a Watershed Treatment Plan at a later date. With this structure, the Permittee must identify which CSDS will be treated as part of the project and which CSDS will be deferred for treatment (Order, II.E.3.d.). Finally, while the commenter correctly notes that annual updates to the NPOs are required, the optional template prepared by Water Board Staff for Federal Agency use requires the minimum information necessary for

Central Valley Water Board Staff to prioritize inspections, rather than randomly selecting projects for inspection that are not planned to be or have been operational.

#### **D6. ELDORADO NATIONAL FOREST COMMENT #6 – Resource Limitations**

The Eldorado National Forest questions the DEIR's conclusion that current USFS staffing levels would be adequate or only minor supplementation would be required to meet requirements of the Draft Order, including road assessments.

**D6. RESPONSE:** Please see Responses A12, A15, and B2 above. Water Board Staff believe the Draft Order requires the minimum level of monitoring and reporting necessary to ensure BMPs are implemented and effective in protecting water quality from land management activities conducted by the USFS and BLM. It is Staff's understanding that USFS staff regularly conduct visual checks on all projects (inspections), document those checks (reporting), and have been providing Water Board Staff with pertinent information when and where discharges occur specific to timber harvesting projects since 2005. This minimal level of monitoring and reporting is a reasonable expectation for permitted activities and is supported by the NPS Policy. Further, the Training program is expected to increase the USFS and BLM's ability to leverage various classifications of staff, thereby reducing the need for specialists to be solely responsible for compliance.

#### **D7. ELDORADO NATIONAL FOREST COMMENT #7 – Mitigation Monitoring and Reporting Program**

The Eldorado National Forest commented that, with regards to the CEQA Mitigation Monitoring and Reporting Program, it is not clear for which species the DNPS Permit expects the Forest to analyze that Forest biologists do not already include in project surveys and consider in design. The Forest further noted that it does not have monitoring plans for species that are not federally listed endangered/threatened and that Forest biologists only analyze for species that are on our FS Sensitive list and are federally listed endangered/threatened. Analyzing for additional species could increase the biologists' workload exorbitantly.

**D7. RESPONSE:** Comment noted. Mitigation Measure BIO-1 is intended to address potential impacts to California special-status species, as defined and listed in Section 3.4.3 of the DEIR and Appendix D. As the comment highlights, the purpose behind this measure is to ensure protection of state resources that are not federally protected and thus may not be afforded the same protections under existing BLM and USFS laws, regulations, and guidance.

#### **D8. ELDORADO NATIONAL FOREST COMMENT #8 – Resource Limitations**

The Eldorado National Forest commented that if a project does not have enough commercial value or supplemental funding to address requirements imposed by the

permit, then the scale of the project may need to be reduced, and in some cases, grant guidelines may prohibit using funding for projects that have to be done to meet a regulatory requirement.

**D8. RESPONSE:** Please see Response A3 above. Staff believe the Draft Order contains minimal requirements for individual covered projects: in high level terms, the Permittee must notify Board staff when and where covered project operations are planned, follow the applicable agency BMPs, visually check on BMP implementation and effectiveness, report when things go wrong, and annually report a list and map of the projects and their operational status. Where Water Board Staff become aware of funding sources that may be suitable Staff will notify Federal Agency staff of such opportunities.

#### **D9. ELDORADO NATIONAL FOREST COMMENT #9 – Notice of Planned Operations**

The Eldorado National Forest questioned the need for an updated Notice of Planned Operations for operations not completed within a year and noted that this requirement may conflict with the other schedules outlined in the Proposed Permit (ex: an Appurtenant Roads Assessment of roads not used to implement project activities would be required within 12 months of the NPO).

**D9. RESPONSE:** Submittal of an NPO on an annual basis provides Water Board Staff with up-to-date information on project activities and the progress of the covered project. In Staff's experience, Federal Agency projects can remain active for multiple years and, depending on the size of the overall NEPA project, operations can occur in multiple areas throughout implementation. Annual updated NPOs, for operations on projects that occur over more than one year, provide Staff with accurate information on project progress and locations of operations, allowing staff to accurately prioritize inspections. The current Timber General Order similarly requires annual notices of operations for USFS projects. (Timber General Order, Sections III F.3.d, F.6.a.) Submittal of an updated NPO does not appear to conflict with other schedules in the Draft Order.

#### **D10. ELDORADO NATIONAL FOREST COMMENT #10 – Resource Limitations**

The Eldorado National Forest commented that tracking ongoing enrollments and associated requirements would require extensive on-going effort.

**D10. RESPONSE:** Please see Responses A4 and D9. The commenter is correct that an NPO would be required for new Category B projects and that the NPO would need to be updated annually if activities are planned to take place for as long as the Order is effective. Water Board Staff will provide an optional NPO template for Federal Agency use. Given that NPOs provide the minimum information needed to prioritize inspections,

Staff do not believe this requirement is overly burdensome and is consistent with the existing Timber General Order.

#### **D11. ELDORADO NATIONAL FOREST COMMENT #11 – Training and Certification**

The Eldorado National Forest commented that the number of Forest staff (permanent and seasonal) required to complete the training certification program would be extensive and questioned the time commitment for the training and how this requirement would translate to partners/contractors. The Eldorado National Forest further commented that the Board may not be aware of its operations, monitoring methods, agency research, and/or internal and external expertise.

**D11. RESPONSE:** Please see Response A8. The online and on-demand training provided by the Central Valley Water Board is intended to assist both BLM and Forest Service staff by providing information on permit conditions and requirements, and common water quality issues associated with NPS activities. The Water Board intends the Training Program to supplement any existing training offered, not to supplant any existing resources or those that may be developed in the future. The training is not required of partners/contractors; though, the USFS and BLM may find it useful to share.

#### **D12. ELDORADO NATIONAL FOREST COMMENT #12 – Pesticide Application**

The Eldorado National Forest, with regards to pesticides, commented that in some cases the watercourse buffers required to meet the California State Watercourse and Lake Protection Zone (WLPZ) distances may be larger than current project specific design criteria and questioned whether these buffers, originally intended to delineate protection zones not setbacks for pesticide treatments, appropriately consider the method of treatment, mobility of the product, surfactant use, etc.

**D12. RESPONSE:** Please see Response A9. The commenter is correct, under the Order, certain nonpoint source activities are restricted in WLPZs to protect riparian and aquatic resources. The Draft Order permits a wide variety of nonpoint source activities that present low to moderate threats to water quality including pesticide application. As such, establishment of buffers around surface waterbodies where pesticide application is restricted is appropriate. Studies on herbicide fate and transport show that buffers in restored and managed riparian forests reduce herbicide concentrations in downslope surface waters to at or below detection limits. If a Permittee wishes to conduct activities, including pesticide application, within the WLPZ buffers that do not meet the eligibility criteria of the Order, Water Board Staff will assist in identifying appropriate permitting mechanisms on a project-by-project basis.



### **D13. ELDORADO NATIONAL FOREST COMMENT #13 – Best Management Practices**

The Eldorado National Forest commented that the requirement within Draft Order section C.2 that the "Permittee must incorporate management practices and water quality protective measures resulting from Central Valley Water Board staff participation in project review processes such as scoping, pre-project consultations, and during project implementation" could potentially result in hard to predict conflicts with existing NEPA documents, Forest Service direction, and/or other considerations such as cost effectiveness.

**D13. RESPONSE:** Thank you for your comment. Water Board Staff agree that the language should be revised and propose the revision below to Order section II.C.2.

**PROPOSED REVISION:** However, the Permittee may propose alternative management practices if it can demonstrate to the satisfaction of the Executive Officer that the proposed alternatives will meet water quality requirements. Alternative management practices proposed by the Permittee must comply with the Prohibitions in this Order. Until such alternative management practices receive written approval, the Discharger shall adhere to those management practices provided by Regional Water Board staff.

### **D14. ELDORADO NATIONAL FOREST COMMENT #14 – Regulatory Compliance**

The Eldorado National Forest noted that the pathway to regulatory compliance for projects that cannot meet the General and/or Category-specific conditions is unclear.

**D14. RESPONSE:** Should projects not qualify for coverage under the Order, then an individual permit may be required. If projects covered by the Order result in violations due to non-compliance, the Water Board may utilize enforcement, as discussed in Attachment E, Section IV, to bring projects back into compliance.

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## **E. U.S. FOREST SERVICE, LASSEN NATIONAL FOREST**

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### **E1. LASSEN NATIONAL FOREST COMMENT #1 – Draft Environmental Impact Report, Project Description and Hydrology and Water Quality**

The Lassen National Forest commented on the potential for confirmation bias within the DEIR, highlighting Figure 2.4 photos within the DEIR showing road-based erosion and the lack of support to show this is widespread and BAER derived erosion rates discussed in DEIR section 3.10.3.

**E1. RESPONSE:** The photos in Figure 2.4 of the DEIR were taken by Water Board Staff during a variety of field inspections conducted on USFS and BLM lands across the Central Valley region and are provided to illustrate for the reader the types of CSDS that

exist or may arise that potentially will require treatment under the Draft Order. Staff are not asserting that road erosion is occurring everywhere, but there is enough information (from the BMP evaluation to the BMPEP reports, to the Core National BMP evaluation, to our recommendations on timber harvesting projects, to our various enforcement actions) to support the need for inventory of CSDS and the requirement to address existing CSDS under the CSSRP. Please also see Response A5 above.

## **E2. LASSEN NATIONAL FOREST COMMENT #2 – Draft Environmental Impact Report, Hydrology and Water Quality**

The Lassen National Forest expressed concern that the 2014/2016 Integrated Report cycle referenced in Section 3.10.2 of the DEIR is not the most current reporting cycle.

**E2. RESPONSE:** Thank you for your comment. The reference within EIR Section 3.10.2 has been updated, as shown below. The impact conclusions in the EIR did not change as a result of this comment.

**PROPOSED REVISION:** The current effective USEPA-approved Section 303(d) list for waterbodies in California is the 2020/2022 list, which received final approval by USEPA on May 11, 2022 (USEPA 2022).

## **E3. LASSEN NATIONAL FOREST COMMENT #3 – Draft Environmental Impact Report, Hydrology and Water Quality**

The Lassen National Forest commented that the conclusions of the DEIR would suggest that a more restrictive timber order needs to be in place to reduce potential upland erosion and sedimentation into stream courses. The Forest further noted that there are two category 5 streams listed as impaired as part of the 2020/2022 Integrated Report within the entirety of the Central Valley Region that the Forest Service manages and that in 2011, the Forest Service analyzed these watersheds as part of a Watershed Condition Framework (WCF) analyses and determined that the portion of the watershed within National Forest Service lands is functioning properly under existing management direction.

**E3. RESPONSE:** Please see Responses A5 and A7 above. The EIR impact analysis focused on potential impacts resulting from implementation of the Draft Order. Permit requirements have been developed to comply with applicable statutory requirements, such as Water Code sections 13263, 13267 and 13304, and regulations, including the Antidegradation and Nonpoint Source Policies.

## **E4. LASSEN NATIONAL FOREST COMMENT #4 – Draft Environmental Impact Report, Hydrology and Water Quality**

The Lassen National Forest questioned the qualitative approach used in the DEIR impacts analysis, as described in Section 3.10.4, noting that the Forest Service

incorporates the best available science into all facets of forest management. The Forest provided four quantitative modeling methodologies for erosion, road-based sedimentation, flood potential, and post fire debris flow that are employed by Forest Service staff and should be used by the CVRWQB for its analyses and assessment.

**E4. RESPONSE:** Water Board Staff acknowledge the utility and commend the use of the quantitative modeling methodologies the commenter mentioned; however, the DEIR evaluates the potential environmental impacts of implementing the Draft Order itself, not the underlying project/management activities undertaken by USFS or BLM.

#### **E5. LASSEN NATIONAL FOREST COMMENT #5 – Draft Environmental Impact Report, Hydrology and Water Quality**

The Lassen National Forest commented that one of the references cited within the DEIR was from the year 1960 (Ahlgren, I.F., and Ahlgren) and not an example of best available science. The Forest Service requested that the analysis incorporates a robust quantitative analysis using quantitative modeling methodologies to ascertain if the current management direction (existing timber waiver) is sufficient to reduce upland erosion and sedimentation.

**E5. RESPONSE:** Please see Responses A3 and E4 above.

#### **E6. LASSEN NATIONAL FOREST COMMENT #6 – Controllable Sediment Source Reduction Program and Resource Limitations**

The Lassen National Forest commented that, under the CSSRP, the selection requirements for which HUC12 watershed to choose will differ from Forest Service management direction for the Watershed Condition Framework. Additionally, the Forest commented that implementation of the CSSRP would hinder its ability to manage the forest for the greatest good as it would require more bureaucratic business practices in incorporating changes to timber sale contracts, sale administration, implementation, and BMP compliance that will require additional staff to complete for no additional return on investment for the American Public.

**E6. RESPONSE:** The CSSRP is intended to complement any existing prioritization and assessment framework currently in place, including the USFS Watershed Condition Framework and the BLM Watershed Condition Assessments. Item G.3.a. of the Order specifically includes several pertinent applicable criteria for selecting HUC 12 watersheds: vi. "Cumulative watershed effects (CWE) and/or Watershed Condition Index (WCI) analyses and/or other similar cumulative impacts assessments or studies conducted by the Permittee demonstrate impacts or potential impacts to water quality resulting from sediment transport"; vii. "The watershed has been subject to other relevant assessments or studies that existing watershed impacts due to road, watercourse crossing, or watershed condition, including CSDS inventories created as

required by this Order”; and viii. “The watershed is subject to Federal Agency directives related to water quality protection, improvement, and/or watershed restoration.” Staff noted a clerical error in the quoted section of the Order and have proposed the following revision:

**PROPOSED REVISION:** Order section II.G.3.a.vii: The watershed has been subject to other relevant assessments or studies that identified existing watershed impacts due to road, watercourse crossing...

### **E7. LASSEN NATIONAL FOREST COMMENT #7 – Best Management Practices**

The Lassen National Forest commented that the Federal NPS Permit would require the FS and BLM to develop and implement site-specific prescriptions to fulfill the broader BMPs which will create a burden in contract preparation describing site specific BMPs that may or not exist in a particular project area, will greatly increase the size of contracts and associated costs of contract administration, and will place limitations on applying different adaptive management techniques to meet the intent of BMPs.

**E7. RESPONSE:** Requiring site-specific details allows standards to be set and known ahead of project implementation and facilitates the comparison of implementation to those anticipated standards. Detailing site-specific information ahead of project implementation and allowing adaptive management are not mutually exclusive of each other. Board staff do not expect that where site-specific BMPs are planned and then found to be ineffective, that adaptive management resulting in a different BMP being applied will present a conflict so long as the protection of water quality is achieved. That, in fact, is the intent and function of monitoring and adaptive management requirements in the control of nonpoint source pollution.

### **E8. LASSEN NATIONAL FOREST COMMENT #8 – Draft Environmental Impact Report**

The Lassen National Forest commented that it values its relationship with the Central Valley Water Board in our mutual goal for improving water quality in our forested watersheds and concludes that the EIR is insufficient in providing a scientific rationale to warrant additional changes to the existing timber permit.

**E8. RESPONSE:** Thank you for your comment. Water Board Staff also values the relationship we have with the Lassen National Forest and look forward to working with Forest staff to implement the Order. Please also see Responses A3, A4, E3 and E4 above.

## **E9. LASSEN NATIONAL FOREST COMMENT #9 – Statewide Consistency**

The Lassen National Forest requested the State Water Resources Control Board develop a new statewide process mutually agreed upon by the USFS Regional Office to more efficiently manage water quality.

**E9. RESPONSE:** Please see Response A2 above.

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## **F. U.S. FOREST SERVICE, MENDOCINO NATIONAL FOREST**

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### **F1. MENDOCINO NATIONAL FOREST COMMENT #1 – Best Management Practices**

The Mendocino National Forest commented that the requirement under Draft Order Section II.C.2 to incorporate management practices and water quality protective measures resulting from Central Valley Water Board staff participation in project review processes such as scoping, pre-project consultations, and during project implementation is not practical. Forest Service staff may disagree with the Water Boards' recommendations based on a range of factors based on professional judgment, such as effectiveness, cost, duration, and how practicable implementation of the recommendation is.

**F1. RESPONSE:** Please see Response D13 above.

### **F2. MENDOCINO NATIONAL FOREST COMMENT #2 – Mitigation Monitoring and Reporting Program**

The Mendocino National Forest commented that the CEQA Mitigation Monitoring and Reporting Program (MMRP) is beyond the scope of the purpose and need of this draft Order. The Forest noted that the Timber General Order includes no such requirement, that the requirement is vague and open-ended, and that the Forest Service in its NEPA documents does have a biological section/input and does not need to be mandated how to conduct the biological analysis. The Forest further noted that the MMRP is redundant and not applicable to the purpose of this Order, which is to ensure the protection and restoration of the beneficial uses of the waters of the state from nonpoint source pollution. Finally, the Forest commented that NEPA may cover for CEQA, that there has been no delegation of authority from the Council on Environmental Quality to the state for NEPA, and these sections will not be implementable.

**F2. RESPONSE:** Please see Response D7 above. As a state agency proposing to adopt the Draft Order, the Water Board is required to comply with CEQA. Like NEPA, CEQA requires analysis of a wide variety of potential impacts, across various resource categories. Unlike NEPA, CEQA mandates implementation of feasible mitigation measures to reduce significant impacts where identified. (Cal. Code Regs., tit. 14, section 15126.4) The DEIR assessed potential impacts from implementation of the Draft

Order, not the land management projects themselves. The BIO Mitigation measure is included in the MMRP because the Draft Order may require actions that would result in a significant impact on species protected under California laws but are not protected under federal laws. Water Board staff believe requiring this measure is within the scope of the Board's water quality authority and fulfills the Board's obligation to protect beneficial uses, particularly within riparian habitat, waterways, or wetlands. Finally, while CEQA allows use of a federal environmental document prepared in compliance with NEPA to be used in place of an environmental impact report or negative declaration if certain circumstances are met, the DEIR is intended to satisfy the Board's CEQA compliance for adoption of the Draft Order. (Cal. Code Regs., tit. 14, section 15220 et seq.) The DEIR is not attempting to implement the federal agencies' NEPA requirements or act under any delegated authority.

### **F3. MENDOCINO NATIONAL FOREST COMMENT #3 – Training and Certification and Resource Limitations**

The Mendocino National Forest commented that the Training and Certification requirement under Draft Order Section II.C.8 is unreasonable because it would mean that multiple staff areas within the Forest Service would have to be certified to work on any aspect of a project that would be enrolled in the Draft Order. The Forest further noted that the requirement will take time away from other Forest Service projects and priorities because it will require a wider range of people to be trained. The Forest commented that this requirement will slow projects because the Forest will have to wait for the person to get trained by the Water Board to be certified to work on any current or future projects that fall under the Order, and in doing so, will minimize the ability of the Forest Service to effectively manage the land.

**F3. RESPONSE:** Please see Response A8.

### **F4. MENDOCINO NATIONAL FOREST COMMENT #4 – Pesticide Application**

The Mendocino National Forest commented that the pesticide application section, Order Section II.C.18 is too prescriptive and restrictive. The Forest noted that it adheres to herbicide labels and conducts analysis for appropriate buffers to minimize impacts to water quality and other resources, which may be smaller than listed in Order Table 1. Adhering to the buffers identified in Table 1 would hinder the Forest Service objectives of treating landscape for fuels reduction, reforestation, invasive species eradication, and restoration. Herbicides labeled for aquatic use will not be permitted under the proposed draft Order. A separate process would be needed to use herbicides labeled for aquatic use.

**F4. RESPONSE:** Please see Responses A9 and D12 above.

## **F5. MENDOCINO NATIONAL FOREST COMMENT #5 – Notice of Planned Operations and Resource Limitations**

The Mendocino National Forest commented that the requirement to submit a Notice of Planned Operation (NPO) for Category B projects every year that the project is going to be implemented is a lot of work and strains the work that the Forest Service could be allocating its limited resources to. The Forest noted that the Timber General Order only requires a Notice of Intent (NOI) at the beginning of the project and Notice of Termination (NOT) once the project is completed. The Forest commented that the Order expands the list of activities covered under the Timber General Order and noted that the combination of needing to submit NPOs for all the identified activities in the draft Order and the yearly frequency will increase the workload of the limited Forest staff.

**F5. RESPONSE:** Please see Responses A7, D9, and D10. NPOs are only required annually if activities are planned on a covered Category B project.

## **F6. MENDOCINO NATIONAL FOREST COMMENT #6 – Sediment Source Assessments**

The Mendocino National Forest commented that while the existing Timber General Order includes Significant Existing or Potential Erosion Sites requirements, the CSDS requirements under Section II.E.3.c have expanded beyond the roads that are used for a project and now includes appurtenant (ancillary) roads. The need to conduct an Appurtenant Road Assessment within 12 months of an NPO is a big workload for limited staff and reprioritizes funds on the Mendocino National Forest.

**F6. RESPONSE:** Sediment discharges account for the majority of discharges of waste associated with ground disturbance from nonpoint source activities to waterbodies such as those covered by the Order. By conducting routine inventories within project areas, consistent and up to date information will be available to assist with planning decisions as well as assure permit compliance. CSDS inventory information gathered during project planning and implementation, even if identified sites are not feasible to treat during the life of the project, is expected to be utilized in the larger scale CSSRP. The CSDS definition has been developed to align with the terminology used in the North Coast Region for consistency and sites defined as CSDS will be fewer than those defined as SEPES under the exiting Timber General Order because qualifying CSDS will be limited to those that were caused or affected by anthropogenic activity, are under the Permittee's ownership and/or control, and can be treated through implementation of management measures. Should any of those criteria not be met, the site is not defined as a CSDS. While the Order does provide coverage to more activity types, the CSDS definition reduces the potential CSDS sites in comparison to the SEPES. The Order also provides extensions for completing CSDS inventories.

## **F7. MENDOCINO NATIONAL FOREST COMMENT #7 – Monitoring and Reporting**

The Mendocino National Forest commented that overall monitoring has increased exponentially in the proposed draft Order and the scope of activities that need to be monitored has expanded. The Forest further commented that CSDS sites would have implementation, effectiveness, and photo-point monitoring and that the Controllable Sediment Source Reduction Program (CSSRP) Reporting, which includes the Field Assessment Work Plan and Watershed Treatment Plan, is a tremendous expectation for the Forest Service to comply with.

**F7. RESPONSE:** Please see Responses A4, A7, and A12 above.

## **F8. MENDOCINO NATIONAL FOREST COMMENT #8 – Resource Limitations**

The Mendocino National Forest commented that the draft Order requirements will compete with other Forest priorities for staff time and funding and that the Forest will need to hire staff or contractors. The Forest commented that all the requirements may not be the best approach to protect water quality, especially if it takes away limited staff and money from projects that would contribute to water quality protection and/or improvement.

**F8. RESPONSE:** Please see Responses A4, A8, and A12.

## **F9. MENDOCINO NATIONAL FOREST COMMENT #9 – Regulatory Authority and Competing Priorities**

The Mendocino National Forest recommended against adoption of the Draft Order. The Draft Order and EIR have not detailed a significant discharge issue from Federal Lands to justify such a substantial increase in regulation, documentation, and categories to be covered by the expanded Draft Order. The Draft Order will unduly slow the pace of critical fuel reduction and forest restoration efforts which align with the state-wide emergency declaration and nation-wide wildfire crisis strategy.

**F9. RESPONSE:** Please see Responses A4, A5, A12, and E3 above.

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## **G. U.S. FOREST SERVICE, SIERRA NATIONAL FOREST**

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## **G1. SIERRA NATIONAL FOREST COMMENT #1 – Resource Limitations**

The Sierra National Forest expressed its concern that the additional required planning, document preparation, implementation, and monitoring for vegetation management, transportation management, recreation facility management, post-emergency recovery activities, and restoration activities covered under the new permit is unrealistic with the current staffing levels. This includes Category A & B Projects, their associated Controllable Sediment Discharge Source (CSDS) Assessments, and the implementation



of both a Controllable Sediment Source Reduction Project (CSSRP) and Watershed Treatment Plans (WTPs). Even though a significant proportion of the Forest Projects may fall within Category A, the Forest commented that there is still the required monitoring and annual reporting requirements associated with this category that takes time to complete.

**G1. RESPONSE:** Please see Responses A4, A7, A8, and A12 above. Central Valley Water Board Staff understand USFS staff's concerns regarding anticipated time to comply with the Draft Order requirements and limited staff resources. Water Board Staff worked extensively with USFS and BLM executive management in developing the Draft Order with the aim to leverage existing processes and minimize the regulatory burden on Federal Agency staff to the extent possible. Water Board Staff have not received a workload analysis supporting the assertion that the Draft Order obligations are infeasible and note that other permitting and monitoring and reporting requirements applicable to private, state and local entities for similar activities are comparable, or require more resources and effort than that proposed in the Draft Order. As noted in Response A2, Water Board Staff commit to ongoing coordination with the other Water Boards and Federal Agencies to assess additional improvements in efficiency and consistency with nonpoint source regulatory requirements.

## **G2. SIERRA NATIONAL FOREST COMMENT #2 – Monitoring**

The Sierra National Forest commented that it already has several Standards and Guidelines specifically written for maintaining desired conditions and objectives for the watershed resource and riparian conservation areas, including watershed condition and conservation planning, and that Forest level monitoring forms the basis for continuous improvement of the forest plan and provides information for adaptive management within the plan area, including providing information on watershed condition, soil structure and function, soil disturbance from management activities, ecological conditions of riparian ecosystems including meadows, stream condition, stream temperature, and habitat conditions for at-risk species (if applicable). The Forest further commented that as water quality issues are identified in the field they are subsequently repaired/restored as close to pre-disturbance condition.

**G2. RESPONSE:** Water Board Staff recognize that some forests or administrative units have existing monitoring processes and forms in place and will collaborate with the USFS and BLM to evaluate existing processes and forms. The Draft Order was intended to allow use of existing systems, so long as they provide the same level of information and water quality protection deemed necessary to comply with applicable laws and policies. Water Board Staff will develop optional templates for Permittee use.

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## H. U.S. FOREST SERVICE, TAHOE NATIONAL FOREST

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### H1. TAHOE NATIONAL FOREST COMMENT #1 – Resource Limitations

The Tahoe National Forest commented that the expansion of permitted activities will dramatically increase the number of projects tracked and required monitoring implemented from 20 to between 200 to 400 projects and that this will require increased watershed staffing across all forests. The Forest commented that the DEIR's estimate that an average of 52 projects per year would occur across the 15 national forests and 9 million acres of federal land within the Central Valley Regional Water Board jurisdiction is based on incomplete data that does not include all projects and those that occur over multiple years. The Forest commented that the claim that the Draft Order will streamline current regulations is misleading and that the Order will instead delay each step of forest and rangeland management from planning to post-implementation monitoring.

**H1. RESPONSE:** Please refer to Responses A4 and A12 above. Providing a single permit with transparent standards that provides regulatory coverage for multiple projects and standardizes permit requirements, including monitoring and reporting, is streamlined in comparison to the potential requirement for an individual permit for each individual project. As described in Response A4 above, Water Board Staff analyzed the number of USFS projects currently enrolled under the Timber General Order and evaluated Federal Agency projects available online several times during the process of Draft Order development. Water Board Staff acknowledge that Federal Agency projects often take multiple years to complete and agree that the estimated average number of projects per year that will be covered under the Order does not represent the total number of projects that will potentially be covered or require monitoring over time. Staff further note that not all projects are operational every year, and reporting is minimal for those that are not operational. Finally, as noted elsewhere in this document, please note that the DEIR evaluates potential impacts from the implementation of the Order itself; it does not attempt to determine the number of future management activities/projects that the USFS or BLM actively undertake in a given year as such an estimate would be speculative and immaterial to the impact analysis.

### H2. TAHOE NATIONAL FOREST COMMENT #2 – Regulatory Authority

The Tahoe National Forest commented that the Draft Order and the EIR lack quantitative data to indicate that sediment discharges from Forest Service lands negatively affect beneficial uses as defined in the Central Valley Basin Plan and requested specific measurements of sediment discharge from the Tahoe National Forest related to project activities that negatively impact beneficial uses.

**H2. RESPONSE:** Please see Responses A3, A5, and E3 above. Water Code section 13263 requires the Water Board to "prescribe requirements as to the nature of any

proposed discharge, existing discharge, or material change in an existing discharge . . . with relation to the conditions existing in the disposal area of receiving waters upon, or into which, the discharge is made or proposed." Additionally, Water Code section 13267 authorizes the Water Board to prescribe monitoring and reporting requirements of "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region." Finally, Water Code section 13304 requires cleanup and abatement actions in the case of waste discharges that creates or threatens to create a condition of pollution (i.e., exceedance of water quality standards). These statutory authorities are in addition to regulatory requirements, such as under the Antidegradation and NPS Policies. Specific measurements of sediment discharge or existing impairments are not needed under these authorities to impose discharge requirements, and the Draft Order is intended to, in addition to abate existing sediment discharges, prevent and minimize discharge impacts and degradation.

### **H3. TAHOE NATIONAL FOREST COMMENT #3 – Best Management Practices**

The Tahoe National Forest commented on the DEIR's use of Forest Service BMPEP Data from across the entire National Forest System to determine the success of BMPs on Forests in Region 5, and noted that the data cited is over a decade old and comes from the first years of BMPEP implementation which does not represent improvements made specifically to address initial findings. The Forest further commented on the limited number of field visits to justify Order requirements, and that there is insufficient evidence that the adoption of the Draft Order will benefit or protect water quality.

**H3. RESPONSE:** Please see Responses A3, A5, A17, A18, and E1 above. The field visits referenced in the DEIR and Order findings are not intended to represent the entirety of USFS and BLM projects/lands but rather to evaluate Federal Agency processes that lead to BMP implementation and adaptive management beyond Staff's experience with complaint response and timber activities oversight.

### **H4. TAHOE NATIONAL FOREST COMMENT #4 – Resource Limitations**

The Tahoe National Forest disagreed with the claim that the Draft Order will streamline the permitting process, given additional restrictions, requirements, and processes that would reduce the Forest's ability to complete needed life and safety fuel reduction work, especially in streamside management zones where the Draft Order and DEIR define multiple confusing "buffer zones". The Forest highlighted the EIR statement within the Alternatives Analysis that "Additionally, relative to baseline, the No Project Alternative would not result in substantially greater environmental damage than the Proposed Project," and commented that there appears to be insignificant rationale for the larger, expanded Draft Order.

**H4. RESPONSE:** Please see Responses A3, A4, A5, E3, and H2 above.

## **H5. TAHOE NATIONAL FOREST COMMENT #5 – Clerical Error**

The Tahoe National Forest commented that numerous times in the DEIR, the Eldorado National Forest is referred to as “El Dorado” (sic).

**H5. RESPONSE:** Thank you for your comment, the spelling of El Dorado to Eldorado has been corrected.

**PROPOSED REVISION:** Revise “El Dorado” to “Eldorado” in Table 2-4 on page 2-30 of the EIR.

## **H6. TAHOE NATIONAL FOREST COMMENT #6 – Best Management Practices**

The Tahoe National Forest expressed concern with the Draft Order, Section II.C.2 requirement to “incorporate management practices and water quality protective measures resulting from Central Valley Water Board Staff participation in project review processes such as scoping, pre-project consultations, and during project implementation,” noting this mandates decision making away from Forest Service staff with extensive local knowledge to centralized regulators.

**H6. RESPONSE:** Please see Response D13 above.

## **H7. TAHOE NATIONAL FOREST COMMENT #7 – Resource Limitations**

The Tahoe National Forest commented that the DEIR failed to consider impacts on wildfire risk and stated that the Draft Order will ultimately increase the risk of catastrophic wildfires in the state of California. In particular, the Forest commented that Section 3.17 of the DEIR fails to discuss how the Draft Order will affect vegetation management activities and noted that the greatest sediment discharge events on our forests occur following catastrophic wildfires. The Forest concludes that this failure violates the California Environmental Quality Act and that the EIR must either a) make a genuine effort to improve the efficiency of the Draft Order while protecting water quality or b) analyze the effects of more frequent, more severe, and larger wildfires in California combined with less agency recovery efforts.

**H7. RESPONSE:** The EIR impact analysis focuses on impacts from implementation of the Draft Order (not of the land management activities themselves), including increased management measure and monitoring requirements. Specific to wildfire-related impacts, Section 3.17 of the DEIR evaluates wildfire-related impacts that may result from activities conducted under the Draft Order, using the significance criteria contained within Appendix G of the CEQA Guidelines. This Section concludes that wildfire related impacts would be less than significant.

Water Board Staff do not anticipate that the Draft Order will interfere with vegetation management practices. Please see Responses A4 and A12 above regarding permit

streamlining. Staff expect most vegetation management activities to fall under Category A, which has minimal tracking and reporting requirements. Vegetation management activities that fall under Category B will do so because they include land disturbance such as construction/reconstruction of roads, landings, and skid trails. Such land disturbance is commonly a source for NPS pollution, and in the case of the post-fire environment, anthropogenic disturbances should not exacerbate natural erosion and sediment discharge rates.

## **H8. TAHOE NATIONAL FOREST COMMENT #8 – Resource Limitations**

The Tahoe National Forest recommended against adoption of the Draft Order, commenting that the Draft Order and DEIR have not detailed a significant discharge issue from Federal Lands to justify the increase in regulation, documentation, and categories to be covered by the expanded Draft Order and noting that the Draft Order will slow pace and scale of critical fuel reduction and forest restoration efforts against the policy and guidance of state-wide and nation-wide initiatives.

**H8. RESPONSE:** Please see Responses A3, A4, A7, A12, C1, E3, and H2.

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## **I. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW)**

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### **I1. CDFW COMMENT #1 – Draft Environmental Impact Report, Biological Resources**

CDFW commented that, based on species occurrence records from the California Natural Diversity Database (CNDDDB), the Project area occurring within CDFW Region 1 is known to and/or has the potential to support several state special-status species. CDFW recommended that potentially occurring special-status species and their habitats are identified, evaluated, and addressed, with specific regard to potentially significant direct and indirect impacts, and that the Lead Agency include applicable avoidance, minimization, and mitigation strategies to reduce impacts to these species and their associated habitats, to less than significant.

**I1. RESPONSE:** Mitigation Measure BIO-1 is intended to reduce potential impacts to candidate, sensitive, or special status species that may occur as a result of implementation of the Draft Order. While the federal agencies have existing protective requirements with respect to special-status species and habitats, this measure is intended to protect biological resources that may otherwise not be considered. In particular, this measure would require avoidance and minimization measures where construction/installation of management measures could result in impacts to California special-status species, as defined and listed in Section 3.4.3 and Appendix D, and sensitive vegetation communities within riparian, habitat, waterways, or wetlands. The commenter has not provided explanation why the existing measure is insufficient.

## **I2. CDFW COMMENT #2 – Draft Environmental Impact Report, Biological Resources**

CDFW commented that the Project area contains suitable habitat for nesting birds and that nesting migratory birds, if present, could be directly or indirectly impacted by future activities resulting from the Project, including but not limited to construction, land modification, and vegetation removal activities. Direct effects could include mortality resulting from vegetation removal and/or construction equipment operating in an area containing an active nest with eggs or chicks. Indirect effects could include nest abandonment by adults in response to loud noise levels, human encroachment, or a reduction in the amount of food available to young birds due to changes in feeding behavior by adults. CDFW recommended additional nesting bird survey protocols to ensure that impacts to nesting birds are less than significant.

**I2. RESPONSE:** The DEIR evaluates potential impacts from implementation of the Draft Order, including implementation of management measures and monitoring. To the extent the comment is focusing on potential impacts outside of this scope, such as evaluation of underlying activities, those impacts are not the focus of evaluation within the DEIR. Additionally, please see Response I1 discussing Mitigation Measure BIO-1. In particular, this measure, where applicable, requires inspection to ensure nesting birds are not present when management measures are implemented and further requires work outside of the nesting season where nests or young are identified. While Board staff appreciate CDFW's additional recommendations regarding nesting bird inspection protocols, the existing mitigation measure is intended to minimize the potential impact while also providing the federal agencies flexibility in implementation, given existing federal protocols and guidance.

## **I3. CDFW COMMENT #3 – Draft Environmental Impact Report, Biological Resources**

CDFW commented that bats are considered non-game mammals and are afforded protection by state law from "taking" (Fish & G. Code, §86), or possession and that construction activities, including ground disturbance, vegetation removal, and any activities leading to increased noise levels, may have direct and/or indirect impacts on bats and bat roosts. The DEIR states that multiple land use types occurring in the project area have the potential to provide roosting habitat for special-status bats. Trees that contain cavities, crevices, or exfoliated bark have high potential to be used by various bat species. The Project includes land alteration and removal of trees with the above-referenced characteristics. CDFW recommended including additional avoidance and minimization measures for the protection of special-status bats.

**I3. RESPONSE:** The DEIR evaluates potential impacts from implementation of the Draft Order, including implementation of management measures and monitoring. To the extent the comment is focusing on potential impacts outside of this scope, those

impacts are not the focus of evaluation within the DEIR. Additionally, please see Response I1 above discussing Mitigation Measure BIO-1. In particular, this measure, where applicable, requires measures to avoid and minimize disturbance to areas containing special-status species, including bats (see Appendix D of the Draft EIR).

#### **14. CDFW COMMENT #4 – Draft Environmental Impact Report, Biological Resources**

CDFW commented that the western bumble bee is in the candidacy stage of the CESA listing process and granted full protection under CESA during this period. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Additionally, the western bumble bee has a state ranking of S1/S2, of which are imperiled/critically imperiled and extremely rare (often five or fewer populations) and is listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Priority. Due to potentially suitable habitat throughout the Project area and the potential for significant impacts to the western bumble bee, CDFW recommended including avoidance and minimization measures in the DEIR and aligning the measures with survey considerations outlined in the June 2023 Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species.

**14. RESPONSE:** The DEIR evaluates potential impacts from implementation of the Draft Order, including implementation of management measures and monitoring. To the extent the comment is focusing on potential impacts outside of this scope, those impacts are not the focus of evaluation within the DEIR. Additionally, please see Response I1 discussing Mitigation Measure BIO-1. In particular, this measure, where applicable, requires measures to avoid and minimize disturbance to areas containing special-status species, and the western bumble bee is listed within Appendix D to the DEIR. While Board staff appreciate CDFW’s additional recommendations regarding the western bumble bee, the existing mitigation measure is intended to minimize potential impacts to protected species while also providing the federal agencies flexibility in implementation, given existing federal protocols and guidance.

#### **15. CDFW COMMENT #5 – Draft Environmental Impact Report, Biological Resources**

CDFW advised that a CESA Incidental Take Permit must be obtained if activities permitted by the Project have the potential to result in “take” (hunt, pursue, catch, capture, kill, or attempt thereof) of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If activities permitted by the Project have the potential to result in take of a CESA-listed species, CDFW encouraged early

consultation, as significant modification may be necessary to minimize and fully mitigate impacts as required by Fish and Game Code Section 2081(b)(2).

**I5. RESPONSE:** Comment noted. DEIR section 3.4.2 briefly discusses CDFW's incidental take authority. The Draft Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited or becomes prohibited in the future under either the California Endangered Species Act or the federal Endangered Species Act. The Permittees are responsible for meeting requirements of these Acts, where applicable, for activities conducted under the Draft Order.

#### **I6. CDFW COMMENT #6 – Pesticide Application**

CDFW commented that activities permitted by the Project may include authorized use of pesticides for wildfire suppression repair, and to control competing vegetation, noxious weeds, or other pests. While pesticide use is sometimes the most efficient tool, CDFW discourages its use, especially in areas that provide habitat for CESA-listed bumble bees. If CESA-listed bumble bees occur on the Project area, CDFW recommends implementing alternatives to pesticide use. If pesticides are used, the DEIR should specify specific methods for use to avoid or minimize direct and indirect impacts to bumble bees (i.e. applying pesticides outside of the blooming season), and CDFW recommended pesticide measures. CDFW strongly encourages the preparation and implementation of a weed prevention and control plan.

**I6. RESPONSE:** The DEIR evaluates potential impacts from implementation of the Draft Order, including implementation of management measures and monitoring. To the extent the comment is focusing on potential impacts outside of this scope, including the application of pesticides by BLM or USFS, those impacts are not the focus of evaluation within the DEIR. The DEIR discusses management measures applicable to pesticide use, such as following application requirements and maintaining watercourse protection buffers, that would have limited potential for impacts.

#### **I7. CDFW COMMENT #7 – Reporting Special-Status Species Observations**

CDFW noted that CEQA requires that information in environmental documents be incorporated into a database that may be used to make subsequent or supplemental environmental determinations, Public Resources Code, § 21003, subd. (e), and requested reporting any observation of special-status species to the California Natural Diversity Database.

**I7. RESPONSE:** Comment noted.



## **I8. CDFW COMMENT #8 – Consultation**

CDFW emphasized its staff availability for consultation at every stage of the project development process and encouraged the Lead Agency to continue to consult with CDFW before and during the development of future projects and their equivalent CEQA documents, specifically regarding the analyses of biological resources and the formulation of avoidance, minimization, and mitigation measures for such resources. Engaging with CDFW early-on plays a critical role in allowing our agency to fulfill our mandate to conserve California’s valuable fish and wildlife resources and will simultaneously aid the Lead Agency in an efficient and comprehensive CEQA review.

**I8. RESPONSE:** Thank you for your review and comment.

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## **J. CENTRAL SIERRA ENVIRONMENTAL RESOURCE CENTER (CSERC)**

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### **J1. CSERC COMMENT #1 – Best Management Practices**

CSERC, citing to page 5 of the Draft Order, questioned the Order purpose “to ensure the protection and restoration of beneficial uses of waters of the state from nonpoint source pollution,” noting that the definition of “ensure” is “to make certain, guarantee, warrant, or confirm” and that the Board cannot “ensure” the protection of the beneficial uses of water based upon the implementation of broadly worded and often unmeasurable Best Management Practices (BMPs). CSERC commented that the Draft Order would not ensure the protection and restoration of beneficial uses of water but instead would legitimize flawed and inadequate policies and explicitly allow widespread, significant, adverse and harmful NPS discharges on federal lands across the region.

CSERC further noted that the Draft Order relies primarily upon agency BMPs that have consistently failed for decades to meaningfully limit NPS discharges and that have not consistently protected beneficial uses of water. BMPs may be useful as a planning tool and as a guide. But a significant percentage of the federal agencies’ BMPs are either weak, nebulous, mostly rhetoric, unmeasurable, unproven, undeveloped or otherwise inadequate to protect beneficial uses and prevent the pollution of waters of the State.

**J1. RESPONSE:** Water Board Staff believe the Draft Order appropriately balances water quality protection while leveraging Federal Agencies’ existing practices and protocols and considering existing resources. Specific to the Draft Order’s use of BMPs, BMPs are relied upon throughout numerous industries and regulations as a method to better protect water quality and are often composed of prescriptive and performance-based measures. When selected and implemented correctly, Water Board Staff’s experience has demonstrated that BMPs are effective in protecting against nonpoint source pollution.

The Draft Order and analysis within the DEIR recognize limitations in relying on BMPs alone. The Draft Order, consistent with the Nonpoint Source Policy, serves to layer on BMPs that have been developed by the Federal Agencies by providing enforceable requirements to reinforce the proper selection and implementation of BMPs and Board oversight. For instance, the Draft Order would require consultation with Central Valley Water Board Staff during initial project proposals, scoping notices, and other project planning efforts that will allow staff the opportunity to make recommendations for water quality protective measures and would require the Federal Agencies to incorporate said recommendations or provide additional documentation to prove protective measures are adequately designed. Site specific design prescriptions would be required to further describe and refine BMPs that may be broadly described in guidance documents. Feedback mechanisms in the form of annual reporting and Central Valley Water Board staff inspections and audits allow Staff to review monitoring results and records to ensure the BMPs are effective and are adequately described in contracts and work plans. Additionally, as described in the Draft Order, adaptive management and corrective actions must be employed to ensure deficiencies are corrected. Finally, the Draft Order's training program aims to help Federal Agency staff appropriately select and implement BMPs and supplement Water Board Staff oversight.

## **J2. CSERC COMMENT #2 – Monitoring**

CSERC commented that without a requirement for the actual testing of water quality of affected waters that is based upon a well-planned scientific sampling strategy to assess the effectiveness of BMPs, the implementation and effectiveness monitoring of BMPs will at best only indicate whether the BMPs were or weren't implemented, not whether they actually are effective at protecting water quality and other beneficial uses of water.

**J2. RESPONSE:** The Nonpoint Source Policy, Key Element 4, requires that an NPS control implementation program “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 MP's or other actions are required. (NPS Policy, p. 13.) As noted in the State Board's discussion of this Key Element, the appropriate type of monitoring will depend on the water quality problem, the cause, the beneficial uses at risk, and the purposes for which the monitoring will be used. (NPS Policy, p. 14.)

Given the scale and scope of land management activities conducted by the Federal Agencies and that federal land is often intermixed with private and state ownership that may be producing nonpoint source type runoff and discharges, periodic water quality sampling would likely not provide adequate information to determine compliance with the Draft Order. The Proposed Monitoring and Reporting Program instead focuses on ensuring that adequate oversight is maintained by the Permittees and Board staff to ensure that BMPs are installed correctly and functioning properly, thus preventing discharges and protecting water quality. Additionally, should Water Board Staff

encounter situations where more information is needed, or ongoing concerns exist in relation to water quality impacts, the Monitoring and Reporting Program may be modified by the Executive Officer of the Central Valley Water Board.

### **J3. CSERC COMMENT #3 – Best Management Practices**

CSERC commented that the Regional Water Board's documents admit that the two agencies' current BMPs are inadequate, and that discharges are adversely affecting waters of the State. For example, CSERC noted that the "BMP Assessment" discussed in Attachment E spells out multiple significant failures of current USFS and BLM "Best Management Practices." As shown from cited text taken from the Project documents, including the DEIR, CSERC noted that the Federal Agency BMPs are often not implemented and have been evaluated to often be ineffective, yet reliance on the Federal Agencies' BMPs is repeatedly described in the Draft Order and supporting documents as the primary mechanism intended to avoid or reduce NPS discharges.

**J3. RESPONSE:** Please see Response J1 above. Please note that, specific to the BLM, the 2018-2019 evaluation occurred prior to the BLM formalizing its California-specific BMPs in 2022.

### **J4. CSERC COMMENT #4 – Best Management Practices**

CSERC, referencing discussion within Attachment E, p.17, notes that the USFS has not yet finalized California-specific BMPs, commented that the Regional Water Board and the Federal Agencies are relying on mitigation measures that are not yet even developed, let alone tested for efficacy, which it claims is not lawful under CEQA.

**J4. RESPONSE:** Key Element 2 of the NPS Policy requires an NPS program to "include a description of the [management practices (MPs)] 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 MPs, and the process to be used to ensure and verify proper MP implementation." (NPS Policy, p. 12). The State Water Board's explanation of Key Element 2 goes on to note that "MPs must be tailored to a specific site and circumstances, and justification for the use of a particular category or type of MP must show that the MP has been successfully used in comparable circumstances." (NPS Policy, p. 12). "If an MP has not previously been used, documentation to substantiate its efficacy must be provided by the discharger." (NPS Policy, p. 12.) Key Element 3, in turn, requires sufficient feedback mechanisms so that it can be determined whether the NPS program is achieving its stated purpose or whether additional or different practices or other actions are required. (NPS Policy, p. 13.)

The Draft Order would require compliance with agency-specific BMP guidance documents, including those prepared by or for the USFS and BLM for use in California when conducting projects covered under the Order. (Order section II.C.4.) Additionally,

compliance with agency-specific BMP guidance documents includes any modifications to those documents, so long as the modifications are equally or more protective of water quality as determined by the Board's Executive Officer. (Order, Section II.C.5.) Finally, the Draft Order requires Permittees to develop and implement site-specific design prescriptions necessary to further describe and refine BMPs and incorporate management practices and water quality protective measures recommended by Central Valley Water Board staff. (Order sections II.C.2, II.C.6.) To constitute, "best" management practices, BMPs must necessarily evolve and adapt to specific circumstances to be "best" measures for nonpoint source control, and staff believe the Draft Order reflects the need for this adaptability.

Please note that the Draft EIR evaluates potential environmental impacts from implementation of the Draft Order, including implementation of the management measures—not those of the underlying management activities/projects to be undertaken by the USFS or BLM. Further, the Board is generally prohibited from dictating the manner of compliance and mandating implementation of specific measures. (Wat. Code, section 13360). The DEIR recognizes that the Order would not require implementation of specific management measures and rather than speculate on implementation specifics, evaluates reasonably foreseeable management measures to meet Draft Order objectives.

#### **J5. CSERC COMMENT #5 – Best Management Practices and Draft Environmental Impact Report**

CSERC commented that the DEIR improperly concludes that there will be no significant impacts from the widespread discharges that would be permitted under the proposal. CSERC asserted this conclusion is flawed, for reasons including, but not limited to the following:

- The USFS BMP programs are known to be inadequate/ineffective, and the deficiencies pointed out by the Water Boards over many years have never been remedied, as evidenced by the many letters and memos written by the Water Boards on this subject.
- The Central Valley Board's own documents for this proposed Permit admit substantial deficiencies in the application and effectiveness of BMPs by the USFS and the BLM.
- The needed BMPs are not yet developed, and it is improper to rely on future, undeveloped, unspecified, unproven BMPs as CEQA mitigation measures, or to support any conclusion that the impacts of the project would be insignificant.

CSERC concluded that it is therefore arbitrary and capricious for the DEIR to conclude that there will be no significant impacts from the proposal to permit the described discharges of waste by USFS/BLM to waters of the State and that the denial of significant impacts and the failure to honestly disclose and mitigate significant impacts, are incorrect and unlawful.

**J5. RESPONSE:** Please see Responses J1 and J4 regarding best management practices. The impact analysis in the Draft EIR focuses on implementation of the Draft Order, including implementation of foreseeable mitigation measures and monitoring. While on-the-ground specifics may be unknown or speculative, the CEQA analysis instead evaluates reasonably foreseeable management measures to meet Order objectives. Even so, the Draft Order would establish measurable standards for projects and BMP implementation, including compliance with applicable water quality objectives.

#### **J6. CSERC COMMENT #6 – Resource Limitations**

CSERC commented that it is also improper to conclude there will be no significant impacts when there is admitted uncertainty as to whether the Water Board has capacity to effectively administer the program. CSERC noted the admitted infeasibility of the Individual WDRs Alternative given the Board’s budget and other commitments/ responsibilities, discussed within the DEIR, extends to the Draft Order as well. CSERC further commented that there is a lack of discussion of “fees” within the DEIR and that the USFS and BLM, as dischargers, must be required to pay fees sufficient to provide adequate staff resources at the Water Board so that the Water Board is able to effectively implement any such permit. CSERC commented that without a detailed discussion of fees, it is impossible to evaluate and disclose whether the Water Board will have sufficient staff to effectively implement and administer any such permit.

**J6. RESPONSE:** The DEIR analyzes potential impacts from implementation of the Draft Order; discussion of any permitting fees is outside this scope. Under the Draft Order, Water Board Staff does not anticipate collecting permitting fees; it is anticipated that existing staffing, currently tasked with oversight of USFS timber harvest under Waste Discharge General Order R5-2017-0061, will be able to effectively oversee the Draft Order based on existing funding sources. Water Board Staff recognize the potential challenges in overseeing project activities across the vast federal lands within the Central Valley region. The Draft Order was designed with these challenges in mind, and attempts to strike a balance by leveraging the statutory obligations and expertise of Federal Agency staff with those of the Water Board and its staff. Please also note that under Public Resources Code section 4629.6, “no currently authorized or required fees shall be charged by the agencies listed in this subdivision [including the State Water Resources Control Board and regional water quality control boards] for activities or costs associated with the review of a project, inspection and oversight of projects, and permits necessary to conduct timber operations of those departments and boards.” The Draft Order’s approach to fees is consistent with other similar regional water quality

control board's permits, including the North Coast Region's Order No. R1-2024-0012 and Lahontan Region's Order No. R6-2024-0035.

### **J7. CSERC COMMENT #7 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC noted that the discussion of the Individual WDRs Alternative within DEIR p.4-29 recognized that staff's individual attention to specific projects may incrementally improve the effectiveness of WDRs in curbing NPS discharges and protecting water quality but that this Alternative was dismissed, in part based upon a lack of Water Board Staff capacity. CSERC again noted that there was no discussion of fees within the DEIR and that to provide the federal agencies with a waste discharge permit without assessing whether fees are necessary for the Water Board to effectively implement the Permit contradicts sound management direction and legal mandates to assure protection of beneficial uses.

**J7. RESPONSE:** Please see Response J6 regarding fees. Water Board Staff believe that the individual WDR option would lead to less oversight of projects overall due to the increased need to focus on development of a discrete number of individual permits. An individual WDR can take from several months to more than a year to complete, which is infeasible for Water Board Staff considering the number of individual projects undertaken by the Federal Agencies and would lead to delay of implementation of important projects, including wildfire prevention projects. Staff believe the Draft Order is a more effective use of staff resources than preparation and oversight of individual WDRs; it serves to streamline the permitting process and allow Staff to focus on implementation and oversight of on-the-ground protective measures on a much broader range of projects while also providing Staff with the necessary information to help prioritize audits and field inspections.

### **J8. CSERC COMMENT #8 – Draft Environmental Impact Report, Environmental Analysis**

CSERC disagreed with the DEIR's impact analysis and conclusion of "no significant impacts," asserting that the project should be considered the Board's action to permit significant and harmful discharges and that the proper baseline for the analysis is no discharges. CSERC commented that the discharges proposed to be permitted are substantial, with known significant adverse effects, and the reliance on inadequate and future undeveloped BMPs cannot support a finding of less than significant.

**J8. RESPONSE:** Please see Responses J1 and J5 related to the Draft Order's reliance on BMPs. The term "baseline," as used in CEQA, pertains to how an environmental review document describes the existing conditions that could be affected by a proposed project. The baseline serves as the benchmark against which the significance of environmental changes caused by the project can be assessed. Under CEQA

Guidelines section 15125, subdivision (a), the baseline is generally existing conditions. (See *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 320-326.)

Here, as explained within the DEIR, the covered land management activities are currently occurring on federal lands and are expected to continue to occur if the Draft Order does not go forward, albeit under existing Federal Agency and Water Board agreements and other existing requirements, such as the Timber General Order. The DEIR does not analyze the underlying activities undertaken by USFS or BLM. Because the Draft Order would only impose on those activities additional foreseeable water quality protection measures and monitoring requirements, but not cause the federal activities themselves to occur or increase, the impact analysis properly focuses on the physical effects of implementing the Draft Order. Additionally, as noted in the EIR, the identification and prioritization of Controllable Sediment Discharge Sources (CSDS) will likely lead to additional CSDS treatment activities relative to the baseline. The treatment of CSDS, although dependent on the specific nature of individual sites, would utilize the same management measures used to implement BMPs relative to the covered activities.

As discussed within the DEIR, the overarching purpose of the Draft Order is to ensure protection of water quality and beneficial uses by addressing threats to water quality resulting from actual or potential nonpoint source discharges. For instance, focusing on HWQ-1, the DEIR concludes that impacts from Order implementation are less than significant given existing federal regulations and guidance to minimize potential impacts associated with erosion and sedimentation and release of hazardous materials. Additionally, the Draft Order itself would provide additional monitoring and oversight for increased effectiveness. Staff conclude that the overall effects of the Draft Order are likely to be positive and improve water quality over the long term.

#### **J9. CSERC COMMENT #9 – Draft Environmental Impact Report, Environmental Analysis**

CSERC commented that the DEIR's conclusion that the project (i.e., NPS discharges allowed under the proposed permit) would have no significant effects is highly speculative, based largely on undeveloped BMPs. CSERC commented that it would be arbitrary and capricious to conclude that the project's environmental impacts will be mitigated to levels of insignificance given: (1) the preponderance of facts and evidence documenting significant adverse effects from NPS pollution on federal lands; (2) the Water Boards' many clear admissions over the years (and in the current documents) that the BMPs/BMPEP are substantially deficient; (3) the highly uncertain potential future performance of mitigation measures / BMPs that are as yet undeveloped, untested and unproven; and (4) the highly speculative and unsupported assumption that the Water Board will have sufficient staff resources to effectively administer and implement the permit, as proposed.

**J9. RESPONSE:** Please see Responses J1, J4, J6, and J8.

**J10. CSERC COMMENT #10 – Best Management Practices**

CSERC commented that the federal agencies have consistently been allowed to continue to authorize widespread projects and activities that generate NPS pollution in violation of the Clean Water Act and that statements within the draft documents acknowledge continued noncompliance. CSERC reiterated concerns with continued reliance on vague Federal Agency BMPs, noting widespread, repeated and ongoing pollution of water, including significant adverse impacts to beneficial uses of water. Additionally, CSERC expressed concern with the lack of requirements within the proposal to address pollution caused by the widespread presence of livestock brought onto USFS or BLM lands each year even though the DEIR and Appendices show that range management BMPs were amongst the most egregious for failure to be implemented or to avoid violations.

**J10. RESPONSE:** Please see Responses B20, J1, and J4 above.

**J11. CSERC COMMENT #11 – Best Management Practices**

CSERC reiterated disagreement with language in Attachment E findings that adherence to and implementation of federal BMP guidance documents and compliance with the Order will ensure water quality protection. CSERC acknowledged that reliance upon BMPs is understandable and that they are generally positive in intent as they are openly designed to allow for national agency project management measures to be consistently identified at a programmatic level. However, CSERC noted that the draft documents make it clear that BMPs are supposed to be supplemented by site-specific measures. CSERC commented that the draft documents do not list site-specific BMPs or examples of site-specific BMPs that will further describe and refine high level BMPs and reiterated concerns that reliance on undeveloped, unwritten, unproven BMPs is not lawful under CEQA to mitigate to levels of insignificance.

**J11. RESPONSE:** Please see Responses J1, J4, and J8 above. The Draft Order does not rely on future BMPs as mitigation measures, and the DEIR's impact analysis, while recognizing that implementation of specific management measures is unknown, evaluates reasonably foreseeable management measures. As noted above, BMPs necessarily evolve and adapt and must be tailored to site specific circumstances to be "best" measures for nonpoint source control. While the Water Board is generally prohibited from dictating the manner of compliance and mandating implementation of specific measures, (Wat. Code, section 13360), enhanced and site-specific measures would be proposed in NEPA documents and developed through Water Board consultation.



## **J12. CSERC COMMENT #12 – Best Management Practices**

CSERC commented that many BMPs are unrealistic or the prescriptive language in the BMP is “simply meaningless rhetoric,” noting language such as “to the extent practicable” or “to use suitable tools” or to “consider the natural sensitivity or tolerance of the watershed” or to “develop site-specific BMP prescriptions . . . as appropriate or when required” is nebulous and provides unmeasurable directives that will do little or nothing to protect water quality. CSERC concluded that relying on broadly worded, non-specific, and often unrealistic BMPs or BMPs that are often mostly rhetoric as approach by itself fails to provide any assurance that legal mandates to protect beneficial uses will be sufficiently met by the federal agencies.

**J12. RESPONSE:** Please see Responses J1 and J4 above.

## **J13. CSERC COMMENT #13 – Best Management Practices**

CSERC commented that the wording of some Federal Agency BMPs is flawed so that either implementation of the BMP is insufficient to assure that there will be any protection of water quality, or there is no way to assess whether that BMPs implementation was ever done due to the non-measurable wording of the BMP.

**J13. RESPONSE:** Please see Responses J1 and J4 above. Additionally, Water Board Staff audits will focus beyond whether the specific BMP was implemented and effective to whether discharges occurred or are threatened to occur as a result of covered project activities.

## **J14. CSERC COMMENT #14 – Best Management Practices**

CSERC reiterated concerns with BMPs being the primary mechanism for meeting water quality standards from nonpoint source pollution sources given acknowledgement throughout the permit documents that over more than a decade of BMP evaluations by the USFS and Water Board demonstrated that a high percentage of past BMPs were only “marginally implemented,” “not implemented”, or the Water Board was unable to identify where corrective actions and adaptive management occurred.

**J14. RESPONSE:** Please see Responses J1 and J4.

## **J15. CSERC COMMENT #15 – Best Management Practices**

CSERC noted, as one of the more glaring reasons why BMPs do not provide assurance that nonpoint source discharges will be minimized or avoided, that its review of the federal BMPs revealed that at least 36 different BMPs in the Regional USFS Guide contain the word “consider” as the key directive for the implementation of practices to avoid significant impacts from projects or activities on federal lands and that the BLM BMP guide has additional examples that use the word “consider” as the key directive for

the BMP. CSERC expressed concern that this type of directive will not result in any meaningful management action or mitigation and recommended rewriting to contain more explicit, measurable prescriptive language to provide a legal basis or consequence if a permittee fails to take an action.

**J15. RESPONSE:** Please see Responses B3, J1, and J4. The Draft Order includes the requirement that the Permittee must develop and implement site-specific design prescriptions necessary to further describe and refine broader National and/or California specific BMPs (Order sections II.C.3 - 6.) as well as requiring corrective actions and adaptive management where site-specific BMPs are found to be ineffective or deficient prior to the upcoming winter period (Order section II.C.10). Additionally, the Draft Order requires compliance with the Permittee's BMP guidance documents, including any modifications to those documents made during the life of the Draft Order, so long as those modifications are equally or more protective of water quality. (Order section II.C.5). Staff propose revisions to include two requirements from Category B Eligibility Criteria and Conditions in Category A Eligibility Criteria and Conditions.

**PROPOSED REVISION:** Order section D.1.b. revised to include:

- v. To allow for adequate road drainage and to reduce the potential for hydrologic connectivity of concentrated road surface runoff, the Permittee must deliberately breach or remove and stabilize off-site roadside berms or other sidecast material generated from transportation management activities (e.g., road grading), unless these features are serving as part of a designed drainage system.
- vi. Waste generated from project activities such as spoil piles from the removal of sediment, debris, asphalt grindings, stockpiles of woody debris, or other earthen materials from the road surface or drainage features must be removed from riparian or WLPZ and stabilized so that there is no potential for that material to discharge or threaten to discharge to surface waters except where associated with a specific restoration activity.

#### **J16. CSERC COMMENT #16 – Monitoring**

CSERC highlighted Order findings that measuring BMP effectiveness is an integral part of the adaptive management process and that in order to measure effectiveness, BMPs must be clearly documented, and sites need to be monitored. (Draft Order, Attachment E, Section II.C., Page E.20.) Yet, CSERC noted Order findings allow use of BMP checklists and that these can then be checked during critical times of the year for effectiveness. (Draft Order, Attachment E, Section II.C., Page E.20) CSERC commented that a checklist does not assure a site-specific BMP was ever actually implemented on-the-ground but instead that site visit is needed to do field checks to document whether the BMP was or was not actually implemented. CSERC further commented that

the Order's use of the word "can" does not assure that any actual site visit to check effectiveness will actually be done.

**J16. RESPONSE:** The excerpts highlighted by the commenter are from findings within the Draft Order's Fact Sheet, Attachment E, and do not constitute requirements of the monitoring and reporting program of the Draft Order. The Fact Sheet discusses documentation that was assembled and relied upon in development of the Draft Order.

Attachment B of the Draft Order contains the monitoring and reporting requirements, including Implementation and Effectiveness monitoring. Both Implementation and Effectiveness monitoring are described as visual evaluations to determine that water quality protective measures were fully and properly implemented, and that those measures were effective in preventing nonpoint source discharges of waste to waters of the state, respectively. These monitoring events require on the ground observation of project activities and associated BMP implementation and effectiveness. Additionally, Water Board staff may conduct audits to review project documentation to better determine compliance with requirements of the Draft Order.

#### **J17. CSERC COMMENT #17 – Monitoring**

CSERC commented that unless there is a requirement for a site visit and documentation of a BMP being implemented, there often will be no assurance that a BMP was ever actually implemented, only that it was included (listed) as a requirement in a contract, agreement, or work plan. CSERC commented that the proposed regulatory scheme is essentially a paper exercise based on the "hope" that checklists or other vague assurances from the dischargers will result in adequate water quality protection and that the likely outcome of adopting the Proposed Project would be continued significant adverse impacts to water quality and beneficial uses.

**J17. RESPONSE:** Please see Response J16.

#### **J18. CSERC COMMENT #18 – Monitoring**

CSERC, citing Attachment E findings, noted that in order to measure effectiveness, BMPs must be clearly documented, and sites need to be monitored but that there are no requirements for any actual sampling and measurement of water quality to show whether or not the implemented BMP actually protected or failed to protect water quality. CSERC also expressed concern that effectiveness monitoring under the Monitoring and Reporting Program is based on a visual evaluation of management measures done somewhere at the project site following the winter period. CSERC stated that sediment discharged into receiving waters or chemical contamination of pesticide applied at a site will no longer be visible and that this monitoring requirement is meaningless. Similarly, CSERC noted that effectiveness monitoring reporting does not include water quality monitoring to prove detections of nonpoint source contamination and expressed

concern that the requirement to identify all Category B projects where effectiveness monitoring identified water quality impacts is meaningless is based on nothing more than visual observations.

**J18. RESPONSE:** Please see Responses J2 and J16. Effectiveness Monitoring serves as a feedback mechanism to determine if BMPs and other management measures functioned properly during the winter period. Should erosion and sediment discharge occur, or other failure of a BMP or management measure, evidence in the form of erosional voids would be visible, and documentation is required to be submitted in the Annual Reports or Incident Reports.

**J19. CSERC COMMENT #19 – Best Management Practices**

CSERC, citing DEIR p. 4-5, highlighted the DEIR’s acknowledgement that sole reliance on the 1981 MAA (with USFS) and 1992 MOU (with BLM) has not led to sufficient protection of water quality and that these frameworks primarily focused on protecting water quality through creation and implementation of BMPs, rather than doing effectiveness monitoring combined with strategically selected water quality monitoring to accurately assess whether water has been polluted by project activities. Thus, based upon the Water Board’s own experience and monitoring, it would be arbitrary and capricious to now rely on essentially the very same BMPs as the primary method to control the discharges that would now be explicitly permitted.

**J19. RESPONSE:** Please see Responses A18, J1, J2, J16, and J18 above.

**J20. CSERC COMMENT #20 – Draft Environmental Impact Report, Hydrology and Water Quality**

CSERC highlighted discussion within the Order findings discussing discharges from native surfaced roads and Federal Agency resource limitations to address. (Attachment E, pp. 20, 26.) CSERC commented that, despite these issues, the federal agencies keep open sediment-discharging roads. CSERC commented further that there is no discussion in the DEIR of potential mitigation measures to reduce such widespread contamination of water from roads, such as directing closure of minimally used native surface roads that show evidence of discharge.

**J20. RESPONSE:** Please see Response J8 regarding focus of the EIR analysis. In implementing the Draft Order’s CSSRP’s requirements, the Federal Agencies will propose corrective actions to abate the discharges of sediment from controllable sediment discharge sites, which could include road decommissioning.

**J21. CSERC COMMENT #21 – Monitoring**

CSERC commented that of the required reporting under the Monitoring and Reporting Program, none of the listed notifications or reports actually require there to be any

measurable monitoring of project effects or the effects of authorized federal activities. Only in the situations where conscientious Federal Agency staff somehow observe (or learn anecdotally of) a discharge incident or a misapplied pesticide application is there a likelihood of there being any report or notification to the Water Board. Because there is no requirement for water quality sampling to be done to show whether discharges entered downstream receiving waters, or whether pesticide drifted into or was sprayed into the riparian zone, CSERC commented that there is minimal potential for agency reports to reveal when such incidents occur.

**J21. RESPONSE:** Please see Responses J2, J16, and J18 above.

### **J22. CSERC COMMENT #22 – Notice of Planned Operations**

CSERC commented that the requirement to submit Notice of Planned Operations for Category B activities at least 15 days prior to the start of the project does not allow already overstretched Water Board staff sufficient time to evaluate whether proposed BMP requirements are adequate prior to the start of ground-disturbing activities.

**J22. RESPONSE:** Please see Response J1 regarding opportunities for Water Board Staff input on covered projects.

### **J23. CSERC COMMENT #23 – Controllable Sediment Source Reduction Program**

CSERC commented that the CSSRP requirement to select one or more HUC 12 watersheds for assessment and treatment gives the misleading impression that the federal agencies will be taking meaningful actions to treat water quality impairments when, in reality, a HUC 12 watershed is a tiny fraction of a single national forest or BLM resource unit area, and an actual treatment plan is not required to be completed for 10 years. CSERC commented that it is an understatement to say the requirement is weak or meaningless.

**J23. RESPONSE:** Water Board Staff understand that addressing a single HUC 12 watershed at a time in a holistic manner can feel like too little progress too slowly for some interested persons. However, to date, the USFS and BLM have not been required to undertake broad or even focused watershed scale treatments in the Central Valley region. It is important to take into consideration the limitations the Federal Agencies frequently encounter, and the scale of the Central Valley region. Staff recognize that all issues cannot be addressed at once and believe that developing a progressive treatment program and evaluating the effectiveness of that program to advise future Board actions is a reasonable place to start. Water Board Staff, in discussions with the Federal Agencies, have proposed an extended treatment implementation timeline to factor in time needed to conduct actions, such as completing any necessary environmental review, securing funding, hiring contractors, and coordinating with

partners and the public. However, the Water Board retains its authority to address site specific issues outside the selected HUC 12 watershed on a case-by-case basis.

**PROPOSED REVISION:** Order section II.G.1. is revised to clarify the intent of the CSSRP as follows:

**Overview of CSSRP.** Under the CSSRP, the Permittee must identify and abate actual or threatened discharges of waste to surface waters from CSDS on lands owned or managed by the Permittee in targeted hydrologic unit code (HUC) 12 watersheds over time. The CSSRP is intended to ensure that the Permittee selects HUC 12 watersheds where its efforts under a Watershed Treatment Plan will result in positive improvements to water quality in the form of measurable and consequential reduction in erosion and sediment discharges associated with their lands.

#### **J24. CSERC COMMENT #24 – Pesticide Application**

CSERC commented that the Draft Order will not sufficiently regulate pesticide use to avoid the potential direct and indirect contamination of water by Federal Agency pesticide projects. CSERC recommended that the Central Valley Water Board require that for “direct individual treatment” spraying of chemicals on BLM or USFS lands, there shall be a Watercourse and Lake Protection Zone requirement with a no- spray treatment buffer no less than 15 meters from the waterline or from sensitive plant populations, riparian vegetation, or known critical habitat for any listed or Special Status species.

**J24. RESPONSE:** Please see Response D12 for a discussion of the Draft Order’s pesticide application buffers.

#### **J25. CSERC COMMENT #25 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC commented that CEQA requires an EIR evaluate a reasonable range of alternatives but that the Draft EIR, in a “glaring legal flaw,” incorrectly misleads when justifying dismissal of the Expanded Coverage Alternative that would include grazing and selection of the proposed permitting option. CSERC commented that it would be a violation of public trust and a failure to fulfill the Water Board’s mission to dismiss the Expanded Coverage Alternative.

**J25. RESPONSE:** The DEIR’s discussion of the Expanded Coverage Alternative noted that covering a broader range of activities under this Order would not be the most efficient or sensible approach given the different types of waste and management measures involved with other activities, like grazing or mining. The Draft Order is primarily focused on sediment discharges and, even more so, sediment discharges from native surface roads and trails. Additionally, grazing activities on USFS and BLM

managed lands are typically conducted by grazing permittees or other third parties under authorization by the Federal Agencies; the Central Valley Water Board's Draft Order only provides coverage for certain activities conducted by or on behalf of the USFS or BLM. The decision to not regulate grazing under the Draft Order does not preclude future actions by the Central Valley Water Board or State Water Board to regulate this or any other activity.

**J26. CSERC COMMENT #26 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC commented that the claim on page 4-4 of the DEIR that the Proposed Project would have the potential to result in only one potentially significant impact which could be reduced to less-than-significant with mitigation is false for multiple reasons. CSERC asserted that the claim on page 4-6 of the DEIR that the only potentially significant effect from the proposed project would be short-term ground disturbance from the federal agencies implementing corrective road management actions, such as water bars or rolling dips and that appropriate adherence to agency practices and procedures would make the overall effects less-than-significant is highly speculative and unsupported by evidence. CSERC further commented that the preponderance of evidence supports a conclusion that permitting the extensive discharges would result in the same widespread, significant adverse impacts to water quality and beneficial uses of water that have been documented over the years, without meaningful mitigation to address cumulative effects, and reiterated concerns with continuing to rely on inadequate and failed or undeveloped BMPs without adequate monitoring. CSERC concluded that adoption of the proposed project would result in significant direct and cumulative water quality impacts across a vast portion of the Central Valley Water Board's region.

**J26. RESPONSE:** Please see Responses J1 and J8 above.

**J27. CSERC COMMENT #27 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC commented that the claim that sediment is the only pollutant is clearly flawed, noting that federal land projects and other approved activities inarguably affect water temperature, oxygen concentration, salinity, and pH, plus other NPS contaminants are generated, such as petroleum products, pesticides, salts, and sewage from recreation sites such as marinas, ski areas, pack stations, campgrounds and other high use areas. CSERC reiterated its disagreement with classifying Federal Agency activities as the "baseline" and asserted that Water Board will be legitimizing and authorizing widespread waste discharges.

**J27. RESPONSE:** Please see Response J8 above.

### **J28. CSERC COMMENT #28 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC commented that while the Reduced Management Measure Implementation Alternative in the DEIR might not be appropriate to select if the only water quality issues of significance were those ground-disturbing construction/installation management measures produced by the federal agencies when implementing corrective actions to address NPS discharges, this supposition is clearly false. CSERC further commented that the Order fails to require any meaningful mitigation for the cumulative effects of road effects, recreation, widespread direct pesticide applications, and timber management activities, and that no required change in any management policies for livestock management collectively means that the proposed action and the Reduced Management Measure Implementation Alternative would both result in continued widespread direct and cumulative impacts to water quality across millions of acres of federal agency lands. CSERC concluded that these are inarguably significant impacts that are far, far more widespread and negative for water quality than sediment discharges that would result from Federal Agency corrective measures.

**J28. RESPONSE:** Please see Responses J8 and J25.

### **J29. CSERC COMMENT #29 – Draft Environmental Impact Report, Alternatives Analysis**

CSERC commented that the Individual Waste Discharge Requirements Alternative was considered but dismissed in the DEIR, yet such an Alternative would likely actually meet the desired objectives of the Order in that not only would individual WDRs ensure better regulatory compliance with all related federal and state mandates, but by having individual projects reviewed and evaluated based on site-specific factors, there would be far more likely actual reductions of Federal Agency discharges or pollution of receiving water bodies. CSERC recommended the Water Board adopt the Individual WDRs Alternative and strengthen it with mandated systemic water quality monitoring requirements.

**J29. RESPONSE:** Please see Responses J2 and J7 above.

### **J30. CSERC COMMENT #30 – Best Management Practices**

CSERC commented that relying on BMPs without requiring water quality sampling has proven to be ineffective at protecting the waters of the State.

**J30. RESPONSE:** Please see Responses J2, J16, and J18.



### **J31. CSERC COMMENT #31 – Best Management Practices**

CSERC commented that existing Federal Agency BMPs are primarily broad, prescriptive measures that are often not meaningful or likely to assure the protection of water resources without adding supplemental requirements for systematic effectiveness monitoring to assess whether or not water quality is actually being protected.

**J31. RESPONSE:** Please see Responses J2, J16, and J18.

### **J32. CSERC COMMENT #32 – Best Management Practices**

CSERC commented that the Water Board has limited staff resources to adequately regulate discharges from federal land management agencies and recommended Order withdrawal over the lack of a detailed discussion of fees, and whether and how the public can be assured that the Water Board will have the staff resources to effectively administer and implement the proposed permit. CSERC commented that a reasonable analysis of how federal dischargers should provide for Water Board oversight capacity is necessary and essential.

**J32. RESPONSE:** Please see Response J6 above.

### **J33. CSERC COMMENT #33 – Best Management Practices**

CSERC recommended that improved, meaningful, and empirically tested BMPs be developed as guidelines for the implementation of Federal Agencies' permitted activities though noted that BMPs alone do not substitute for strategic, consistent, unbiased, and timely water quality effectiveness monitoring.

**J33. RESPONSE:** Please see Responses J2, J4, J16, and J18.

### **J34. CSERC COMMENT #34 – Monitoring**

CSERC recommended that the Federal Agencies strategically monitor both the implementation of BMPs as well as the effectiveness of BMPs using accepted scientific principles, including not just checklists or anecdotal visual observations, but actual measurements as needed to demonstrate watershed health and full compliance with water quality standards.

**J34. RESPONSE:** Please see Responses J2, J16, and J18.

### **J35. CSERC COMMENT #35 – Monitoring**

CSERC recommended that the Draft Order should include the following monitoring requirement or a similar measure, in addition to the implementation of BMPs and effectiveness monitoring, to provide a meaningful assessment of whether or not BMPs and well-intended Federal Agency project administration are actually achieving the

adequate protection of water quality, watershed protection objectives, and associated objectives for protection of beneficial uses:

- Each year, any individual national forest or BLM district covered by the NPS Permit shall be required to identify two projects or agency-approved activities on that national forest or BLM district that pose (in the eyes of the federal agency staff) the potential for water quality degradation or watershed degradation beyond permissible levels on their district or national forest. The total list of all identified projects from all affected individual national forests or BLM districts shall be provided to the Water Board each year.
- Once that list has been provided to the Water Board staff that oversees federal land activities within their Region, the Water Board staff will select one project or activity on each national forest or BLM district to be actively monitored pre-project, during project implementation, and post-project with the water sampling methods that are most likely to capture evidence of significant water quality contamination or significant watershed degradation that may occur.
- The Federal Agency implementing the project or activities that pose water quality or watershed risk will be required to coordinate with Regional Water Board staff to ensure that the Federal Agency (or if capacity exists, the Water Board staff) collects the mandated samples, reports them in a timely manner, and halts activities if certain thresholds established by the Water Board are exceeded. The Federal Agency should be required to coordinate with the Water Board staff to provide all requested reports and evidence of BMPs being implemented so as to minimize costs and time demands on the Water Board.

**J35. RESPONSE:** Please see Response J2.

### **J36. CSERC COMMENT #36 – Pesticide Application**

CSERC expressed concern that the Proposed Permit would not protect riparian areas and waters of the State from indirect individual pesticide spray applications. The commenter recommends the Water Board require a no-spray treatment buffer no less than 15 meters from the waterline or from sensitive plant populations, riparian vegetation, or known critical habitat for any listed or Special Status aquatic species for “direct individual treatment” spraying of pesticides.

**J36. RESPONSE:** Please see Response D12.

### **J37. CSERC COMMENT #37 – Monitoring**

CSERC commented that without mandated Effectiveness Monitoring of Water Board-selected “high risk” projects or activities on each National Forest or BLM district, combined with limited-but-critical water quality sampling to be done at strategically selected locations, then any federal NPS permit will only provide more “paper assurances” from the agencies that “BMPs are being implemented.” CSERC noted that outcome would likely allow more of the same nonpoint source pollution issues that “we all have seen up to the present”. CSERC concluded that the Order must be withdrawn and rewritten in order to bring it into compliance with CEQA and the Water Board’s legal responsibilities and mandates and that the Water Board should not approve a permit that allows federal agencies to plead a lack of capacity, a lack of funding, or other excuses that justify the agency from avoiding water protection effectiveness monitoring and systemic strategic water sampling that is essential to show whether the requirements of the Clean Water Act and the Porter Cologne Water Quality Control Act are being met.

**J37. RESPONSE:** “High risk” projects or activities (that do not meet the criteria for coverage) are not eligible for coverage under the Order. Such activities would most likely require the Federal Agency to submit a report of waste discharge (Water Code section 13260) to the Water Board and subsequent preparation of an individual WDR. If a WDR or Waiver of WDR is found to be necessary, project specific monitoring and reporting requirements would be required, which may include water quality sampling. That said, the Draft Order also provides that additional monitoring may be required by the Executive Officer where appropriate. Moreover, Effectiveness Monitoring is required for Category B projects, in addition to Implementation Monitoring, which serves to verify that on-the-ground measures to protect water quality have been implemented and remain effective at protecting water quality. Water Board Staff believe the requirements of the Draft Order, including the required monitoring and reporting, will provide sufficient feedback mechanisms and protect water quality from nonpoint source discharges. Nothing in the Draft Order precludes the Water Board from issuing site specific orders for technical or monitoring reports (Water Code section 13267) or Cleanup and Abatement Orders (Water Code section 13304) to investigate or address unlawful discharges of waste.

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## **K. CENTER FOR BIOLOGICAL DIVERSITY (CBD)**

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### **K1. CBD COMMENT #1 – Draft Environmental Impact Report, Environmental Analysis and Best Management Practices**

CBD commented that the DEIR for the Draft Order fails to acknowledge ongoing impacts from activities on the Federal lands to water quality as well as significant direct, indirect and cumulative impacts to other sensitive resources despite many of BMPs being in place for over a decade. The commenter expressed concern that the Draft

Order relies on BMPs that are quite general or not yet developed and that without specific, detailed BMPs, monitoring and reporting requirements, the Water Board cannot find that the Draft Order will adequately protect water quality.

**RESPONSE:** Please see Responses A17, A18, J1, J4, J8 and J15 above.

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## **SACRAMENTO AND AMERICAN RIVERS SOURCE WATER PROTECTION PROGRAMS (SRSWPP/ARSWPP)**

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### **L1. SRSWPP/ARSWPP COMMENT #1 – Water Quality Objectives**

SRSWPP/ARSWPP commented that the water quality objectives listed in Attachment D to the Draft Order are too limited to ensure protection of MUN beneficial uses from the potential impacts of the covered land management activities discussed within the Draft EIR (Section 3.10.3) and requested additional objectives, such as biostimulatory substances, chemical constituents, floating material, and tastes and odors, be included.

**L1. RESPONSE:** The Draft Order requires the Federal Agencies to comply with all applicable water quality objectives contained in the Basin Plans. The list of water quality objectives included in the Draft Order and further described in Attachment D, is non-exhaustive and intended to highlight the most likely constituents and water quality concerns related to the activities covered in the Draft Order.

### **L2. SRSWPP/ARSWPP COMMENT #2 – Source Watersheds**

SRSWPP/ARSWPP commented that the Controllable Sediment Source Reduction Program (CSSRP) is a critical part of the Draft Order; however, as discussed in Order Section II.G, Water Code Section 108.5 describes source watersheds as those that are integral components of California’s water infrastructure and does not appear to be specifically limited to Shasta and Oroville reservoirs. The commenter requests Folsom Lake on the American River, part of the coordinated operations of the State Water Project and Central Valley Project water systems, be listed as well.

**L2. RESPONSE:** Thank you for your comment. Water Board Staff agree and propose the below revision to not unnecessarily limit the meaning of Water Code section 108.5.

**PROPOSED REVISION:** Order section II.G.3.a.ii is revised as follows:

The selected watershed drains to a source watershed as defined in Water Code section 108.5. ~~Source watersheds are those that deliver water to the Shasta and Oroville reservoirs: the Trinity, Upper Sacramento, McCloud, Pit, and Feather River watersheds.~~

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## M. CALIFORNIA OFF-ROAD VEHICLE ASSOCIATION (CORVA)

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### **M1. CORVA COMMENT #1 – Regulatory Authority**

CORVA commented that the EIR goes far beyond the mission and the authority of the Water Board in regard to regulation of scenic resources and appearance, noise, light pollution and nighttime viewing, historic buildings, air quality including odors, and human remains, among others and recommended every reference beyond the scope of the Board's responsibilities as it relates to water quality must be removed. CORVA stated its appreciation for the water quality goals set out by the Board in the Proposed Permit where the goals are to help the Federal Agencies achieve increased water quality goals on a site-specific basis by reducing erosion and sedimentation wherever possible.

**M1. RESPONSE:** The items listed in the comment (including scenic resources and appearance, noise, light pollution, and nighttime viewing, historic buildings, air quality including odors, and human remains) are required considerations that must be analyzed under the California Environmental Quality Act (CEQA). These considerations and their analysis are included in the Environmental Impact Report (EIR). The Central Valley Water Board, as the lead agency under CEQA, is required to assess potential impacts of the proposed project (in this case, implementation of the Order) to various resources, such as those mentioned in the comment. The Order itself would regulate nonpoint sources of pollution, which is within the Central Valley Water Board's authority to regulate.

### **M2. CORVA COMMENT #2 – Resource Limitations**

CORVA commented that while there is an acknowledgement that Federal Agencies may not receive requested funding by Congress to conduct specific projects, there is no recognition that Federal Agencies lack the workforce necessary to comply with the Proposed Permit. CORVA further commented that strict adherence to Best Management Practices (BMPs) required by the Proposed Permit for every project and associated activity is laudatory from an environmental perspective but nearly impossible to achieve with real-life scenarios.

**M2. RESPONSE:** Please see Responses A3, A4, A5, and A7 above.

### **M3. CORVA COMMENT #3 – Paperwork Reduction Act**

CORVA commented that the Draft Order violates the Paperwork Reduction Act of 1995, given the "voluminous amounts of paperwork" required by the Proposed Permit.

**M3. RESPONSE:** Please see Responses A3, A4, A7, and A12. The Paper Reduction Act (PRA) was designed, among other things, to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used,

shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society.” (44 U.S.C. section 3501.) The PRA places obligations on the federal agencies with respect to collecting and managing information. (44 U.S.C. section 3506; See Sunstein, Cass R., Administrator, Office of Information and Regulatory Affairs, Information Collection under the Paperwork Reduction Act (Apr. 7, 2010)). The Draft Order does not violate the PRA, and nothing in the PRA exempts the federal government from complying with the Clean Water Act and California Water Code.

#### **M4. CORVA COMMENT #4 – Resource Limitations**

CORVA expressed concern that the Proposed Permit holds the Federal Agencies responsible for violations of water quality caused by natural sediment sources including landslides and that both the Federal Agencies and the Water Board lack necessary staffing resources to implement the Proposed Permit.

**M4. RESPONSE:** The Draft Order provides regulatory coverage for post-emergency recovery activities associated with landslides to ensure that any necessary repair work required (after the initial emergency actions) are not delayed by the need to engaged with Water Board Staff to identify appropriate permitting mechanisms. Additional reporting may be required if the site qualifies as a Discharge Incident; however, the reporting requirements are minimal, and unless the landslide meets the definition of a Controllable Sediment Discharge Source, additional follow up beyond reporting may not be required. Water Board Staff will be available to assist the Federal Agencies with Order compliance, throughout Order implementation and beyond audits.

#### **M5. CORVA COMMENT #5 – Resource Limitations**

CORVA expressed concern that Federal Agencies budgetary and workforce limitations, neither of which CORVA asserts are appropriately disclosed in the DEIR, will prevent successful implementation of the Proposed Permit.

**M5. RESPONSE:** Please see Responses A3, A4 and D8.

#### **M6. CORVA COMMENT #6 – Resource Limitations**

The commenter expressed concern that the Draft Order will burden the Federal Agencies with layers of redundancy and paperwork and will be counterproductive.

**M6. RESPONSE:** Please see Responses A3, A4, and A7.

### **M7. CORVA COMMENT #7 – Competing Priorities**

CORVA questioned how the Proposed Permit would allow federal agencies to sustain recreational access, with the added paperwork it requires and recommended the Proposed Permit be rewritten to include the potential for negative effects on rural communities that depend on access to recreation.

**M7. RESPONSE:** Please see Responses A3, A4 and A7.

### **M8. CORVA COMMENT #8 – Regulatory Authority**

CORVA commented that the Proposed Permit does not honor the Water Board’s mission and oversteps the Water Board’s vision as described in its 2021 Strategic Plan. CORVA reiterated comments that probable negative effects are missing from the analysis and that these errors must be corrected at once and this Proposed Permit withdrawn.

**M8. RESPONSE:** Please see Responses A3 and A4.

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## **ADDITIONAL STAFF REVISIONS**

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Water Board Staff have made minor editorial, clarification, and formatting edits throughout the Order. Specific revisions initiated by Staff, beyond those provided above, are listed below in underline (new) and strikeout (old) format below.

### **PROPOSED STAFF REVISION 1**

Finding 12 within the Draft Order has been revised as follows to incorporate findings within Resolution R5-2024-XXXX certifying the EIR:

For the purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.). The Central Valley Water Board has prepared and circulated an Environmental Impact Report (EIR) that analyzes the potential environmental impacts of this Order. The Central Valley Water Board certified the EIR pursuant to CEQA on <DATE> pursuant to Resolution R5-2024-XXXX, and CEQA findings therein are incorporated into and constitute Findings for this Order. Mitigation measures to address the potential significant impacts are identified in the CEQA mitigation monitoring and reporting program (MMRP), included as Attachment C to this Order.

### **PROPOSED STAFF REVISION 2**

MRP section III.C.3.k.x. revised to clarify CSDS treatment priority.

Priority for treatment (high, medium, low, deferred)

- High – treatment to occur prior to the winter period
- Medium – treatment to occur within one year of startup of project activities
- Low – treatment to occur prior to the end of project activities

### PROPOSED STAFF REVISION 3

MRP section III.D.4.b. revised to clarify Annual Reporting requirements for CSDS maps and information.

- b. **CSDS Project Map and Inventory Table Information.** All CSDS must be identified on the project map and CSDS inventory table for the life of the project regardless of treatment status (including those that will be deferred for future treatment).
- A project map (may be combined with the Location of Operations Map) with all CSDS identified, and
  - Project specific CSDS inventory table. The inventory table must include all CSDS inventory information detailed in section III.C.3.k above. that includes the following:
    - ~~All CSDS must be identified on the project map and CSDS inventory table for the life of the project regardless of treatment status (including those that will be deferred for future treatment).~~

### PROPOSED STAFF REVISION 4

MRP section III.E.4.b.vi. revised to require explanation if CSDS sites were left untreated at the conclusion of approved WTP implementation.

- An estimated quantification of CSDS discharge volumes of untreated sites remaining and explanation as to why sites were left untreated ~~how volume calculations were derived.~~