

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
SEPTEMBER 19, 2011**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED ORDER MODIFYING ORDER R5-2010-0022, CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES IN THE CENTRAL VALLEY REGION.

DISCUSSION

Timber harvesting operations are of significant economic importance in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) region. Approximately 50 percent of the State's timberlands and approximately 45 percent of the annual statewide harvest of commercial timber occurs in the Central Valley region. Due to a steady decline in harvesting rates on Federal lands, most of this harvested volume is removed from private land. Timber harvesting operations have the potential to impact water quality in our region's higher elevation watersheds, the source of much of California's surface water supply. Potential impacts from timber harvesting include: sediment discharges from roads and watercourse crossings, petroleum discharges from heavy equipment usage near surface waters, herbicide discharges from efforts to control competing vegetation and increases in water temperature from the removal of shade producing vegetation near surface waters. Regulation of activities that may impact water quality in these upper watersheds is crucial to ensuring that the water is of the highest quality before it comes in contact with the intense land uses of the foothills and valley floor.

On March 18, 2010, the Central Valley Water Board adopted the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities in [Order No. R5-2010-0022 \(Waiver\)](#). The Waiver specifies eligibility criteria and conditions that must be met by dischargers engaged in timber harvest activities on private and USFS lands in order to qualify for a waiver of waste discharge requirements (WDR). The discharger must submit a Waiver application (Certification Notice) to the Central Valley Water Board at least 30 days prior to the commencement of timber harvest activities.

The Waiver, in Attachment A, delineates five categories under which a harvest activity may be enrolled. Categories 1 – 4 apply to activities conducted on private lands and Category 5 applies only to activities conducted on U.S. Forest Service lands.

- Category 1: for timber harvest plans that present minimal risk to water quality
- Category 2: for Emergency and Exemption notices as approved by the California Department of Forestry and Fire Protection (Cal Fire)
- Category 3: for timber harvest plans where Central Valley Water Board staff attends a pre-harvest inspection
- Category 4: for timber harvest plans where Central Valley Water Board staff is unable to attend a pre-harvest inspection.
- Category 5: for timber harvest projects on U.S. Forest Service lands

Waiver Attachment B sets up the Monitoring and Reporting Conditions for activities enrolled under the Waiver. This section identifies the Central Valley Water Board's authority for requiring monitoring, describes the various types of monitoring, and defines the criteria and conditions for monitoring as required by the Waiver.

The Waiver also includes Attachment C, the Monitoring and Reporting Program (MRP) which identifies timing and specific types of monitoring to be conducted based upon specific conditions, to ensure that high standards of water quality protection are achieved both during and after operations. In general, the majority of projects are required to conduct and report on visual monitoring only. An Annual Report is required to be submitted by the discharger by July 15th of each year once operations have begun, that reports on the implementation, forensic and effectiveness of the management practices utilized under the plan.

In order to cease Waiver coverage the discharger must submit (and Central Valley Water Board staff must approve) a Notice of Termination at the conclusion of those activities.

Central Valley Water Board staff is responsible for ensuring waiver compliance by evaluating Certification Notices, Annual Monitoring Reports and Notices of Termination to ensure the plan meets the Waiver criteria and conditions. Critical to this review and determination is the conducting of field inspections pre-harvest, during operations and post-operations.

Proposed Modification to Waiver

The Waiver adopted by the Central Valley Water Board on March 18, 2010 included a requirement that dischargers with activities eligible for enrollment under Categories 3 and 4 (private lands) submit a report of waste discharge and a \$1,226.40 total enrollment fee (fee schedule category 3C). This decision was based on the fact that activities eligible for Categories 3 and 4 are perceived to represent a higher risk to water quality and thus require more resources for review and enrollment. A caveat was proposed by the Central Valley Water Board and adopted into the Waiver (Item 19, page 9) that states *"If all timber Personnel Years are fully general-funded for the 2010/2011 fiscal year, the Executive Officer shall propose a modification to the Waiver which waives all reports of waste discharge."*

The proposed revisions, notice of public hearing and response to comments were prepared in early 2011 for Central Valley Water Board consideration in April 2011. Shortly before the meeting, it became clear that a quorum would not be available for the proposed item due to a recusal. No additional board members have been appointed to the Central Valley Water Board to date and rather than delay the decision, the State Water Resources Control Board (State Water Board) has agreed to hear the item.

Staff will present a modification to the Waiver at the September 20, 2011 State Water Board meeting whereby the State Water Board may decide to waive all reports of waste discharge and associated enrollment fees.

Waiver Enrollment Statistics

Central Valley Water Board staff receives and reviews an average of 200 timber harvest plans on private lands annually. The number of timber harvest plans submitted for private lands fluctuates with the log market and as such there has been a decline in submittals over the past two years. It is important to understand that though the number of new project submittals may be down, the backlog of plans that have been previously approved and even extended (through several recent legislative actions) is extensive.

As of March 2011, there were 790 plans on private lands currently enrolled in the Waiver (Categories 1-4). Of those, 667 are plans on private lands enrolled in Waiver Categories 3 and 4 (the perceived higher-risk to water quality categories).

Central Valley Water Board staff also receives and reviews an average of 100 timber harvest projects on U.S. Forest Service lands annually. As of March 2011, there were 304 projects enrolled under Waiver Category 5.

POLICY ISSUE

The Waiver, adopted in March 2010, will expire on March 31, 2015. Until that date, Central Valley Water Board staff will continue to focus on reviewing proposals for timber harvest activities on both private and federal lands. Staff will also continue to strive to ensure a high level of compliance with the Waiver criteria and conditions by conducting field inspections, outreach, training and preparing guidance documents. Monitoring results will be reviewed each year and staff will strive to inspect as many of the higher-risk plans as possible throughout the life of those plans to ensure protection of water quality.

A public notice requesting comments on the proposed revisions was mailed to interested parties and posted on the Central Valley Water Board's website, along with the documents comprising the Waiver, in February 2011. The public comment period ended on March 8, 2011. Seven comment letters were received, six of which were in support of the proposed removal of the reports of waste discharge and associated enrollment fees, with the remaining letter of concern addressing matters that were not pertinent to the proposed revisions.

A copy of the public comments received as well as staffs' responses can be located at: http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/

The proposed revisions to Order R5-2010-0022 were scheduled for hearing at the Central Valley Water Board's regular meeting in April 2011. Shortly before the meeting, it became apparent that not all Central Valley Water Board members would be eligible to consider adoption of the revised Waiver. Without a quorum for the Central Valley Water Board, no action can be taken on this item.

FISCAL IMPACT

As the Timber Harvest Regulatory Program at the Central Valley Water Board was fully funded through the State's General Fund in fiscal year 2010-2011, removing the enrollment fee requirement will not have a significant fiscal impact on the Program.

REGIONAL BOARD IMPACT

State Water Board action on this item will assist the Central Valley Water Board by removing a portion of the Waiver that requires reports of waste discharge and associated enrollment fees to be submitted by dischargers.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the revisions to the Conditional Waiver that removes the requirement for the submittal of Reports of Waste Discharge and associated enrollment fee for activities enrolling under Categories 3 and 4.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards. In particular, approval of this item will assist in removing the Reports of Waste Discharge and enrollment fee requirement that was placed to temporarily address a funding shortfall.

DRAFT

STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER QUALITY

ORDER WQ 2011-XXXX DWQ MODIFYING ORDER NO. R5-2010-0022

MODIFICATION OF CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES IN THE CENTRAL VALLEY REGION

The State Water Resources Control Board, (State Water Board) finds that:

1. California Water Code (Water Code) section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate regional water board a report of waste discharge containing such information and data as may be required by the board and the first annual fee applicable to waste discharge requirements, unless the board waives such requirement.

2. Water Code section 13269, subdivision (a) provides that a regional water board or the State Water Board may waive the requirements to submit a report of waste discharge and to obtain waste discharge requirements as to a specific discharge or specific type of discharge, if the board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. Water Code section 13269 further provides that any such waiver of waste discharge requirements shall be conditional, may not exceed five years in duration, and may be terminated at any time by the board.

3. Water Code section 13269 includes the following provisions:

- The waiver shall include the performance of individual, group, or watershed-based monitoring, unless the board determines that the discharges do not pose a significant threat to water quality.
- Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
- Monitoring results must be made available to the public.

4. The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), issued a conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Central Valley Region on January 30, 2003 (Waiver), and renewed the Waiver on January 27, 2005 and April 28, 2005. On March 18, 2010, the Central Valley Water Board issued [Order R5-2010-0022](#), which renewed the Waiver until March 31, 2015.

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

D R A F T

5. Water Code section 13269 authorizes the Central Valley Water Board to include as a condition of a waiver the payment of an annual fee established by the State Water Board. At the time of this hearing the State Water Board has not established annual fee regulations with respect to waivers of waste discharge requirements for timber harvest activities.

6. The Central Valley Water Board has adopted the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4th Edition 1998) and the Water Quality Control Plan for the Tulare Lake Basin (2nd Edition 1995) (Basin Plan), including subsequent amendments, that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Valley Region.

7. Pursuant to the Basin Plan and State Board Plans and Policies, including [State Water Board Resolution No. 88-63](#), the existing and potential beneficial uses of waters in the Central Valley Region include:

- (a) Agricultural Supply (AGR)
- (b) Aquaculture (AQUA)
- (c) Preservation of Biological Habitats of Special Significance (BIOL)
- (d) Cold Freshwater Habitat (COLD)
- (e) Commercial and Sportfishing (COMM)
- (f) Estuarine Habitat (EST)
- (g) Freshwater Replenishment (FRSH)
- (h) Ground Water Recharge (GWR)
- (i) Industrial Service Supply (IND)
- (j) Migration of Aquatic Organisms (MIGR)
- (k) Municipal and Domestic Supply (MUN)
- (l) Navigation (NAV)
- (m) Hydropower Generation (POW)
- (n) Industrial Process Supply (PRO)
- (o) Rare, Threatened, or Endangered Species (RARE)
- (p) Water Contact Recreation (REC-1)
- (q) Non-contact Water Recreation (REC-2)
- (r) Shellfish Harvesting (SHELL)
- (s) Spawning, Reproduction, and Development (SPWN)
- (t) Warm Freshwater Habitat (WARM)
- (u) Wildlife Habitat (WILD).

8. [State Water Board Resolution 68-16](#) ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires the Central Valley Water Board to regulate discharges of waste to waters of the state to achieve highest water quality consistent with maximum benefit to the people of the State. It further requires that the discharge meet

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

D R A F T

waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. The Central Valley Water Board found the Waiver to be consistent with Resolution 68-16. This revision to the Waiver will not change any requirements of Order No. R5-2010-0022 other than certain fee requirements. This revision is consistent with Resolution 68-16 because it does not authorize degradation of any waters of the State.

9. The Central Valley Water Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) (CEQA), conducted an Initial Study in 2002 in accordance with title 14, California Code of Regulations, section 15063.

10. The Central Valley Water Board adopted a negative declaration pursuant to CEQA on January 30, 2003 when it issued the Waiver. This action to renew the Waiver does not require preparation of a subsequent or supplemental environmental document pursuant to title 14, California Code of Regulations, sections 15162 or 15163. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in section 15162, subdivision (a). In addition, it can be seen with certainty that there is no possibility that the revision may have a significant effect on the environment. (Cal. Code of Regs., tit. 14, §15061, subd. (b)(3).)

11. The Central Valley Water Board found that the Waiver is in the public interest as follows. This revision to the Waiver does not affect these findings:

- (a) Timber harvest activities are primarily regulated by other agencies, including CAL FIRE and the USFS. The Central Valley Water Board does not approve timber harvests, but it does have authority to require compliance with the California Water Code.
- (b) Without the Waiver, timber harvest activities would continue under authority of those other agencies, but such activities may not be subject to appropriate water quality protective conditions.
- (c) Without the Waiver, the Central Valley Water Board could regulate a smaller percentage of timber harvest activities in the Region due to limited staff resources, but with the Waiver, timber harvest activities acting pursuant to the Waiver are subject to enforceable conditions.
- (d) The Waiver contains conditions that require compliance with the applicable Basin Plan, including applicable water quality objectives.
- (e) The Waiver contains conditions requiring compliance with monitoring and reporting programs that will assist in the protection of water quality and in verification of the adequacy and effectiveness of Waiver conditions.
- (f) Compliance with the conditions of the Waiver will result in protection of water quality.
- (g) The Waiver does not approve or authorize pollution.

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

D R A F T

- (h) The Waiver conditions are subject to enforcement pursuant to Water Code section 13350 in the same way as enforcement of waste discharge requirements.
- (i) The Waiver is an effective mechanism given staff resources to regulate a large number of potential discharges and allows staff to maximize its field presence.
- (j) The Waiver allows staff to continue to participate in the pre-harvest review of proposed timber activities which provides staff the ability to require implementation of protective measures beyond those required by CAL FIRE and the USFS for the most critical timber operations.
- (k) The State Water Board, on January 22, 2004 and in [Order No. WQQ 2004-0002](#), affirmed the Central Valley Water Board Waiver and stated: "The Waiver includes specific criteria to ensure compliance with requirements of the Basin Plan and to prevent discharges that may substantially impact water quality. Further, the Regional Board's actions were consistent with State Board policies and procedures and the terms of the Waiver do not exceed the Regional Board's statutory authority."
- (l) The Waiver has been in effect since 2003, and based on the Central Valley Water Board's experience, the Waiver has resulted in increased use of management practices to protect waters of the state such as the inclusion of staff recommendations during field review of timber harvest plans and the inclusion of additional management practices in submittals not field-reviewed by staff.
- (m) The MRP has been in effect since mid-2005, and based on the Central Valley Water Board's experience, the MRP has resulted in accelerated application of management practices to protect waters of the state once failures or potential failures have been identified.
- (n) The Waiver, given limited Central Valley Water Board staff resources, provides a framework that most effectively utilizes resources to regulate discharges of wastes.

12. This revision of the Waiver will remove the requirement for Category 3 and 4 dischargers to pay the first annual fee with their enrollment documents. This revision is in the public interest because it treats Category 3 and 4 dischargers the same as similarly situated dischargers throughout the state for purposes of annual fees and is consistent with the State Water Board's fee schedules.

13. When it adopted the Waiver, the Central Valley Water Board made the following findings. This revision to the Waiver does not affect these findings:

- (a) The Waiver is consistent with applicable water quality control plans as it requires compliance with the Basin Plan, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and includes eligibility criteria and conditions to protect waters of the State.
- (b) The Waiver requires compliance with monitoring conditions consistent with the amendments to Water Code section 13269.

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

DRAFT

- (c) As described in the administrative record, the adoption of individual waste discharge requirements for all timber harvest activities in the Central Valley Region is not feasible at this time. The Central Valley Water Board receives for review more than 2000 timber harvest documents annually. Given the number of Central Valley Water Board staff and other factors, including the timing of the CAL FIRE timber harvest approval process and the time needed to adopt waste discharge requirements, it is not feasible for the Central Valley Water Board to adopt many individual waste discharge requirements in a year. General waste discharge requirements on, for example, a watershed-by-watershed approach, would also take a significant amount of time given the large number of watersheds and sub-watersheds in the Region. Thus, without the Waiver, most timber harvest activities would not be subject to any regulation under the California Water Code. Waste discharge requirements do not provide identifiable benefits over this Waiver because the Waiver contains essentially the same conditions that would be included in waste discharge requirements, such as the requirement to comply with water quality control plans, and the Waiver is enforceable to the same extent as waste discharge requirements. The adoption of waste discharge requirements, however, is not precluded because pursuant to Water Code section 13269, a waiver may be terminated at any time without cause.

14. Ordering Paragraph 7 of Order R5-2010-0022 states, “Dischargers enrolling under Categories 3 or 4 of the Waiver shall submit a fee with the report of waste discharge, as described in Attachment A.” Ordering Paragraph 19 states: “If all timber Personnel Years are fully general-funded for the 2010/2011 fiscal year, the Executive Officer shall propose a modification to the Waiver which waives all reports of waste discharge.” This Order modifies Order No. R5-2010-0022 by waiving the requirement to submit a report of waste discharge for all categories of discharge subject to the Waiver. Thus, Category 3 and 4 dischargers will not be required to pay any fee unless the State Water Board establishes an annual fee schedule for waivers of waste discharge requirements for discharges related to timber harvest activities.

15. The Central Valley Water Board and State Water Board have given notice of this revision of the Waiver to all known dischargers and other interested persons.

16. The State Water Board conducted a public meeting on September 19, 2011, in Sacramento, California, and considered all testimony and evidence concerning this revision to the waiver.

IT IS HEREBY ORDERED:

1. The State Water Board hereby conditionally waives the requirement to submit a report of waste discharge for Waiver Categories 3 and 4. Ordering Paragraph 5 of Order No. R5-2010-0022 is modified to add the following sentence to the end: “Effective on September 19, 2011, the State Water Board waived the requirement to submit a report of waste discharge for Waiver Categories 3 and 4.” Ordering Paragraphs 7 and 19 of Order No. R5-2010-0022 are hereby stricken.

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

D R A F T

2. The State Water Board hereby modifies [Attachment A](#) to Order No. R5-2010-0022 as shown in the attached redline/strikeout version.
3. Dischargers currently enrolled under the Waiver shall continue to be covered under the Waiver, without re-enrolling.
4. If the State Water Board establishes an annual fee schedule for waivers of waste discharge requirements for discharges related to timber harvest activities, all Dischargers shall pay the applicable annual or enrollment fees as a condition of maintaining coverage under the Waiver.
5. The discharge of any waste not specifically regulated by the Waiver is prohibited unless the discharger complies with Water Code section 13260, subdivision (a) and the Central Valley Water Board either issues waste discharge requirements pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269 or, in the case of a discharge that does not create or threaten a condition of pollution or nuisance, the time frames in Water Code section 13264, subdivision (a) have elapsed.
6. The Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code section 13263.
7. Pursuant to Water Code section 13269, the State Water Board's action waiving the requirement for Category 3 and 4 dischargers to submit a report of waste discharge: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code.
8. The Executive Officer or Central Valley Water Board may terminate the applicability of the Waiver as modified herein to any timber harvest activities at any time.
9. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the Central Valley Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge, or by an action of the State Water Board.
10. The Waiver (Order No. R5-2010-0022 including Attachments A and B, and the Monitoring and Reporting Program) shall remain in effect except as specifically modified in this Order, and shall expire on March 31, 2015, unless terminated or renewed by the Central Valley Water Board. The waiver of the requirement for Category 3 and 4 dischargers to submit reports of waste discharge and associated enrollment fees shall take effect on September 19, 2011, and shall expire on March 31, 2015, unless terminated or renewed by the Central Valley Water Board.

Order WQ 2011-XXXX DWQ
Modifying Order No. R5-2010-0022
Conditional Waiver of Waste Discharge Requirements
For Discharges Related to Timber Harvest Activities
in the Central Valley Region

D R A F T

11. The Central Valley Water Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as appropriate.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 2011.

Jeanine Townsend
Clerk to the Board