

**Response to Comments
on
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**

**Prepared by:
North Coast Regional Water Quality Control Board
May 8, 2014**

Background

California Water Code (CWC) 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 Board a Report of Waste Discharge (ROWD) containing such information and data as may be required. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269, that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 North Coast Regional Water Board Basin Plan, 4-33.00 (Basin Plan)).

Since 2004, discharges of waste resulting from most timber harvest activities on non-federal lands in the North Coast Region have been permitted under either General Waste Discharge Requirements (GWDRs) under Order No. R1-2004-0030, or under conditional waivers of WDRs. On October 10, 1999, Senate Bill 390 amended Water Code section 13269 to require that all existing waivers expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be reconsidered and, if appropriate, be renewed every five years. On June 23, 2004, the Regional Board adopted Order No. R1-2004-0016, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region. Order No. R1-2004-0016 (2004 Waiver) expired in 2009 and was revised and renewed as Order No. R1-2009-0038 (2009 Waiver), which expires on June 4, 2014. Regional Water Board staff will propose adoption of Order No. R1-2014-0011 (Categorical Waiver) to replace Order No. R1-2009-0038.

The Categorical Waiver defines five categories of timber harvest activities, detailed in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. It should be emphasized that the conditions of the Categorical Waiver are designed to be sufficiently protective so that implementation and compliance with the general and specific conditions are expected to

reduce the likelihood that timber harvesting projects pose a significant threat to water quality.

To ensure that the Categorical Waiver is in the public interest and consistent with the Basin Plan (including TMDLs), revisions may be made based on experience with implementation and oversight of the categorical waiver over the previous five years and in response to changing conditions or regulations.

In July 2009, Order No. R1-2009-0038 was petitioned to the State Water Board. Petitioners asserted that conditions in categories E and F of the 2009 Waiver were inconsistent with the Forest Practice Rules (FPRs), particularly in the context of nonindustrial timber management plans (NTMP) already approved by CAL FIRE. On March 24, 2011, the Regional Water Board adopted limited term amendments to the 2009 Waiver to temporarily suspend the revised provisions for NTMPs. One of the primary purposes of the amendments was to allow time for 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 rules for protecting water quality included in the Forest Practice Rules. Regional Water Board staff concluded their investigations and stakeholder outreach in collaboration with CAL FIRE. Based on the results of these efforts, on May 2, 2013, the Regional Water Board adopted Order No. R1-2013-0005, Waiver of Waste Discharge Requirements specific to 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 . This legislation eliminated permit fees associated with timber harvesting operations, including WDR fees. This eliminated any financial incentive for landowners to seek coverage under the Categorical Waiver rather than the GWDR. In addition, in AB 1492 the Legislature explicitly declared its intent to accomplish, among other goals, the following:

- Support in-state production of timber within the state's environmental standards, and promote and encourage retention of forests and forested landscapes.
- Identify and implement efficiencies in the regulation of timber harvesting between state agencies.

In keeping with the intent of AB 1492 as well as the Porter-Cologne Water Quality Act (Water Code section 13000 et seq.), the Regional Water Board continues to work with the Board of Forestry, CAL FIRE, timber interests, and environmental groups to align Regional Water Board our water quality protection requirements and permits with the Forest Practice Rules (FPRs), where feasible, in a manner that is consistent with the Regional Water Board's mandate to protect and restore the beneficial uses of water in the North Coast Region.

On November 18, 2013, in preparation for this Categorical Waiver update and renewal, Regional Water Board staff sent a letter to a stakeholder group of foresters, landowners and environmental groups and on November 19, 2013 sent a similar letter to CAL FIRE staff. The purpose of the letters was to alert interested persons about the upcoming

waiver revision and solicit input on stakeholder interest in a public participation process similar to that which occurred during development of the NTMP WDR.

At that time, Regional Water Board staff received comments from three individuals: Jason Poburko, Matt Greene and Alan Levine. On January 9, 2014, the Regional Water Board provided an early draft of the revised Categorical Waiver to interested persons and CAL FIRE staff, and included a letter soliciting further input. Regional Water Board staff received responses from Jason Poburko and Rob DiPerna.

Staff made minor changes to the early draft revised Categorical Waiver based on internal review and informal comments from Mr. Poburko. The formal public comment period for the draft revised Categorical Waiver Order (Order) began on February 24, 2014. The notice of the draft Order was distributed to the Regional Water Board's lysris list ('reg1_waiver_wdr_nonfederal@swrcb18.waterboards.ca.gov'), three newspapers in the Region (Press Democrat, Eureka Times Standard, Siskiyou Daily News) and was posted on the Regional Water Board's website. The public notice stated that the proposed Order was available for a 30-day public review, from February 24, 2014 to 5:00 p.m. on March 24, 2014. The Order itself was available on the Regional Water Board's website on February 24, 2014; however, the public notice of the Order was not available on the website until March 14, 2014. Accordingly, Regional Water Board staff extended the public review period to April 1, 2014.

Comments received during the February 24 – April 1, 2014 Comment Period

Michael Tadlock, California Licensed Foresters Association	March 24, 2014
John W. Cruz, Forest Unlimited	March 24, 2014
Alan Levine, Coast Action Group	March 27, 2014
Ali Freedlund, Mattole Restoration Council	March 27, 2014
Jason Poburko, Registered Professional Forester	March 28, 2014
Felice Pace, Sierra Club	March 30, 2014
Matt Greene, California Licensed Foresters Association	April 1, 2014
George Gentry, California Board of Forestry	April 1, 2014
Rob DiPerna, Environmental Protection Information Center	April 1, 2014
Mike Miles, Humboldt/Mendocino Redwood Company	April 1, 2014

Substantive comments received during the comment period are summarized below, followed by Regional Water Board staff response. Where commenters have made similar comments, those comments are summarized and a single response presented. It has been the objective of Regional Water Board staff to be responsive to all comments and where appropriate make suggested changes when those changes improve the proposed Waiver. Revisions to the February 24, 2014 draft Order in response to public comments are reflected in the proposed Order that will be considered for adoption by the Regional Water Board on May 8, 2014, and are highlighted in a "redline-strikethrough" version included as supporting documentation.

Comment #1 - Monitoring

Two commenters discuss the monitoring requirement of the Categorical Waiver. Monitoring in the Categorical Waiver consists of conducting project site inspections. One commenter stated that Regional Water Board staff has not provided adequate findings of past monitoring results, or that required monitoring has shown any deficiency in landowners achieving the waiver's conditions. In addition, the commenter suggests the

Regional Water Board consider other incidental types of landowner inspections, and that the Regional Water Board permits limit the monitoring requirements to large storm events.

One commenter requests that the Regional Water Board make data collected by landowners on controllable sediment discharge sources (CSDS) available for use by landowners and agencies. He states that the data could be made available in a GIS database and used to evaluate the effectiveness of the Erosion Control Plan (ECP) requirements and for analysis of cumulative watershed effects.

Response: Water Code section 13269 subdivision (a)(3) states, "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 regional 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 shall be made available to the public."

Since 2004, ECPs and inspection plans have been key components of Regional Water Board permits for discharges from timber harvesting activities. ECPs require that landowners identify CSDS in their plan areas and propose corrective action to prevent or minimize sediment discharge. Inspection plans are intended to ensure that landowners inspect areas where timber harvesting has occurred, evaluate whether measures to prevent and minimize sediment discharge are functioning properly, and identify and correct those areas where such measures are not functioning properly before large problems develop. The ECP and inspection plans together comprise the self-monitoring requirements designed to prevent and minimize sediment discharge to support implementation of the waiver program.

Regional Water Board staff review ECPs for every THP. Since the Categorical Waiver and GWDR were approved in 2004, the majority of new THPs in the North Coast Region have included ECPs. The timber industry has responded remarkably well; foresters now routinely identify CSDS and devise corrective measures, and operators have become proficient in restoration work. The Regional Board does not track individual sediment sources or sediment volumes, but the majority of plans that are required to prepare ECPs typically identify sites in their plan area. Controllable sediment discharge sources are prevalent throughout timberlands in the Region. ECPs typically include multiple CSDS sites, underscoring the point that without a program requiring landowners to actively conduct inventories and propose corrective action, such sites would likely remain untreated and eventually fail, resulting in adverse impacts to water quality.

The inspection requirement is an essential component of the monitoring program. A great deal of effort, including much of the new FPR "FPRs Road Rules", which the Board of Forestry (BOF) has approved and are scheduled to become effective January 1, 2015, is aimed at controlling erosion from timber operations. Historically, a significant portion of the sediment discharged from timber operations has come from road-related landslides and failure of watercourse crossings during storm events. Many such failures begin as minor drainage obstructions that result in saturation and subsequent failure of road fills or plugged culverts leading to catastrophic failure and erosion of the entire road prism. The majority of such failures can be prevented by appropriate design and construction of roads

and watercourse crossings as well as regular inspections to identify and correct small problems before they become catastrophic failures.

Regarding the suggestion that inspections be limited to large storm events (20-50 year return interval), failures may be more likely during large, infrequent storm events, however, any channel-filling runoff event can mobilize sediment and debris and lead to possible failures. The commenter asks that the Regional Water Board consider the extent and types of other monitoring activities conducted by landowners, such as owl surveys, stocking surveys, compliance and completion inspections conducted by the California Department of Forestry and Fire Protection (CAL FIRE), and annual inspections conducted pursuant to the new Road Rules. The Regional Water Board encourages landowners to utilize these other inspections to fulfill Categorical Waiver inspection requirements and verify that measures necessary to prevent or minimize sediment discharge from all logging roads, landings, and skid trails used for timber operations are functioning properly and to identify and correct such areas as warranted.

Regarding the comment that monitoring could be used as a data collection and analysis program, the monitoring requirement is designed and implemented as a pollution control and prevention strategy, not a data collection program. Regional Water Board staff note the suggestion that data on CSDS sites collected to comply with the ECP requirement could be compiled in a database and made accessible to the public for the purpose of analysis. That information could potentially be useful for a variety of purposes, but expanding the program from its current purpose would not be a trivial matter, and at this time Regional Water Board staff resources are not sufficient to support such a task. Additionally, in order to utilize CSDS data in the way the commenter suggests would require more rigorous data collection and quality control methods than currently required or necessary to ensure compliance with the waiver conditions and protection of water resources and is beyond the scope of the current renewal.

Comment #2 – Reliance on Forest Practice Rules (FPRs) for Basin Plan compliance

Two commenters maintain that for the reasons listed below, all THPs that meet applicable FPRs comply with the Water Quality Control Plan for the North Coast Region (Basin Plan) and therefore, it is in the public interest to waive WDRs:

- Most Timber Harvest Plans (THPs) in the North Coast Region are within the zone of coastal anadromy where the Andromous Salmonid Protection (ASP) rules apply. The goal of the ASP rules is that every timber operation be planned and conducted to protect, maintain, and contribute to restoration of properly functioning habitat for listed salmonid species.
- FPRs require that CAL FIRE must disapprove a plan if it is likely to violate the Basin Plan.
- FPR section 916.12 provides that if existing rules are deemed not to be sufficient in waterbodies listed as impaired under section 303(d) of the Clean Water Act, CAL FIRE in collaboration with the Regional Water Board, shall develop watershed-specific rules. The Regional Water Board has not sought watershed-specific rules pursuant to FPR section 916.12, therefore acknowledging by default that the existing rules are sufficient.

- Timber operations are prohibited from discharging or threatening to discharge sediment in quantities deleterious to water quality (Basin Plan 4-29.00), therefore, there is a fair argument that all timber operations pose a low or insignificant threat to water quality.
- Finding 22 in Regional Water Board Order No. R1-2013-0005 (NTMP General WDR) states, “Water quality requirements related to sediment discharge from NTMP lands can largely be implemented through full and proper implementation of the FPRs, with additional protection measures necessary to protect the beneficial uses of water incorporated into NTMPs for site-specific conditions when recommended by the Regional Water Board.”
- Regional Water Board staff review all THPs as review team members and have never presented evidence that a THP that is in compliance with the FPRs has ever violated the Basin Plan. If so, there would be a large record of Notices of Violations and non-concurrences.

Conversely, two commenters state that the Categorical Waiver overly relies on the FPRs for Basin Plan compliance and also state that Regional Water Board staff have largely been absent from the timber harvest plan review process for the last decade.

Response: In its role as formal review team members during the CAL FIRE CEQA functional equivalent review process pursuant to California Code of Regulations, title 14 section 1037.5, Regional Water Board staff evaluates all THPs for the potential to adversely impact the beneficial uses of water and for compliance with applicable water quality standards. In addition, once a THP has been approved by CAL FIRE and before timber operations can commence, landowners must seek coverage under the GWDR, Categorical Waiver, or a specific individual or watershed WDR. At that time, Regional Water Board staff further evaluates the plans for compliance with the provisions of the permits, including general and specific conditions or requirements intended to implement Basin Plan standards. In addition, Regional Water Board staff conduct site visits before (pre-harvest inspections), during (active inspections), and after (completion or termination inspections) timber operations. Our internal records show that Regional Water Board staff have conducted over 2,200 inspections of THPs and NTMPs since June 4, 2004.

Regional Water Board permits for discharge associated with timber harvest activities rely to the extent feasible, but not wholly, on FPRs to achieve Basin Plan compliance. Revised findings 13, 16 and 18 in the proposed Order recognize the water quality protection provided by the FPRs. However, at this time, it not appropriate to rely solely on compliance with the FPRs. The approach is summarized in revised finding 22, which states, “It is anticipated that timber operations on non-federal lands that fully and properly implement FPRs that provide water quality protection, and meet the general and specific conditions of this Categorical Waiver, will contribute to implementation of sediment and temperature TMDLs with additional protection measures necessary to protect the beneficial uses of water incorporated into THPs for site-specific conditions when recommended by the Regional Water Board.”

Stating a prohibition or that a plan must comply with the Basin Plan is not sufficient to ensure Basin Plan compliance. Compliance programs must include specific measures that are likely to achieve compliance with applicable water quality standards as well as a monitoring program to inform whether those standards are being met.

Comment #3 – Categorical Waiver reliance on the ASP rules to meet the temperature objective

“The Regional Water Board’s Temperature Policy (Resolution No. R1-2014-0006) states, ‘Where non-Water Board programs provide riparian shade that results in attainment of water quality standards, the Regional Water Board will rely on and incorporate those programs.’ Several commenters state that the proposed Order was prepared and submitted for public comment without the knowledge that the Board would support the FPRs and revise the Temperature Policy Resolution.”

One commenter states that conditions for Class II watercourse canopy retention in the 2009 Waiver were more protective than ASP rules. He maintains that this is a significant decrease in watercourse protection and that reliance on the ASP rules for standard Class II watercourses and Class II-L upstream of 1,000 feet from the confluence with a Class I watercourse is inadequate.

Response: Finding 16 of the proposed Order acknowledges that minimum retention standards for canopy providing shade on Class I watercourses and the lower 1,000 feet of Class II-L required under the ASP rules are generally protective of shade and water temperatures.

Finding 16 has been modified as follows (underlined text has been added): While standard Class II watercourse canopy retention required under the FPRs does not in all cases ensure compliance with the Basin Plan temperature objective, Specific Conditions of Categorical Waiver “F” specify retention of post-harvest canopy within 200 feet of watercourses that exceed FPR standards.

In addition, Condition 7 of Categorical Waiver F relies on the canopy retention from the ASP rules, with the addition of site specific recommendations by Regional Water Board staff intended to protect or restore shade where necessary to meet the Basin Plan temperature objective. As such, it is anticipated that canopy retention standards for Class I and II watercourses will be adequate to meet the temperature objective.

Comment #4 - CEQA Findings

The proposed Order does not comply with CEQA because it relaxes standards from the 2009 Categorical Waiver.

Response: The Regional Water Board has complied with CEQA in adopting the proposed Order. Staff prepared a mitigated negative declaration for the 2009 Categorical Waiver finding that all potential environmental effects that would result from adopting the Categorical Waiver would be less than significant with mitigation incorporated. Staff does not agree with commenter’s claim that the proposed Order does not comply with CEQA because it relaxes standards in comparison to the Categorical Waiver adopted in 2009. The proposed Order does not result in substantial changes as compared to the 2009 Categorical Waiver, and does not involve any new significant environmental effects or increase in the severity of an effect compared to the 2009 Categorical Waiver. Staff has not identified any

new significant environmental impacts that would result from adoption of the proposed Order that were not previously analyzed in the mitigated negative declaration adopted in 2009. Pursuant to California Code of Regulations title 14, section 15162, none of the conditions requiring a subsequent negative declaration have been triggered, therefore no additional CEQA documentation is required.

Comment #5 – Over-broad reach of Category F

Category F on page 13 of 22 refers to a categorical waiver for ‘other projects.’ It is unclear what is the scope and type of “other projects.” While it “includes” THPs or other timber harvesting activities, it is not limited to those categories. To the extent there is to be a Category F, it should be limited to THPs and those THP-related activities, and should not extend beyond timber harvest plans. As above, the commenter challenges the characterization of THPs as being “in compliance with CEQA,” as he believes that determination can only be made on a case-by-case basis. Lacking a change, he questions the need for Category F.

Response: Categorical Waiver F requires that the determination of CEQA compliance be made on a case-by-case basis, as specified in the eligibility criteria. In order to meet the requirements of Category F, the Regional Water Board must determine that “any other Project” complies with CEQA.

Comment #6 – “Finding 34 [revised finding 36] on pages 9-10 states that the Regional Board intends to rely on a 2009 Mitigated Negative Declaration in reviewing this categorical waiver, and that it will issue a notice of determination within five days of the issuance of the order. Is this what the Regional Board intends, or is this language left-over from the last order? We are unclear whether the Regional Board intends to rely on the 2009 Mitigated Negative Declaration for the promulgation of this Draft Order or not. Clarification on this point would be greatly appreciated.” The commenter maintains that reliance on proceedings from 2009 is inappropriate, and the Regional Board needs updated CEQA and public review for its proposed Categorical Waiver.

Response: See response to comment #4 above. The Regional Water Board has determined that the proposed Order is consistent with the prior CEQA documentation as no new impacts that were not previously analyzed are expected to occur. The Regional Water Board finds that none of the conditions in California Code of Regulations, title 14, section 15162 are met that would require the Regional Water Board to prepare subsequent CEQA documentation and reliance on the 2009 mitigated negative declaration is appropriate. The Regional Water Board will file a notice of determination in accordance with title 14, California Code of Regulations, section 15075 within five (5) days of the adoption of this Order.

Comment #7 – Greenhouse gasses and climate change

The categorical waiver is devoid of any mention of the realities of climate change and how they are playing out on the North Coast. Additional consideration must be given to how our private land forested watersheds must be secure and well-maintained to address the water needs in our state as the predictable consequences of climate change occur.

Response: Forestlands are, in general, a carbon sink where CO₂ is captured and fixed by the process of photosynthesis, which removes carbon from the atmosphere and sequesters

carbon in wood fiber. In California, forests in the North Coast, Cascade Northeast and North Sierra regions were estimated to produce a net benefit of 7.2 million metric tons of CO₂ equivalents removed from the atmosphere each year. (California Energy Commission 2004). Growing forests sequester and store more carbon over time until growth stagnates as trees reach a mature age. Older trees sequester carbon through new growth at a declining rate, but they remain pools of stored carbon until they decay through decline, death, or consumptive use. Timber harvesting activities covered under the Categorical Waiver will likely result in sequestration of more greenhouse gas emissions than they will generate, either directly or indirectly.

Comment #8 - Changes to the Modified THP rules

Two commenters point out that the BOF has passed revisions to the Modified THP rules, which are scheduled to go in effect January 1, 2015 and suggest that revised finding 28 be updated to reflect the upcoming rule change. One commenter maintains that revisions to the Modified THP rules constitute a significant change and therefore require additional CEQA review.

Response: Revisions to California Code of Regulations, title 14, section 1051, Modified THPs, are as follows:

- Maximum size increased from 100 to 160 acres;
- Allows heavy equipment on slopes greater than 50% when explained and justified. Previously, heavy equipment was not allowed on slopes greater than 50%;
- Construction of new skid trail allowed on slopes up to 50% (previously 40% was the upper limit);
- New skid trail on slopes greater than 40% and less than 50% may not exceed linear 100 feet;
- On Modified THPs greater between 101 and 160 acres, new logging roads shall not exceed 960 feet in linear distance and logging road construction and reconstruction shall not exceed 1,600 feet in linear distance.

Under the revised rules, Modified THPs remain roughly equivalent to THPs that meet the conditions of Categorical Waiver F. Regional Water Board data indicates that between 2005 and 2013, 19 Modified THP were enrolled in the Categorical Waiver, covering a total of 280 acres, with the average size being 15 acres. Revisions to FPRs for Modified THP are minor and Modified THPs in the North Coast Region affect a small geographic area. As such, Modified THPs approved pursuant to FPR section 1051 will continue to be eligible for Categorical Waiver D. See revised Finding 28.

Comment #9 – Slope stability

One commenter has suggested that it is often unnecessary to require a full geologic evaluation by a Professional Geologist when proposing some timber operations on unstable areas and maintains this requirement can often be met by pre-consultation with Professional Geologists from the California Geological Survey. Another commenter asserts that both the FPRs and the Regional Water Board's proposed Order fail to adequately protect slopes that are prone to catastrophic landsliding. This commenter included in his comments an article from "Counter Punch," a web based news reporting site

(<http://www.counterpunch.org/>) on catastrophic flooding and landslides in the Pacific Northwest.

Response: Timber harvesting can result in increased rates of shallow landslides on vulnerable slopes due to decreases in root strength and increased soil moisture (Reid and Keppeler, 2012). Tree roots can enhance the strength of shallow soils, increasing the soil's ability to resist failure. When trees are harvested, their roots gradually decay, reducing the reinforcement they provide and increasing the potential for shallow landslides. The loss of root strength gradually increases over a period of several years, with the critical period of maximum loss occurring approximately 5 to 15 years after harvesting (Ziemer 1981a). As new roots grow into the space previously occupied by the older roots system, the support they provide gradually increases. Loss of root strength varies with species and intensity of harvest. Partial harvesting of resprouting species such as redwood or tanoak is thought to minimize the degree and duration of the period of diminished root strength. This is due to the fact that a significant portion of trees remain after harvesting and that the roots of those remaining trees do not die back completely after the tree is cut down.

Interception, evaporation, and evapotranspiration of rainfall by forest canopy can also reduce the volume of precipitation that infiltrates and remains in soils. Harvesting trees can therefore result in increased soil moisture and runoff, which can contribute to landsliding and increased erosion. Various studies (Lewis, 2003) (Reid and Lewis, 2007) (Pearse and Rowe, 1979) have found increases in effective rainfall (the part of precipitation that reaches stream channels as runoff) over 20%, in harvested stands compared to unharvested stands, due to reductions in interception and evaporation of precipitation before it reaches the ground and removal of moisture from the soil through evapotranspiration in unharvested stands. Zeimer (1981b) found only minor changes in peak flows following partial harvesting. Vulnerability to shallow landsliding processes varies throughout a hillslope, primarily as a function of soil depth, slope gradient, contributing drainage area, subsurface hydrology, and soil characteristics.

Because timber operations on vulnerable hillslopes have the potential to affect slope stability and increase the potential for landslide-related sediment discharge, Categorical Waiver F requires a geologic evaluation by a Professional Geologist to characterize slope stability in a project area and provide recommendations to minimize the potential impacts from timber operations. The condition requiring geologic review by a Professional Geologist for THPs has been revised in the proposed Order from previous versions of the 2009 Waiver so that proposed use of existing roads on dormant deep seated landslides would not require geologic review. This revision was made to provide some level of relief to landowners of the expense of hiring a consulting geologist when conducting low risk activities, while still remaining adequately protective of water quality. The Regional Water Board encourages landowners to pre-consult with Professional Geologists from state agencies. However, a pre-consultation is an informal process that is routinely done as a first pass "filter" for landowners to determine whether to avoid certain areas or proposed activities. The role of agency personnel is to review projects, not assist in project design. As such, revising waiver conditions so that pre-consultation by agency Professional Geologists can satisfy the requirement for geologic evaluation is not appropriate nor in accordance with the Geologist and Geophysicist Act. (Business and Professions Code §§ 7800-7887.)

Comment #10 – Stream restoration

Projects that include in-stream restoration should qualify for waiver coverage.

Response: 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 as specified in California Code of Regulations, title 14, section 15333.

Comment #11- Enrollment procedures

The commenter requested clarification whether landowners who enroll projects under Categorical Waivers C, D, and F may commence operations after 10 days of submitting a certification notice.

Response: See revised Section 3(C) of the proposed Order, “For project proponents applying for coverage under Categorical Waiver C, D, or F, the landowner may commence timber operations upon receipt of written confirmation (e.g. email or other) from the Regional Water Board that the project is covered under the Categorical Waiver.”

Comment #12 - Inventory of Controllable Sediment Discharge Sources

The commenter sought clarification regarding the language of Specific Condition 1 of Categorical Waiver F, “Information presented in the map point table included as Attachment C of this Order to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge may satisfy the ECP requirement described in Categorical Waiver F when the landowner demonstrates to the satisfaction of Regional Water Board staff that the information is adequate to prevent and minimize controllable sediment discharge from the THP.”

Response: That section has been revised as follows, “Information presented in the map point table included as Attachment C of this Order to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge may satisfy the requirement.”

What has been referred to as an ECP in previous Regional Water Board orders has been simplified in this proposed Order to its most basic element, the inventory of CSDS. In recognition of the overlap between FPRs and Regional Water Board requirements to identify and correct CSDS, the map point table was developed by a group consisting of review team agencies and foresters that can be included in THPs as enforceable provisions that would include all the information required to satisfy agency requirements in a consistent format.

Comment #13 – Sediment prevention plan

The commenter suggests that the Regional Water Board should consider allowing specific practices that are not permitted under Special Condition 11 of Categorical Waiver F when explained and justified.

Another commenter states that conditions referred to in proposed condition 11 represent significant changes from the 2009 Waiver and therefore are not justified under CEQA.

Response: See Response to Comment #4 regarding CEQA compliance. With the exception of allowing small habitat restoration projects, revisions to the conditions proposed in the February 24, 2014 public review draft have been omitted and the condition from the 2009 Waiver requiring landowners to submit a sediment prevention plan when proposing specific activities has been retained.

Comment #14 - Canopy retention

The commenter suggests that under Section II, Specific Condition 7 of Categorical Waiver F, the phrase, “where necessary” be added to convey that additional requirements may not be needed to meet the Basin Plan temperature objective.

Response: Regional Water Board staff agrees with the comment. See revised condition 7.

Comment #15 - The commenter recommends that the Regional Water Board consider adopting review procedures that consider:

1. Concurrent review of Notice of Termination with the CAL FIRE Notice of Completion;
2. Review the utility of separate Erosion Control Plans, particularly where the harvest plan has already addressed the issue.

Response: Point 1- See revised Order section IV.7. The Notice of Termination is no longer required to terminate coverage under the Categorical Waiver. Coverage for THPs and Modified THPs extends through the erosion control maintenance period and is automatically terminated at the end of that period.

Point 2- See response to comment #9 above.
Regional Water Board staff agrees with the comment.

Comment #16 – Working Forest Management Plans

Several commenters suggest that the Regional Water Board consider that the BOF is developing new rules for Working Forest Management Plans (WFMPs), which are anticipated to be adopted in 2014 and become effective January 1, 2015.

Response: Regional Water Board staff has provided the BOF with comments on draft rule language for WFMPs and will continue to do so for subsequent drafts. However, it would be premature to develop a permit until the final rules are approved.

Comment #17 - Categorical Waiver B, Exemptions

“In a large project how is the 3 acre limit to be measured, total or contiguous? How is the scope of a project to which the 3 acre limit applies determined? For the 3 acre limit to be meaningful in protecting water resources the project must be scoped so that this does not become a blanket exemption so that a large project is artificially treated as multiple smaller projects. The total impact of all projects ought to be considered.”

Response: The commenter is referred to California Code of Regulations, title 14, section 1052.

Comment #18 - Exemption Category D

“This exemption applies to Modified THPs of 100 acres or less. Do Modified THPs in this category still have to comply with the substantive WDRs through the CEQA and FPR regulations which protect our waterways?”

Response: Modified THPs are a class of THPs defined by Cal. Code Regs., tit. 14, §1051. They go through the same CALFIRE review and approval process as THPs. Pursuant to the Categorical Waiver, they must comply with the General Conditions and eligibility criterion of Categorical Waiver D as well as California Code of Regulations, title 14, section 1051. [Please note revisions to the 14CCR 1051 described in comment #5]

Comment #19 - NTMPs

“This section states that the coverage under Categorical Exemption E for NTMPs was revoked effective 5/2/13. Does this mean that NTMPs will now have to submit plans to comply with to Waste Discharge Requirements? What will the process be for official review and public comment on NTMP compliance with WDRs?”

Response: On May 2, 2013, the North Coast Regional Water Quality Control Board adopted Order No. R1-2013-0005, General Waste Discharge Requirements for Discharges for Timber Operations on Non-Industrial Timber Management Plans (NTMPs) in the North Coast Region (General NTMP WDR), which superseded Categorical Waiver E of Order No. R1-2009-0038. Therefore, beginning May 2, 2013, the landowners submitting a new Notice of Timber Operations must apply for coverage under the General NTMP WDR.

Comment #20 - Exemption Category F

“This section states basically that THPs continue to be exempt from the Waste Discharge Requirements. Is it intended that the Waste Discharge Requirements be part of the THP insofar as CEQA and FPR compliant projects reflect the intent of the WDRs, so that therefore compliance to the substantive WDRs is still required?”

Response: Timber harvesting conducted under approved THPs must enroll under either the GWDR, Categorical Waiver, an existing Ownership or Watershed-specific WDR, or an individual waiver or WDR. They must also comply with the general and specific conditions of the proposed Order and CEQA to qualify for coverage under the Categorical Waiver.

Comment #21 - 5 year waiver renewal

“This section states that pursuant to Water Code section 13269 waivers shall not exceed 5 years. This seems like an excessive period, one or two years would better protect our water resources.”

Response: Comment noted.

Comment #22 - Inspection access

“Under the Section “General Conditions that Apply to All Categories”, Item 2 states that the landowner shall allow access for inspection. How may representatives of concerned citizens participate in the inspection process?”

Response: Concerned citizens may request copies of inspection memorandum included in official files for permitted plans. Regional Water Board staff is not aware of a legal requirement that landowners allow members of the public access to inspect their property.

Comment #23 - FPR revisions

“In the paragraph that details Conditions for Category F, a set of forest practice guidelines are presented. In case of conflict with California FPRs established by CALFIRE which set of rules has precedence? It is important to know this because the CDF rules are constantly evolving.

Response: Where the proposed Order cites a FPR as an enforceable provision of the Categorical Waiver, it refers to the current rule language unless the Order specifies the version of the rule in effect in a given year.

Comment #24 – Waiver conditions are limited by Water Code section 13269

The commenter contends that Water Code section 13269, as well as Senate Bill 923, the enabling legislation which amended section 13269 in October 2003, only authorizes two conditions: 1) that waivers shall include monitoring requirements to support the development and implementation of the waiver program; and 2) the state or regional board may include annual fees.

Response: Water Code section 13269 subdivision (a)(1) states that WDRs may be waived for a type of discharge if the state or regional board determines that the waiver, “is consistent with any applicable state or regional water quality control plan and is in the public interest.” Section (a)(2) states, “The conditions of the waiver shall include, *but need not be limited to* [italics added],...monitoring.” CWC section 13269 does not limit the conditions of the waiver to monitoring and annual fees as suggested in the comment, but rather provides the state or regional boards fairly wide discretion to establish the conditions it determines are necessary to ensure compliance with water quality rules, regulations and law.

Comment #25 – “Bullet [finding] 9: “*These beneficial uses are impaired in the majority of water bodies in the North Coast Region as made evident by significant decline in populations of several species of anadromous salmonids during the past half century.*” This statement provides a hypothetical linkage between water quality physical conditions and species abundance without taking into account that the majority of the life cycle of this species occurs in the open ocean, and that other decisions regarding the use of water and land have had drastic effects of the natural flow regimes and extent of available spawning habitat. It is an inappropriate statement to claim that beneficial uses are impacted because of a reduced number of observed species given the existence of so many other constraints and impacts to this species beyond the juridical scope of this Board. This statement is unnecessary to support the Waiver and should not be used in the findings.

Bullet 9: *'Degradation of freshwater habitat due to excess sediment discharge and removal of trees providing shade on watercourses from unregulated timber harvesting and associated activities prior to passage and implementation of the Forest Practice Rules in the mid-1970s has been among the most significant factors.'* The impacts from historical harvesting have been in a process of successional recovery since the time of impacts, almost 40 years ago. In most cases streamside canopy in forested environments, unless inhibited by other land use will have returned to functional levels of effective shade."

Response: Comment noted. See revised finding 9.

Comment #26 – "Bullet [finding] 10. ' However, due to the fundamental nature of the interaction between harvesting and transporting trees and physical processes in steep and remote watersheds, the potential remains for timber operations to result in discharge of sediment to watercourses and increases in water temperature from reductions in forest canopy that provides shade to streams.' This statement is contrary to the concept of supporting a waiver. Furthermore it fails to recognize the difference between a potential to discharge and a potential to result in a significant discharge as written in the Water Code. In addition any suggestion that the limited removal of forest canopy adjacent to streams under the FPRs negatively impacts temperature must be supported by real observational science. CAL FIRE as the lead agency responsible for these forest practice rules has prepared CEQA findings to the contrary. Recent finding by this very board under R1-2014-0006 have supported that the current FPRs are generally protective of shade and therefore this statement should be struck. Additionally, trees are not transported, logs are."

Response: Comment noted. See revised finding 10.

Comment #27 – "Bullet [finding] 11. ' While the FPRs do not fully ensure compliance with water quality standards...' The concept of a GAP between compliance is constantly cited by staff, however the details of this GAP have never been adequately provided or demonstrated, such that it may be interpreted as a staff belief structure. The GAP exists as a regulatory concept tool that maintains the need for conditional waivers and GWDR orders. This statement of a GAP must be better supported. Therefore this letter shall serve as a formal request for illustration of this "GAP" in the response to public comment, such that it may be identified and potentially address by the regulated public to seek final resolution in this matter."

Response: The comment is noted. See new findings 11 and 12, and revised finding 13 (previously 11). However, it is beyond the scope the current revision of the waiver to determine whether FPRs can be fully relied on to implement water quality standards. The North Coast Regional Water Board is committed to continuing to actively engage, along with other regional and state water boards, with CAL FIRE, BOF, timberland owners and environmental groups to evaluate the adequacy of water protection provided by the FPRs and identify ways to improve rules for protection of the beneficial uses of water. The FPRs are one component of the North Coast Region's program for regulating discharges from timber harvesting on non-federal lands. The North Coast Regional Water Board remains committed to working with other regional boards, the state water board, CAL FIRE, BOF, timberland owners and environmental groups to

evaluate and ensure the adequacy of the FPRs in providing all water quality protection requirements necessary under state and federal rules, regulations, and law.

Comment #28 - “Bullet [finding] 11. Expand discussion to include additional reference rules for dust abatement, road abandonment, and waterbreak spacing. As this also reduce sediment production and transport.” The commenter cites FPRs sections: 923.4(h) , 943.4(h) Road Maintenance 923.8, 943.8, Planned Abandonment of Roads, Watercourse Crossings, and Landings 914.6, 934.6, 954.6 Waterbreaks.

Response: Please see revised finding 13 (previously 11). Regional Water Board staff included the cited rules by reference. The finding was meant to generally acknowledge the numerous FPRs addressing water quality protection. In the interest of brevity, it is not intended to be a comprehensive list.

Comment #29 – “Bullet [finding]14 [revised finding 16], “Minimum retention standards for canopy providing shade on Class I watercourses and the lower 1,000 feet of Class II-L required under the ASP rules are generally protective of shade and water temperatures.” Please provide a real world example where the minimum retention standards are not protective of shade and water temperature. The word “generally” should be struck without supporting evidence that the minimums are not protective. Additionally, the waiver should take into consideration for enrollment when the silvicultural methods of selection or commercial thinning are specifically applied to watercourse protection zones, as these methods require basal area restrictions that would ensure that the perceived minimum canopies are not a reasonable an end result of operations.

“Bullet 14 [revised finding 16], ‘While Class II watercourse canopy retention required under the FPRs does not ensure compliance with the Basin Plan temperature objective.’ This statement must be supported by citation of study or model of appropriate scale. Without such support, the statement is opinion and should not be considered as a finding. Additionally, the waiver should take into consideration when the silvicultural methods of selection or commercial thinning are specifically applied to FPR watercourse protection zones, as these methods require basal area restrictions that would ensure that the perceived minimum canopies are not a reasonable an end result of operations.”

Response: See revised finding 16 (previously finding 14). Due to the site specific variations that exist in the North Coast watersheds where timber harvesting occurs, it would be a generalization that is not supported by evidence to claim that minimum retention standards are in all cases protective of shade and water temperature. The word “generally” is routinely used in scientific literature where certainty is lacking.

Comment #30 – “Finding 17 (now finding 19) states, ‘It is generally thought that partial harvesting under uneven-aged silviculture has a lower potential to result in adverse impacts to water quality than more intensive harvesting under even-aged management. Tree retention can minimize potential changes in runoff patterns and peak flow that can impact beneficial uses of water. Also, the potential for increased sediment discharge from landslides is reduced by retaining root strength on vulnerable hill slopes. As such, harvesting methods that result in intensive canopy removal are limited under this Categorical Waiver to areas at least 200 feet from a watercourse on slopes less than 65%.’”

The commenter points out that Finding 17 (previously finding 15) states, “The majority of TMDLs on the North Coast, as well as numerous other studies, have found logging roads, particularly poorly constructed roads and watercourse crossings, to be one of the primary sources of excess sediment discharge and alteration in watershed hydrologic regimes associated with impairment of beneficial uses.” If roads are the problems identified by Federal EPA TMDL observation and reporting, and roads are a common factor to all timber harvesting, then the application of silviculture should not be a conditional factor associated with the qualification of waiver coverage.

Response: Both tree removal as well as construction, reconstruction, and use of roads have the potential to result in adverse impacts to water quality. Therefore, the proposed Order includes Specific Conditions addressing the potential impacts to water quality from tree removal and roads.

Comment #31 – The commenter maintains that [finding 19] lacks a comprehensive flow of logic and references even-age/uneven-aged silviculture, peak flow, and rooting strength on unstable areas under gross generalizations in an attempt to justify a large no-clearcut zone in some cases 170 feet in excess of the current rules.

The commenter cites the CAL FIRE hill slope monitoring program which found that implementation rates of FPRs related to water quality are high and that individual practices required by the rules are effective in preventing hillslope erosion when properly implemented. The program also concluded that watercourse protection zones were found to retain high levels of post-harvest canopy cover and prevent harvesting-related erosion.

The commenter maintains that there is no factual basis for 170-foot protection on Class III watercourses and states that generalized statements regarding root strength are without citation and may be interpreted as constituting the practice of geology and must be supported by a license.

Response: See response to comment #6 which addresses slope stability, root strength, and the relationship between tree removal and adverse impacts to water quality, including increased sediment production due to higher peak flows and landslides.

The comment on 170-foot protection on Class III watercourses refers to Special Condition 6 of Categorical Waiver F, which allows intensive Silviculture (clearcutting) on slopes less than 65% at distances greater than 200 feet from a watercourse. FPR section 916 provides Class III watercourses with a 25-50 foot (depending on hill slope gradient) equipment limitation zones. Regional Water Board staff acknowledges that this condition is significantly more protective than FPRs minimums, and is appropriate for a conditional waiver. Landowners with THPs that propose clearcutting to the FPRs minimum standards have the option of enrolling their plans in the General WDR under Order No. R1-2004-0030.

Comment #32 - The commenter states that operations proposing heavy equipment on unstable areas that would require a geologic evaluation should be precluded from Waiver coverage.

Response: Regional Water Board staff agrees that operating heavy equipment on unstable areas can increase landslide potential and related sediment discharges. However, potential sediment discharge can be prevented or minimized when recommendations to minimize impacts to slope stability are developed by a Professional Geologist based on an adequate characterization of landslide hazards and are incorporated into an approved project.

Comment #33 - Finding 37 (previously finding 34) states, “Because discharges from timber harvest activities result from similar operations, and involve similar types of waste and treatment standards, the discharges are appropriately regulated under a general waiver of waste discharge requirements.”

The commenter maintains this statement is supportive that all operations can, in the public interest, be regulated under a general waiver and waivers are utilized for timber operations by every other RWQCB in the state of California.

Response: Water Code section 13263 provides that a regional board may find that general waste discharge requirements are appropriate for a category of discharges that meet specified criteria. Water Code section 13269 provides that a regional board may conditionally waive waste discharge requirements if the type of discharge meets the requirements of section 13269 and do not pose a significant threat to water quality. The Regional Water Board in adopting the proposed Order finds that the categories of discharges covered by the proposed Order do not pose a significant threat to water quality provided they meet the conditions of the Order.

Comment #34 – Waiver coverage for programmatic THPs (PTHPs) under the Mattole Programmatic Timberland Environmental Impact Report (PTEIR)

Commenters request that either a new Categorical Waiver be added to the proposed Order that would apply to PTHPs submitted under the Mattole PTEIR or that current draft language for Category F should be amended to include Mattole PTHPs. This is based on Regional Water Board staff having previously concluded that the Mattole PTEIR instituted equal or greater protections than the FPRs and met the intent of the Categorical Waiver. The language would need to include a condition allowing use of the Geologic Flow Chart in the Mattole PTEIR so that landowners proposing a Mattole PTHP would not have to justify the use of the Flow Chart.

Response: Regional Water Board staff has provided input and review of the PTEIR since its inception and will continue to provide input on PTHPs under our role as a member of the CAL FIRE Review Team, and as a Responsible Agency under CEQA.

MRC representatives, Seth Zuckerman and Ali Freedlund provided information at the November 2011 Regional Water Board meeting in Santa Rosa on the process, status and silvicultural proposals within the PTEIR and subsequent PTHPs. Regional Water Board staff reported that they had met with the MRC and were currently evaluating whether the

existing timber Categorical Waiver, the GWDR, modification of either, or a new WDR or Waiver would be necessary to adequately regulate the future PTHPs. Section II(B)(3) of the GWDR states, "For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) shall seek coverage under this Order for each new PTHP."

Regional Water Board staff believe that enrollment under the GWDR provides the most appropriate permitting mechanism, particularly in light of elimination of WDR fees for timber harvesting. Under the GWDR, there is no need to develop a new category or conditions for coverage. Under the GWDR, landowners proposing a Mattole PTHP do not have to justify the use of the geologic flow chart.

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