

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Thursday, May 8, 2014
River Lodge Conference Center
1800 Riverwalk Drive
Fortuna, California

- ITEM: 4
- SUBJECT: **Public Hearing** to consider adoption of Order No. R1-2014-0011, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (*James Burke*)
- BOARD ACTION: At the public hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed categorical waiver of waste discharge requirements (Categorical Waiver).
- BACKGROUND: On June 24, 2009, the Regional Board adopted Order No. R1-2009-0038 (2009 Categorical Waiver), which renewed and revised the previous 2004 Categorical Waiver. Water Code section 13269 requires that a waiver of waste discharge requirements shall not exceed five years in duration, but may be renewed by a regional board.
- In July 2009, the 2009 Categorical Waiver was petitioned to the State Board. Petitioners raised objections to Specific Conditions of Categorical Waiver E and F for being inconsistent with the Forest Practice Rules (FPRs), particularly in the context of nonindustrial timber management plans (NTMP) already approved by the California Department of Forestry and Fire Protection (CAL FIRE). On March 24, 2011, the Regional Water Board (RWB) adopted limited term amendments to the 2009 Categorical Waiver to temporarily suspend the revised provisions for NTMPs. The amendments allowed Regional Water Board staff to work with NTMP landowners, CAL FIRE and other interested parties to evaluate the adequacy of protective measures designed into NTMPs to achieve compliance with Total Maximum Daily Loads (TMDLs), Basin Plan standards, and regulations for protecting water quality, included in the Forest Practice Rules (FPRs). Regional Water Board staff concluded their investigations and stakeholder outreach in collaboration with CAL FIRE, and based on the results of these efforts, on May 2, 2013, the Regional Board adopted Order No. R1-2013-0005, Waste Discharge Requirements for NTMPs (NTMP Order), which superseded Categorical Waiver E for NTMPs.

On September 11, 2012, the Governor signed Assembly Bill (AB) 1492, which initiated changes in timber harvesting regulations. One significant change was the abolition of permit (i.e. Waste Discharge Requirements (WDR)) fees associated with timber operations. This eliminated the financial incentive for landowners to seek coverage under a waiver rather than WDRs.

Anticipating the renewal of the 2009 Categorical Waiver, and based on the positive outcome of the stakeholder participation process that led to the adoption of the NTMP WDRs, Regional Water Board staff sent an email to a stakeholder group consisting of foresters, landowners, and environmental groups on November 18, 2013. The email solicited input on the desire for a stakeholder participation process similar that used for the NTMP WDRs and early comments on revising the Categorical Waiver. A similar email was sent to CAL FIRE. Staff received very little response to the request.

On January 9, 2014, the RWB staff sent out an early revised draft waiver to the stakeholder group and CAL FIRE along with a letter soliciting input. Staff received very few comments.

Based on the few comments received and internal review, the RWB staff released a public review draft Categorical Waiver on February 24, 2014. Ten people submitted written comment during the February 24 – April 1, 2014 comment period. Regional Water Board staff reached out to several of the commenters, including Matt Greene, Jason Poburko, Alan Levine, Rob DiPerna and Ali Freedlund with hours of phone conversations discussing their comments. Staff also contacted George Gentry, Executive Director of the Board of Forestry regarding his comments. Staff has prepared formal response to comments with the objective of being responsive to all comments, and where appropriate, making suggested changes when those changes can improve the proposed Categorical Waiver.

The proposed Categorical Waiver relies on the initial study and mitigated negative declaration adopted by the Regional Water Board on June 4, 2009 at the public hearing for the 2009 Categorical Waiver.

DISCUSSION:

Written public comments include the following notable issues:

- California Licensed Foresters Association would like to see all THPs approved under the FPRs to be eligible for Waiver Coverage;

- Environmental Groups believe the proposed Order relies too much on the FPRs and that CEQA requires additional environmental review of the proposed revisions;
- Some commenters would like an option to review by a Professional Geologist for operations on landslides while others state that the proposed Categorical Waiver does not provide adequate protection to slope stability;
- The Mattole Restoration Council (MRC) requested that Programmatic THP (PTHPs) approved under the Mattole Programmatic Timberland Environmental Timber Harvesting Plan (PTEIR) be eligible for coverage under the proposed Categorical Waiver.

NOTABLE CHANGES: Proposed Order No. R1-2014-0011 renews the 2009 Categorical Waiver and includes revised findings, minor reorganization, revisions to general conditions (Section I) and the specific conditions of Categorical Waivers C and F (Section II), and revised application procedures (Section III). A brief summary of these changes is described below:

- Expanded Categorical Waiver C to include projects that the RWB Executive Officer determines are in compliance with an approved Sediment TMDL Action Plan;
- Revised Categorical Waiver D for Modified THPs so that Projects that comply with the revised FPRs related the Modified THPs which go in effect January 1, 2015, are eligible for coverage;
- The application process for Categorical Waivers C, D, and F has been simplified to submittal of a Certification Notice. Operations may commence upon receipt of written confirmation (e.g. email or other) from the Regional Water Board that the project is covered under the Wavier;
- Categorical Waiver E for NTMPs has been superseded by NTMP WDRs (Order No. R1-2013-0005); NTMPs are no longer eligible for coverage under the Categorical Waiver;
- Annual inspection requirements for Categorical Waiver F have been changed to once per year throughout the life of the THP and erosion control maintenance period. This aligns with new FPR annual inspection requirement commencing January 1, 2015. A pre-winter inspection of the harvest area is also required annually, when active timber operations occur;

- Information presented in the map point table (Attachment C of the Waiver) to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge may satisfy the requirement to prepare and submit an inventory of controllable sediment discharge sources;
- The condition requiring geologic evaluation by a Professional Geologist has been revised to apply if the following activities are proposed on *active* landslides:
 - i. Timber falling
 - ii. Use of ground based equipment
 - iii. Road construction or reconstruction
- Retention of canopy providing shade must at a minimum comply with the FPRs Anadromous Salmonid Protection rules. Site specific recommendations by Regional Water Board staff intended to protect or restore shade necessary to meet the Basin Plan temperature objective must be included in the approved THP;
- The Categorical Waiver F condition for evenaged silviculture has been simplified such that intensive harvesting such as clearcutting is allowed on slopes less than 65%; provided it is at a distance greater than 200 feet from a watercourse and less than 20 contiguous acres and 100 cumulative acres.
- Regional Water Board staff is actively working with our partners in state and federal agencies, non-governmental organizations as well as landowners to encourage restoration projects designed to enhance habitat for listed salmonids and remove regulatory barriers to permitting such projects. As such, Specific Condition 11 of Categorical Waiver F has been revised to allow small habitat restoration projects.

RECOMMENDATION: Staff recommends adoption of proposed Order R1-2014-0011.

SUPPORTING
DOCUMENTS:

1. Proposed Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region*
2. Response to Comments
3. Public Comments
4. Proposed Order redline strikeout
5. Notice of Public Hearing