

Memorandum

Ex E3

April 29, 1994

To: Walt Pettit, Executive Director
State Water Resources Control Board

Harold

HAROLD J. SINGER, EXECUTIVE OFFICER

From: *California Regional Water Quality Control Board*
Lahontan Region
2092 Lake Tahoe Boulevard
South Lake Tahoe, California 96150
(916) 542-5400 Fax (916) 544-2271

Subject: MANAGEMENT AGENCY AGREEMENT WITH THE U.S. FOREST SERVICE

This memo discusses problems we have experienced in implementation of the Management Agency Agreement (MAA) with the U.S. Forest Service, and outlines some potential solutions.

One provision in the MAA is that the two agencies will meet no less than annually to "maintain coordination/communication, report on water quality management progress, review proceedings under this agreement, and to consider revisions as requested by either party." This annual meeting is currently scheduled for May 19 at the SWRCB Executive Office conference room. Because this date conflicts with our regular Regional Board meeting in Barstow, neither I nor my senior staff will be able to attend. I request that this meeting either be rescheduled so that I may attend, or that revision of the MAA be the topic of a separate meeting on a mutually convenient date for all parties.

The SWRCB executed the Management Agency Agreement (MAA) with the U.S. Forest Service (USFS) in 1981. The MAA (Attachment 1) recognizes the Forest Service as the Water Quality Management Agency (WQMA) for National Forest System lands in California, and designates the Forest Service 208 Report as the instrument to be used by the USFS to meet its responsibility as the WQMA. Three regions of the USFS with lands in California signed the MAA.

The MAA contemplated that Water Code sections requiring reports of waste discharge and waste discharge requirements (WDRs) would be waived for nonpoint source discharges by the Forest Service, provided that the Forest Service implements the provisions of its 208 Report (i.e., Best Management Practices, or BMPs).

This creates a problem, however, where specified discharges are prohibited by a Basin Plan. The procedures contemplated by the MAA (i.e., implementation of BMPs to minimize discharges in lieu of reports of waste discharge and WDRs) will not necessarily be sufficient to meet State standards. The MAA does not directly address situations where discharges of waste are prohibited. The MAA states that:

of proposed discharge and issuance of waste discharge requirements for nonpoint source discharges will be waived by the Regional Board pursuant to Section 13269, Water Code provided that the Forest Service reasonably implements those practices and procedures and the provisions of this agreement. Where a Forest Service project requires additional approvals or findings of the Regional Board (for example, where a specified discharge is prohibited pursuant to Section 13243 of the Water Code), the waiver of report of proposed discharge and issuance of waste discharge requirements contemplated above shall not apply. The Regional Boards may, however, enter into Memoranda of Understanding with the Forest Service to streamline requests for exemptions to discharge prohibitions.

I believe that the most efficient and effective way for the Regional Boards to process exemption requests by the USFS is through the adoption of Memoranda of Understanding (MOUs) at the local level. Waste discharge prohibitions and exemption criteria applicable to each national forest or ranger district can be detailed within the MOUs, along with procedures for streamlining the NEPA/CEQA processes and dispute resolution. Having a well-defined process should expedite USFS projects as well as save staff time for both agencies.

On February 15, 1994, I sent a letter to Forest Supervisor John Skinner of the Tahoe National Forest offering to enter into an MOU in order to streamline the process for review and approval of USFS requests for exemptions to our Basin Plan prohibitions. Although USFS staff at the regional and local levels initially indicated support for such an MOU, I have not (to date) received a response from Mr. Skinner. We have drafted an MOU which is included as Attachment 4.

We are currently reviewing the relationship between the MAA and the new Clean Water Act stormwater permit requirements. This is another issue that may not have been contemplated when the MAA was signed. I may prepare a separate memorandum on this issue prior to the upcoming annual meeting.

Please call me at (916) 542-5412 if you have any questions regarding this memo.

Attachments (4)

cc: Regional Board members
Gaylon Lee, Division of Water Quality, SWRCB
John Rector, USFS
Steven Blum, OCC, SWRCB
Regional Board Executive Officers

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“Section 313 of the Federal Water Pollution Control Act mandates federal agency compliance with the substantive and procedural requirements of state and local water pollution control law.”

and that:

“...nothing herein shall be construed in any way as limiting the authority of the State Board or the Regional Boards in carrying out their legal responsibilities for management or regulation of water quality.”

Where nonpoint discharges by the USFS can be carried out under WDRs, we have generally waived reports of waste discharge and issuance of WDRs pursuant to the MAA. However, where our Basin Plan specifically prohibits certain discharges, the USFS cannot proceed with projects that would violate the prohibition(s) based on provisions of the MAA alone. An exemption to the prohibition(s) must first be obtained. Our vehicle for evaluating requests for exemptions to prohibitions contained in the Basin Plan is a report of waste discharge.

Attachment 2 is a letter from Dr. Ranjit Gill of my staff to the Truckee Ranger District regarding the proposed Overland Trail Commemorative Route. In that letter, Dr. Gill informed the USFS that our Basin Plan contains prohibitions against discharges of earthen materials within the 100-year floodplain of any tributary to the Truckee River. Dr. Gill provided the USFS with copies of the prohibitions and exemption criteria, and requested a report of waste discharge so that we could process the USFS's exemption request.

Attachment 3 is a response from Joanne Roubique of the Truckee Ranger District stating that, due to her interpretation of provisions of the MAA, she would not submit a report of waste discharge for this project.

This disparity in interpretation of the MAA was likely not contemplated when it was signed over thirteen years ago. I believe that the MAA should be amended to clarify the responsibilities of both agencies regarding waste discharge prohibitions. My staff has informally discussed this information with staff of other Regional Boards and there is support for this position. Unless the MAA is revised to provide such clear direction to staff at both agencies, the ambiguity will continue to result in inconsistent interpretations and interagency disagreements. The inexplicit language in the current MAA may also provide a disincentive to the Regional Boards for fulfilling their responsibility to uphold waste discharge prohibitions.

I suggest that the following language be added to the MAA (amend item “b” on pages 2-3 of the MAA as indicated):

- (b) That Section 313 of the Federal Water Pollution Control Act mandates federal agency compliance with the substantive and procedural requirements of state and local water pollution control law. It is contemplated by this agreement that Forest Service reasonable implementation of those practices and procedures and of this agreement will constitute compliance with Section 13260, subdivision (a) of Section 13263, and subdivision (b) of Section 13264, Water Code. It is further contemplated that these provisions requiring a report